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Contents

Federal Register

Vol. 85, No. 228

Wednesday, November 25, 2020

Agency for Healthcare Research and Quality
NOTICES
Supplemental Evidence and Data Request:
Models of Care That Include Primary Care for Adult Survivors of Childhood Cancer, 75326–75327

Agriculture Department
See Food and Nutrition Service
See Forest Service
See Rural Business-Cooperative Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 75283–75284

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Office of Refugee Resettlement Serious Medical Procedure Request Form, 75327–75328

Civil Rights Commission
NOTICES
Meetings:
Mississippi Advisory Committee, 75294–75295
Nevada Advisory Committee, 75295
South Dakota Advisory Committee, 75295–75296

Commerce Department
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
RULES
Certain Swap Data Repository and Data Reporting Requirements, 75601–75678
Real-Time Public Reporting Requirements, 75422–75503
Swap Data Recordkeeping and Reporting Requirements, 75503–75601

Comptroller of the Currency
PROPOSED RULES
Fair Access to Financial Services, 75261–75266

Defense Acquisition Regulations System
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Defense Federal Acquisition Regulation Supplement; Part 215 Negotiation, 75304
Defense Federal Acquisition Regulation Supplement; Transportation, 75304–75305

Defense Department
See Defense Acquisition Regulations System
See Navy Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Federal Acquisition Regulation Part 3, Improper Business Practices and Personal Conflicts of Interest, 75325–75326
Arms Sales, 75305–75309

Drug Enforcement Administration
RULES
Schedules of Controlled Substances:
Placement of Cyclopentyl Fentanyl, Isobutyryl Fentanyl, Para-chloroisobutyryl Fentanyl, Para-methoxybutyryl Fentanyl, and Valeryl Fentanyl in Schedule I, 75231–75235

Education Department
NOTICES
Reporting Process, 75310–75311

Employee Benefits Security Administration
NOTICES
Charter Renewal:
Advisory Council on Employee Welfare and Pension Benefit Plans, 75375–75376

Employment and Training Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 75376–75377

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Chemical Data Reporting:
Final Extension of the 2020 Submission Period, 75235–75238
National Emission Standards for Hazardous Air Pollutants:
Miscellaneous Coating Manufacturing Residual Risk and Technology Review, 75235
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Wisconsin; Partial Approval and Partial Disapproval of the Oneida County Sulfur Dioxide Nonattainment Area Plan, 75273–75280
NOTICES
Research Triangle Institute; Transfer of Data (October 2020), 75319–75320

Export-Import Bank
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 75321
Proposal To Consider Changes to Content Policy With Respect to the Program on China and Transformational Exports, 75320–75321

Federal Aviation Administration
PROPOSED RULES
Airspace Designations and Reporting Points:
Lone Rock, WI, 75267–75268

Federal Communications Commission
RULES
Establishing a 5G Fund for Rural America, 75770–75828

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 75321–75323

Federal Emergency Management Agency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Consolidated National Training and Education Division Level 3 Training Evaluation Forms, 75349–75350
Changes in Flood Hazard Determinations, 75350–75354, 75359–75361
Final Flood Hazard Determinations, 75348–75349, 75355–75359
Proposed Flood Hazard Determinations, 75354–75355

Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 75317–75318
Application:
Georgia Power Co., 75312–75313
Town of Stuyvesant, NY and Albany Engineering Corp., 75316–75317
Village of Gouverneur, NY, 75318–75319
Combined Filings, 75311–75312, 75315–75316
Environmental Impact Statements; Availability, etc.:
Golden Pass Pipeline, LLC, 75313–75315
Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorizations:
Flat Ridge Interconnection, LLC; Supplemental, 75317
Meetings, 75319

Federal Highway Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 75399–75402

Federal Motor Carrier Safety Administration
PROPOSED RULES
Petition for Rulemaking:
Transportation Intermediaries Association; Property Broker Transaction Records and Regulatory Guidance Concerning Dispatch Services, 75280–75282
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Motor Carrier Records Change Form, 75402–75404

Federal Reserve System
NOTICES
Change in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 75323–75324

Federal Trade Commission
NOTICES
Analysis of Consent Orders:
Stryker and Wright Medical, 75324–75325

Fish and Wildlife Service
NOTICES
Endangered and Threatened Species:
Recovery Permit Applications, 75371–75373

Food and Drug Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Obtaining Information To Understand Challenges and Opportunities Encountered by Compounding Outsourcing Facilities, 75328–75330
Product Jurisdiction and Combination Products, 75338–75339
Recordkeeping and Reporting Requirements for Human Food and Cosmetics Manufactured From, Processed With, or Otherwise Containing Material From Cattle, 75330–75331
Guidance:
Formal Meetings Between the Food and Drug Administration and Abbreviated New Drug Application Applicants of Complex Products Under Generic Drug User Fee Amendments, 75336–75338
Qualification Process for Drug Development Tools, 75334–75336
Termination of the Food and Drug Administration's Unapproved Drugs Initiative, 75331–75334

Food and Nutrition Service
PROPOSED RULES
Restoration of Milk, Whole Grains, and Sodium Flexibilities, 75241–75261

Forest Service
NOTICES
Meetings:
South Central Idaho Resource Advisory Committee, 75284

General Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Federal Acquisition Regulation Part 3, Improper Business Practices and Personal Conflicts of Interest, 75325–75326

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
NOTICES
Findings of Research Misconduct, 75339–75341
Request for Information:
Regulatory Relief to Support Economic Recovery, 75720–75768

Homeland Security Department
See Federal Emergency Management Agency
See U.S. Customs and Border Protection
RULES
Ratification of Department Actions, 75223–75230

Housing and Urban Development Department
NOTICES
FY2020 Allocations, Waivers, and Alternative Requirements for the Pilot Recovery Housing Program, 75361–75371
Section 8 Housing Choice Vouchers:
Implementation of the Housing Choice Voucher Mobility Demonstration, Extension of Application Due Date, 75371

Industry and Security Bureau
NOTICES
Meetings:
Emerging Technology Technical Advisory Committee, 75296–75297
Regulations and Procedures Technical Advisory Committee, 75296

Interior Department
See Fish and Wildlife Service
NOTICES
Environmental Assessments; Availability, etc.:
Louisiana Trustee Implementation Group Deepwater Horizon Oil Spill Final Restoration Plan, 75373–75374

Internal Revenue Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 75405–75407

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Corrosion-Resistant Steel Products From the People's Republic of China, 75299–75302
Corrosion-Resistant Steel Products From the People's Republic of China; Rescission, 75297–75299
Application:
Duty-Free Entry of Scientific Instruments, 75302–75303

International Trade Commission
NOTICES
Complaint:
Certain Vehicle Control Systems, Vehicles Containing the Same, and Components Thereof, 75374–75375

Justice Department
See Drug Enforcement Administration
See Prisons Bureau

Labor Department
See Employee Benefits Security Administration
See Employment and Training Administration
See Workers Compensation Programs Office

National Aeronautics and Space Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Federal Acquisition Regulation Part 3, Improper Business Practices and Personal Conflicts of Interest, 75325–75326

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 75341, 75344
Council of Councils, 75342
National Human Genome Research Institute, 75344
National Institute of Dental and Craniofacial Research, 75342–75343
National Institute of General Medical Sciences, 75341–75342, 75344–75345
National Institute on Aging, 75345
National Institute on Deafness and Other Communication Disorders, 75345–75346
Request for Information on Research Opportunities, 75343–75344

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Exclusive Economic Zone Off Alaska:
Arrowtooth Flounder in the Bering Sea and Aleutian Islands Management Area, 75239–75240
Several Groundfish Species in the Bering Sea and Aleutian Islands Management Area, 75238–75239
NOTICES
Meetings:
Fisheries of the South Atlantic; Southeast Data, Assessment, and Review, 75303
Marine Fisheries Advisory Committee, 75304

Navy Department
NOTICES
Meetings:
U.S. Naval Academy Board of Visitors; Corrections, 75309–75310

Nuclear Regulatory Commission
RULES
Miscellaneous Corrections; Correction, 75230–75231
NOTICES
Background Check Process:
Southern Nuclear Operating Co. Inc., Vogtle Electric Generating Plant, Unit 4, 75380–75383
Exemptions:
Issuance of Multiple Exemptions in Response to COVID–19 Public Health Emergency, 75378–75380

Pipeline and Hazardous Materials Safety Administration
RULES
Hazardous Materials:
Adoption of Miscellaneous Petitions To Reduce Regulatory Burdens, 75680–75717

Postal Service
NOTICES
Product Change:
First-Class Package Service Negotiated Service Agreement, 75383–75384
Priority Mail and First-Class Package Service Negotiated Service Agreement, 75384
Priority Mail Negotiated Service Agreement, 75384

Presidential Documents
PROCLAMATIONS
Special Observances:
National Family Week (Proc. 10120), 75221–75222
ADMINISTRATIVE ORDERS
Nicaragua; Continuation of National Emergency (Notice of November 24, 2020), 75829–75831

Prisons Bureau
PROPOSED RULES
First Step Act Time Credits, 75268–75273

Railroad Retirement Board
NOTICES
Meetings:
Actuarial Advisory Committee, 75384

Rural Business-Cooperative Service
NOTICES
Request for Applications:
Rural Energy for America Program, 75284–75294

Securities and Exchange Commission
NOTICES
Intention To Cancel Registration Pursuant to the Investment Advisers Act, 75391–75392
Meetings; Sunshine Act, 75391
Self-Regulatory Organizations; Proposed Rule Changes:
New York Stock Exchange, LLC, 75388–75391
The Options Clearing Corp., 75384–75388

State Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Passport Demand Forecasting Survey, 75394
President's Emergency Plan for AIDS Relief Program Expenditures, 75392–75393
Imposition of Nonproliferation Measures Against Foreign Persons, Including a Ban on United States Government Procurement, 75393–75394
Meetings:
Preparation for International Maritime Organization Meeting, 75393

Surface Transportation Board
NOTICES
Discontinuance of Service Exemption:
CSX Transportation, Inc., Pike County, Kentucky, 75394–75395

Tennessee Valley Authority
NOTICES
Environmental Impact Statements; Availability, etc.:
Sugar Camp Energy, LLC Mine No. 1, 75395–75397

Trade Representative, Office of United States
NOTICES
Hearing:
Investigation of Vietnam's Acts, Policies, and Practices Related to Currency Valuation, 75397–75398
Investigation of Vietnam's Acts, Policies, and Practices Related to the Import and Use of Illegal Timber, 75398–75399

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration
See Pipeline and Hazardous Materials Safety Administration
NOTICES
Meetings:
Workshop on GPS Jamming and Spoofing in the Maritime Environment, 75404–75405

Treasury Department
See Comptroller of the Currency
See Internal Revenue Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 75407–75418

U.S. Customs and Border Protection
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery, 75347–75348
Meetings:
Commercial Customs Operations Advisory Committee, 75346–75347

Veterans Affairs Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Expanded Access to Non-Veterans Administration Care Through the Maintaining Internal Systems and Strengthening Integrated Outside Networks Program; Establishing a Process for Certification, Discontinuance, and Disputes for Veterans Care Agreements, 75418–75419

Workers Compensation Programs Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Rehabilitation Action Report, 75377–75378

Separate Parts In This Issue

Part II
Commodity Futures Trading Commission, 75422–75678

Part III
Transportation Department, Pipeline and Hazardous Materials Safety Administration, 75680–75717

Part IV
Health and Human Services Department, 75720–75768

Part V
Federal Communications Commission, 75770–75828

Part VI
Presidential Documents, 75829–75831

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

10120 75221

Administrative Orders:

Notices:

Notice of November 24, 2020 75831

7 CFR

Proposed Rules:

210 75241
215 75241
220 75241
226 75241

8 CFR

Ch. I 75223

10 CFR

Ch. I 75230

12 CFR

Proposed Rules:

55 75261

14 CFR

Proposed Rules:

71 75267

17 CFR

43 (2 documents) 75422, 75601
45 (2 documents) 75503, 75601
46 75503
49 (2 documents) 75503, 75601

21 CFR

1308 75231

28 CFR

Proposed Rules:

523 75268
541 75268

40 CFR

63 75235
711 75235

Proposed Rules:

52 75273

47 CFR

1 75770
54 75770

49 CFR

107 75680
171 75680
172 75680
173 75680
178 75680
179 75680
180 75680

Proposed Rules:

Ch. III 75280

50 CFR

679 (2 documents) 75238, 75239

Federal Register
Vol. 85, No. 228
Wednesday, November 25, 2020

Presidential Documents

Title 3—

The President

Proclamation 10120 of November 20, 2020

National Family Week, 2020

By the President of the United States of America

A Proclamation

Families strengthen our communities, shape our values, and provide a foundation for future success. Families are—and will always be—the basic building block of our society. During National Family Week, we take time to honor and appreciate the many blessings of strong and healthy families, and we recognize that our policies must empower and enable them to flourish so they can contribute to an even brighter future for our great Nation.

Every family is unique and remarkable, and my Administration is committed to providing meaningful solutions to address the issues that matter most to them, especially when facing extraordinary challenges. As our Nation confronted the coronavirus pandemic, I signed the Coronavirus Aid, Relief, and Economic Security (CARES) Act to provide over $2 trillion in economic relief to quickly help families, small businesses, and communities, and the Families First Coronavirus Response Act, which provided timely and critical support for families by expanding paid family, medical, and sick leave. We also increased unemployment benefits, enhanced flexibility within unemployment insurance programs, suspended student loan payments, and removed the threat of foreclosures and evictions for families with Government guaranteed mortgages. My Administration continues to call on the Congress for additional support to sustain families through this pandemic, particularly those most harmed by State and local shutdown orders and other restrictions on economic activity.

The pandemic has placed great strain on American families, from those who have mourned the loss of a loved one to those who have struggled to adjust to new and burdensome daily routines. In times like this, mental health becomes even more important. That is why I signed an Executive Order to provide grant funding for easier access to mental health services, including telehealth, peer-to-peer, and safe in-person therapeutic treatments.

Despite impediments and adversity, we have made great progress to help bring an end to this terrible pandemic and rebuild our previously booming economy. In addition to identifying many successful therapeutics through Operation Warp Speed, I recently announced tremendous progress in developing and distributing safe and effective vaccines. Moreover, with unprecedented rapid reductions in unemployment and historic third-quarter growth, the United States, in just a few months, has recovered two-thirds of the economic output lost to the pandemic. America will fully recover not only emotionally and physically, but also fiscally, from the devastation of the pandemic—and our families will be the bedrock of our Nation's renewed success.

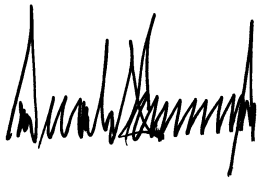
Families are our most cherished and sacred institution. They play a vital role in providing emotional, physical, and communal support and help us endure the inevitable difficulties of life. My Administration stands firm in supporting the success of our families by ensuring that every child—born and unborn—can thrive in a loving home with caregivers who are bolstered by access to childcare, paid family leave, school choice, and job training. By enacting tax cuts, lowering prescription drug prices, and working

to increase wages and benefits, we have enabled families to keep more of their hard-earned money so they can realize their own American dream.

In this season of Thanksgiving, we thank God for the wonderful families across our great Nation who are working to build brighter, better, and more prosperous futures. This week, we acknowledge that we are only as strong as our families and vow to prioritize their well-being and to uphold their fundamental role in our society.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 22 through November 28, 2020, as National Family Week. I invite communities, churches, and individuals to observe this week with appropriate ceremonies and activities to honor our Nation's families.

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



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Rules and Regulations

Federal Register

Vol. 85, No. 228

Wednesday, November 25, 2020

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DEPARTMENT OF HOMELAND SECURITY

8 CFR Chapter I

Ratification of Department Actions

AGENCY: Department of Homeland Security (DHS).

ACTION: Ratification.

SUMMARY: The Department of Homeland Security, through its Acting Secretary, is publishing a notice of two ratification documents regarding a number of previous actions by the Department. The ratifications provide the public with certainty, by resolving any potential defect in the validity of those actions.

DATES: The ratification documents were signed on November 16, 2020 and relate back to the original date of each action ratified.

FOR FURTHER INFORMATION CONTACT: Leo (Chip) Boucher, Assistant General Counsel, Administrative Law, Office of the General Counsel, Department of Homeland Security, Washington, DC 20528, (202) 282–9822.

SUPPLEMENTARY INFORMATION: The Department of Homeland Security, through its Acting Secretary, is ratifying a number of previous actions by the Acting Secretary and by former Acting Secretary Kevin K. McAleenan, and one previous action by U. S. Citizenship and Immigration Services Deputy Director for Policy Joseph Edlow. The Department continues to maintain that the November 8, 2019, succession order designating Chad Wolf as Acting Secretary is valid and that Acting Secretary Wolf had the authority to take the actions being ratified in the attached appendix. And the Department continues to maintain that the April 9, 2019, succession order designating Kevin K. McAleenan as Acting Secretary was valid and that Acting Secretary McAleenan had the authority to take the actions being ratified in the appendix. The Department issued these ratifications and is now publishing them in the **Federal Register** out of an abundance of caution. Neither the ratifications nor the publication is a statement that the ratified actions would be invalid absent the ratification.

Ian Brekke,

Deputy General Counsel, U.S. Department of Homeland Security.

Appendix

BILLING CODE 9112–FP–P

U.S. Department of Homeland Security
Washington, DC 20528

RATIFICATION OF ACTIONS TAKEN BY THE ACTING SECRETARY OF HOMELAND SECURITY

I am affirming and ratifying each of my delegable prior actions as Acting Secretary, *see* 5 U.S.C. § 3348(a)(2), (d)(2), out of an abundance of caution because of a recent Government Accountability Office (GAO) opinion, *see* B-331650 (Comp. Gen., Aug. 14, 2020), and recent actions filed in federal court alleging that the November 8, 2019, order of succession issued by former Acting Secretary Kevin McAleenan was not valid. *See, e.g.*, *Guedes v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 920 F.3d 1, (D.C. Cir. 2019) ("We have repeatedly held that a properly appointed official's ratification of an allegedly improper official's prior action . . . resolves the claim on the merits by remedy[ing] the defect (if any) from the initial appointment" (quote marks omitted) (second alteration in original)).

When former Acting Secretary McAleenan resigned on November 13, 2019, I began serving as Acting Secretary in accordance with the order of succession former Acting Secretary McAleenan designated on November 8, 2019, under the Homeland Security Act (HSA), 6 U.S.C. § 113(g)(2) (enacted on Dec. 23, 2016, Pub. L. 114–328, div. A, title XIX, § 1903(a), 130 Stat. 2672). That designation of the order of succession followed former Secretary Kirstjen Nielsen's April 9, 2019, designation of the order of succession, also pursuant to section 113(g)(2), which resulted in Mr. McAleenan serving as Acting Secretary when former Secretary Nielsen resigned.

The Secretary of Homeland Security's authority to designate the order of succession under section 113(g)(2) is an alternative means to the authority of the Federal Vacancies Reform Act (FVRA) to designate an Acting Secretary of Homeland Security. Section 113(g)(2) provides that it applies "notwithstanding" the FVRA; thus, when there is an operative section 113(g)(2) order of succession, it alone governs which official shall serve as Acting Secretary. Accordingly, I properly began serving as Acting Secretary on November 13, 2019. Because section 113(g)(2) authorizes the designation of an Acting Secretary "notwithstanding chapter 33 of title 5" in its entirety, section 113(g)(2) orders addressing the line of succession for the Secretary of Homeland Security are subject to neither the FVRA provisions governing which officials may serve in an acting position, *see* 5 U.S.C. § 3345, nor FVRA time constraints, *see id.* § 3346.

On September 10, 2020, President Donald J. Trump nominated me to serve as Secretary of Homeland Security. Because I have been serving as the Acting Secretary pursuant to a section 113(g)(2) order of succession, the FVRA's prohibition on a nominee's acting service while his or her nomination is pending does not apply, and I remain the Acting Secretary notwithstanding my nomination. *Compare* 6 U.S.C. § 113(a)(1)(A) (cross-referencing the FVRA without the "notwithstanding" caveat), *with id.* § 113(g)(1)–(2) (noting the FVRA

provisions and specifying, in contrast, that section 113(g) provides for acting secretary service "notwithstanding" those provisions); *see also* 5 U.S.C. § 3345(b)(1)(B) (restricting acting officer service under section 3345(a) by an official whose nomination has been submitted to the Senate for permanent service in that position).

That said, there have been recent challenges contending that my service is invalid, resting on the erroneous contentions that the orders of succession issued by former Secretary Nielsen and former Acting Secretary McAleenan were invalid. If those contentions were legally correct—meaning that neither former Secretary Nielsen nor former Acting Secretary McAleenan would have issued a valid section 113(g)(2) order of succession—then the FVRA would apply and Executive Order 13753 (published on December 14, 2016, under the FVRA) would continue to govern the order of succession for the Secretary of Homeland Security.

The FVRA provides an alternative basis for an official to exercise the functions and duties of the Secretary temporarily in an acting capacity. In that alternate scenario, under the authority of the FVRA, 5 U.S.C. § 3345(a)(2), when the President submitted my nomination, Peter Gaynor, the Administrator of the Federal Emergency Management Agency (FEMA), would have become eligible to exercise the authority of the Secretary temporarily in an acting capacity. This is because Executive Order 13753 pre-established the President's succession order for the Department when the FVRA applies,[1] Mr. Gaynor would be the most senior official eligible to serve as the Acting Secretary under that succession order, and my nomination restarted the FVRA's time limits, 5 U.S.C. § 3346(a)(2).

Out of an abundance of caution and to minimize any disruption to the Department of Homeland Security and to the Administration's Homeland Security mission, on November 14, 2020, after the President submitted my nomination to the Senate on September 10, 2020, Mr. Gaynor exercised any authority of the position of Acting Secretary that he had to designate an order of succession under 6 U.S.C. § 113(g)(2) (the "Gaynor Order").[2] Mr. Gaynor re-issued the order of succession established by former Acting Secretary McAleenan on November 8, 2019, and placed the Under Secretary for Strategy, Policy, and Plans above the FEMA Administrator in the order of succession. Once the Gaynor Order was executed, it superseded any authority Mr. Gaynor may have had under the FVRA and confirmed my authority to continue to serve as the Acting Secretary. Thus, in addition to the authority I possess pursuant to the November 8, 2019, order

[1] Executive Order 13753, Amending the Order of Succession in the Department of Homeland Security, 81 Fed. Reg. 90667 (Dec. 14, 2016).

[2] Mr. Gaynor signed an initial succession order to this effect on September 10, 2020. Out of caution, due to uncertainties related to the timing of the signing of that order on the date of my nomination to the U.S. Senate, Administrator Gaynor has issued the November 14, 2020, order. Further, I previously issued a ratification order on September 17, 2020, similar to this present order, *see* Ratification, 85 Fed. Reg. 59651 (Sept. 23, 2020), but I am issuing this order today to eliminate any potential question about whether, assuming that the orders issued by Secretary Nielsen and Acting Secretary McAleenan were insufficient to make me Acting Secretary under section 113(g)(2), my ratification has occurred subsequent to the proper signing and issuance of a succession order that has the effect of making me Acting Secretary.

of succession effectuated by former Acting Secretary McAleenan, the Gaynor Order alternatively removes any doubt that I am currently serving as the Acting Secretary.

I have full and complete knowledge of the contents and purpose of any and all actions taken by me since November 13, 2019. Among my prior actions that I am ratifying is a Final Rule I approved and issued in the Federal Register at 85 Fed. Reg. 46,788 (Aug. 3, 2020). Former Acting Secretary McAleenan issued a Notice of Proposed Rulemaking (NPRM) for that Final Rule at 84 Fed. Reg. 62,280 (Nov. 14, 2019), and I am familiar with that NPRM having previously approved the Final Rule. I believe that all of the aforementioned actions as Acting Secretary since November 13, 2019, were legally authorized and entirely proper. However, to avoid any possible uncertainty and out of an abundance of caution, pursuant to the Secretary of Homeland Security's authorities under, *inter alia*, the Homeland Security Act of 2002, Pub. L. No 207-296, as amended, and 5 U.S.C. §§ 301-302, I hereby affirm and ratify any and all actions involving delegable duties that I have taken from November 13, 2019, through November 14, 2020, the date of the execution of the Gaynor Order, and I hereby affirm and ratify the above noted November 14, 2019 NPRM originally approved by former Acting Secretary McAleenan.

Chad F. Wolf
Acting Secretary

11/16/2020
Date

U.S. Department of Homeland Security
Washington, DC 20528

Ratification of Certain Actions Taken by Former Acting Secretary Kevin McAleenan and One Action Taken by U.S. Citizenship and Immigration Services Deputy Director for Policy Joseph Edlow

I am affirming and ratifying certain delegable actions taken by Acting Secretary McAleenan, *see* 5 U.S.C. § 3348(a)(2), (d)(2), and one delegable action taken by U.S. Citizenship and Immigration Services (USCIS) Deputy Director for Policy, Edlow, as listed below, out of an abundance of caution because of a recent Government Accountability Office (GAO) opinion, *see* B-331650 (Comp. Gen., Aug. 14, 2020), and recent actions filed in federal court alleging that the November 8, 2019, order of succession issued by former Acting Secretary Kevin McAleenan was not valid. *See, e.g.*, *Guedes v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 920 F.3d 1, 13 (D.C. Cir. 2019) ("We have repeatedly held that a properly appointed official's ratification of an allegedly improper official's prior action . . . resolves the claim on the merits by remedy[ing] the defect (if any) from the initial appointment.") (internal quotation marks and citation omitted).

When former Acting Secretary McAleenan resigned on November 13, 2019, I began serving as Acting Secretary in accordance with the order of succession former Acting Secretary McAleenan had designated on November 8, 2019, under the Homeland Security Act (HSA), 6 U.S.C. § 113(g)(2) (enacted on Dec. 23, 2016, Pub. L. 114–328, div. A, title XIX, § 1903(a), 130 Stat. 2672). That designation of the order of succession followed former Secretary Kirstjen Nielsen's April 9, 2019, designation of the order of succession, also pursuant to § 113(g)(2), which resulted in Mr. McAleenan's serving as Acting Secretary when former Secretary Nielsen resigned.

The Secretary of Homeland Security's authority to designate the order of succession under § 113(g)(2) is an alternative means to the authority of the Federal Vacancies Reform Act (FVRA) to designate an Acting Secretary of Homeland Security. Section 113(g)(2) provides that it applies "notwithstanding" the FVRA; thus, when there is an operative § 113(g)(2) order of succession, it alone governs which official shall serve as Acting Secretary. Accordingly, I properly began serving as Acting Secretary on November 13, 2019. Because § 113(g)(2) authorizes the designation of an Acting Secretary "notwithstanding chapter 33 of title 5" in its entirety, § 113(g)(2) orders addressing the line of succession for the Secretary of Homeland Security are subject to neither the FVRA provisions governing which officials may serve in an acting position, *see* 5 U.S.C. § 3345, nor FVRA time constraints, *see id.* § 3346.

On September 10, 2020, President Donald J. Trump nominated me to serve as Secretary of Homeland Security. Because I have been serving as the Acting Secretary pursuant to a

§ 113(g)(2) order of succession, the FVRA's prohibition on a nominee's acting service while his or her nomination is pending does not apply, and I remain the Acting Secretary notwithstanding my nomination. *Compare* 6 U.S.C. § 113(a)(1)(A) (cross-referencing the FVRA without the "notwithstanding" caveat), *with id.* § 113(g)(1)–(2) (noting the FVRA provisions and specifying, in contrast, that § 113(g) provides for acting secretary service "notwithstanding" those provisions); *see also* 5 U.S.C. § 3345(b)(1)(B) (restricting acting officer service under § 3345(a) by an official whose nomination has been submitted to the Senate for permanent service in that position).

That said, there have been recent challenges contending that my service is invalid, resting on the erroneous contentions that the orders of succession issued by former Secretary Nielsen and former Acting Secretary McAleenan were invalid. If those contentions were legally correct—meaning that neither former Secretary Nielsen nor former Acting Secretary McAleenan issued a valid § 113(g)(2) order of succession—then the FVRA would have applied and Executive Order 13753 (published on December 14, 2016, under the FVRA)[1] would have governed the order of succession for the Secretary of Homeland Security from the date of Nielsen's resignation.

The FVRA provides an alternative basis for an official to exercise the functions and duties of the Secretary temporarily in an acting capacity. In that alternate scenario, under the authority of the FVRA, 5 U.S.C. § 3345(a)(2), when the President submitted my nomination, Peter Gaynor, the Administrator of the Federal Emergency Management Agency (FEMA), would have become eligible to exercise the functions and duties of the Secretary temporarily in an acting capacity. This is because Executive Order 13753 pre-established the President's succession order for the Department when the FVRA applies, Mr. Gaynor would have been the most senior official eligible to exercise the functions and duties of the Secretary under that succession order, and my nomination would have restarted the FVRA's time limits, 5 U.S.C. § 3346(a)(2).

Out of an abundance of caution and to minimize any disruption to the Department of Homeland Security and to the Administration's Homeland Security mission, on November 14, 2020, after the President submitted my nomination to the Senate on September 10, 2020, Mr. Gaynor exercised any authority of the position of Acting Secretary that he had to designate an order of succession under 6 U.S.C. § 113(g)(2) (the "Gaynor Order").[2] Mr. Gaynor re-issued the order of succession established by former Acting Secretary McAleenan on November 8, 2019, and placed

[1] Executive Order 13753, Amending the Order of Succession in the Department of Homeland Security, 81 Fed. Reg. 90667 (Dec. 14, 2016).

[2] Mr. Gaynor signed an initial succession order to this effect on September 10, 2020. Out of caution, due to uncertainties related to the timing of the signing of that order on the date of my nomination to the U.S. Senate, Administrator Gaynor has issued the November 14, 2020, order. Further, I previously issued a ratification order on October 7, 2020, similar to this present order, *see* Ratification, 85 Fed. Reg. 65653 (Oct. 16, 2020), but I am issuing this order today to eliminate any potential question about whether, assuming that the orders issued by Secretary Nielsen and Acting Secretary McAleenan were insufficient to make me Acting Secretary under section 113(g)(2), my ratification has occurred subsequent to the proper signing and issuance of a succession order that has the effect of making me Acting Secretary.

the Under Secretary for Strategy, Policy, and Plans above the FEMA Administrator in the order of succession. Once the Gaynor Order was executed, it superseded any authority Mr. Gaynor may have had under the FVRA and confirmed my authority to continue to serve as the Acting Secretary. Thus, in addition to the authority I possess pursuant to the November 8, 2019, order of succession effectuated by former Acting Secretary McAleenan, the Gaynor Order alternatively removes any doubt that I am currently serving as the Acting Secretary.

I have full knowledge of the following actions taken by former Acting Secretary McAleenan and USCIS Deputy Director for Policy Edlow, and believe that these actions were legally authorized and entirely proper:

1. Asylum Eligibility. Interim Final Rule. 84 Fed. Reg. 33,829 (July 16, 2019) issued by Former Acting Secretary McAleenan.

2. U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements. Notice of Proposed Rulemaking. 84 Fed. Reg. 62,280 (November 14, 2019) issued by Former Acting Secretary McAleenan.

3. Designating Aliens for Expedited Removal. Federal Register Notice. 84 Fed. Reg. 35,409 (July 23, 2019) issued by Former Acting Secretary McAleenan.

4. Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications. Notice of Proposed Rulemaking. 84 Fed. Reg. 47,148 (Sept. 9, 2019) issued by Former Acting Secretary McAleenan.

5. Asylum Application, Interview, and Employment Authorization for Applicants. Notice of Proposed Rulemaking. 84 Fed. Reg. 62,374 (Nov. 14, 2019) issued by Former Acting Secretary McAleenan.

6. Inadmissibility on Public Charge Grounds. Final Rule. 84 Fed. Reg. 41,292 (Aug. 14, 2019) issued by Former Acting Secretary McAleenan. Final rule correction. 84 Fed. Reg. 52,357 (Oct. 2, 2019) issued by Former Acting Secretary McAleenan.

7. Guatemala Refugee Protection. Former Acting Secretary McAleenan's October 16, 2019 determination issued by Former Acting Secretary McAleenan.

8. USCIS Deputy Director for Policy, Joseph Edlow's memorandum "Implementing Acting Secretary Chad Wolf's July 28, 2020 Memorandum" (August 21, 2020) issued by USCIS Deputy Director for Policy, Joseph Edlow.

9. Acting Secretary Kevin McAleenan's memorandum, "Information Regarding First Amendment Protected Activities" (May 17, 2019) issued by Former Acting Secretary McAleenan.

To avoid any possible uncertainty and out of an abundance of caution, pursuant to the Secretary of Homeland Security's authorities under, *inter alia*, the Homeland Security Act of 2002, Pub. L. No 207-296, as amended, and 5 U.S.C. §§ 301-302, I hereby make a detached and considered affirmation and ratification of the above noted actions originally taken and approved by former Acting Secretary McAleenan and USCIS Deputy Director for Policy Edlow.

Chad F. Wolf
Acting Secretary

11/16/2020
Date

[FR Doc. 2020–26060 Filed 11–23–20; 11:15 am]

BILLING CODE 9112–FP–C

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

[NRC–2020–0125]

RIN 3150–AK48

Miscellaneous Corrections; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule, correcting amendment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is correcting a final rule that appeared in the **Federal Register** on October 16, 2020, and became effective on November 16, 2020. That document inadvertently replaced an outdated Executive Order with an incorrect reference. This document corrects the reference to the Executive Order in the final rule.

DATES: This correction is effective on November 25, 2020.

ADDRESSES: Please refer to Docket ID NRC–2020–0125 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–2020–0125. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.*
- *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.*
- *Attention:* The Public Document Room (PDR), where you may examine and order copies of public documents is currently closed. You may submit your request to the PDR via email at *PDR.Resource@nrc.gov* or call 1–800–397–4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jill Shepherd, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1230, email: *Jill.Shepherd@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC is correcting FR Doc. 20–21148, a final rule that was published in the **Federal Register** on October 16, 2020 (85 FR 65656), and became effective on November 16, 2020. That document inadvertently replaced an outdated Executive Order with an incorrect reference. This document corrects the reference to the Executive Order in the final rule.

On page 65657, third column, under the heading ''10 CFR part 73,'' correct the paragraph ''*Correct Reference.* This final rule corrects the reference in § 73.57(b)(2)(iii) to read ''Executive Order 13767, as amended by Executive Order 13764,'' which replaced Executive Order 10450.'' to read ''*Correct Reference.* This final rule corrects the reference in § 73.57(b)(2)(iii) to read ''Executive Order 13467, as amended by Executive Order 13764,'' which replaced Executive Order 10450.''

List of Subjects In 10 CFR Part 73

Criminal penalties, Exports, Hazardous materials transportation, Incorporation by reference, Imports, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Security measures.

Accordingly, 10 CFR part 73 is corrected by making the following correcting amendments:

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

■ 1. The authority citation for part 73 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 53, 147, 149, 161, 170D, 170E, 170H, 170I, 223, 229, 234, 1701 (42 U.S.C. 2073, 2167, 2169, 2201, 2210d, 2210e, 2210h, 2210i, 2273, 2278a, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); Nuclear Waste Policy Act of 1982, secs. 135, 141 (42 U.S.C. 10155, 10161); 44 U.S.C. 3504 note.

Section 73.1 also issued under Nuclear Waste Policy Act secs. 135, 141 (42 U.S.C. 10155, 10161).

Section 73.37(b)(2) also issued under Sec. 301, Public Law 96–295, 94 Stat. 789 (42 U.S.C. 5841 note).

Section 73.37(f) also issued under Sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note).

§ 73.57 [Amended]

■ 2. In § 73.57(b)(2)(iii), remove ''Executive Order 13767'' and add in its place ''Executive Order 13467''.

Dated November 18, 2020.

For the Nuclear Regulatory Commission.

Pamela J. Shepherd-Vladimir,

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

[FR Doc. 2020–25875 Filed 11–24–20; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–565]

Schedules of Controlled Substances: Placement of cyclopentyl fentanyl, isobutyryl fentanyl, para-chloroisobutyryl fentanyl, para-methoxybutyryl fentanyl, and valeryl fentanyl in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: The Drug Enforcement Administration places cyclopentyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylcyclopentanecarboxamide), isobutyryl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylisobutyramide), *para*-chloroisobutyryl fentanyl (*N*-(4-chlorophenyl)-*N*-(1-phenethylpiperidin-4-yl)isobutyramide), *para*-methoxybutyryl fentanyl (*N*-(4-methoxyphenyl)-*N*-(1-phenethylpiperidin-4-yl)butyramide), and valeryl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylpentanamide), including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible, in schedule I of the Controlled Substances Act. This action continues the imposition of the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, import, export, engage in research, conduct instructional activities or chemical analysis with, or possess), or propose to handle cyclopentyl fentanyl, isobutyryl fentanyl, *para*-chloroisobutyryl fentanyl, *para*-methoxybutyryl fentanyl, and valeryl fentanyl.

DATES: Effective date: November 25, 2020.

FOR FURTHER INFORMATION CONTACT: Scott A. Brinks, Regulatory Drafting and Policy Support Section, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–3261.

SUPPLEMENTARY INFORMATION:

Legal Authority

The Controlled Substances Act (CSA) provides that proceedings for the issuance, amendment, or repeal of the scheduling of any drug or other substance may be initiated by the Attorney General (1) on his own motion; (2) at the request of the Secretary of the Department of Health and Human Services (HHS);[1] or (3) on the petition of any interested party. 21 U.S.C. 811(a). This action was initiated on the Attorney General's own motion, as delegated to the Administrator of DEA (Administrator), and is supported by, *inter alia,* a recommendation from the Assistant Secretary for Health of HHS (Assistant Secretary) and an evaluation of all relevant data by the Drug Enforcement Administration (DEA). This action continues the imposition of the regulatory controls and administrative, civil, and criminal sanctions of schedule I controlled substances on any person who handles or proposes to handle cyclopentyl fentanyl, isobutyryl fentanyl, *para*-chloroisobutyryl fentanyl, *para*-methoxybutyryl fentanyl, and valeryl fentanyl.

Background

On February 1, 2018, DEA published an order in the **Federal Register** amending 21 CFR 1308.11(h) to temporarily place cyclopentyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylcyclopentanecarboxamide), isobutyryl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylisobutyramide), *para*-chloroisobutyryl fentanyl (*N*-(4-chlorophenyl)-*N*-(1-phenethylpiperidin-4-yl)isobutyramide), *para*-methoxybutyryl fentanyl (*N*-(4-methoxyphenyl)-*N*-(1-phenethylpiperidin-4-yl)butyramide), and valeryl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylpentanamide), along with two other substances,[2] in schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). 83 FR 4580. That temporary scheduling order was effective on the date of publication, and was based on findings by the former Acting Administrator that the temporary scheduling of these seven substances was necessary to avoid an imminent hazard to the public safety pursuant to 21 U.S.C. 811(h)(1). On January 30, 2020, DEA published an order to extend the temporary schedule I status of cyclopentyl fentanyl, isobutyryl fentanyl, *para*-chloroisobutyryl fentanyl, *para*-methoxybutyryl fentanyl, and valeryl fentanyl by one year, or until February 1, 2021, pursuant to 21 CFR 811(h)(2). 85 FR 5321. Also, on that same date and in the same issue of the **Federal Register**, DEA simultaneously published a notice of proposed rulemaking (NPRM) to permanently control cyclopentyl fentanyl, isobutyryl fentanyl, *para*-chloroisobutyryl fentanyl, *para*-methoxybutyryl fentanyl, and valeryl fentanyl in schedule I of the CSA. 85 FR 5356. Specifically, DEA proposed to add these five substances to the opiates list under 21 CFR 1308.11(b).

DEA and HHS Eight Factor Analyses

On November 12, 2019, the Assistant Secretary submitted HHS's scientific and medical evaluation and scheduling recommendation for cyclopropyl fentanyl, *para*-fluorobutyryl fentanyl, cyclopentyl fentanyl, isobutyryl fentanyl, *para*-chloroisobutyryl fentanyl, *para*-methoxybutyryl fentanyl, and valeryl fentanyl to the former Acting Administrator.[3] After considering the eight factors in 21 U.S.C. 811(c), each substance's abuse potential, lack of legitimate medical use in the United States, and lack of accepted safety for use under medical supervision pursuant to 21 U.S.C. 812(b), the Assistant Secretary recommended that cyclopentyl fentanyl, isobutyryl fentanyl, *para*-chloroisobutyryl fentanyl, *para*-methoxybutyryl fentanyl, and valeryl fentanyl be controlled in schedule I of the CSA. In response, DEA conducted its own eight-factor analysis of cyclopentyl fentanyl, isobutyryl

[1] As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), FDA acts as the lead agency within HHS in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518, Mar. 8, 1985. The Secretary of HHS has delegated to the Assistant Secretary for Health of HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

[2] Those two other substances, ocfentanil (N-(2-fluorophenyl)-2-methoxy-N-(phenethylpiperidin-4-yl)acetamide) and *para*-fluorobutyryl fentanyl (N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)butyramide, were subsequently permanently placed in schedule I on November 29, 2018 (83 FR 61320) and October 25, 2019 (84 FR 57323), respectively, pursuant to 21 U.S.C. 811(d)(1).

[3] Although HHS also provided information on cyclopropyl fentanyl and *para*-fluorobutyryl fentanyl, these two substances will not be discussed in this final rule since they were permanently placed in schedule I on October 25, 2019. 84 FR 57323.

fentanyl, *para*-chloroisobutyryl fentanyl, *para*-methoxybutyryl fentanyl, and valeryl fentanyl. DEA and HHS analyses are available in their entirety in the public docket for this rule (Docket Number DEA–565) at *http://www.regulations.gov* under ''Supporting Documents.''

Determination To Schedule cyclopentyl fentanyl, isobutyryl fentanyl, *para*-chloroisobutyryl fentanyl, *para*-methoxybutyryl fentanyl, and valeryl fentanyl

After a review of the available data, including the scientific and medical evaluation and the scheduling recommendations from HHS, DEA published an NPRM entitled ''Schedules of Controlled Substances: Placement of cyclopentyl fentanyl, isobutyryl fentanyl, *para*-chloroisobutyryl fentanyl, *para*-methoxybutyryl fentanyl, and valeryl fentanyl into schedule I.'' This rule proposed to control cyclopentyl fentanyl, isobutyryl fentanyl, *para*-chloroisobutyryl fentanyl, *para*-methoxybutyryl fentanyl, and valeryl fentanyl, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible, in schedule I of the CSA. 85 FR 5356, January 30, 2020. The NPRM provided an opportunity for interested persons to file a request for hearing in accordance with DEA regulations on or before March 2, 2020. No requests for such a hearing were received by DEA. The NPRM also provided an opportunity for interested persons to submit comments on or before March 2, 2020.

Comments Received

DEA received six comments on the proposed rule to permanently control cyclopentyl fentanyl, isobutyryl fentanyl, *para*-chloroisobutyryl fentanyl, *para*-methoxybutyryl fentanyl, and valeryl fentanyl in schedule I of the CSA. The submissions were from individual or anonymous commenters. Two commenters provided support for the rule, and one commenter opposed the rule. Three other commenters either supported or opposed the proposal, but misunderstood it to be rescheduling fentanyl from schedule II to schedule I. As such, the latter three comments were outside the scope of this current scheduling action.

Comment: The two commenters provided different reasons for supporting the proposed rule. One commenter stated the proposed rule was beneficial and expressed displeasure with drug dealers, but did not elaborate further. The other commenter stated that according to the Centers for Disease Control and Prevention, abusing unregulated opioids represents a significant risk of opioid overdose to users. Additionally, the commenter stated that the opioid abuse epidemic is incurring not only financial, but also social and emotional damage. Lastly, this commenter stated that these five substances meet DEA's requirements for schedule I control, and noted they are structurally similar to the opioid fentanyl, lack FDA approval for treatment, and are of unknown quality and potency.

DEA Response: DEA appreciates the comments in support of this rulemaking.

Comment: One commenter stated that DEA's proposal to only place five structural variants of fentanyl in schedule I is ''stupid'' and will not solve the problem when ''China imports *[sic]* four hundred variants'' (taken to be asserting that China exports 400 such variants of fentanyl to the United States). The commenter suggested that DEA determine every possible ''fentanyl variant'' and place them all in schedule I rather than control individual substances.

DEA Response: Similar to what this commenter suggested, the agency has undertaken a broad scheduling action for fentanyl-related substances. Specifically, on February 6, 2018, the former Acting Administrator of DEA published an order to temporarily schedule fentanyl-related substances, a class of substances as defined in the order, and their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers in schedule I. 83 FR 5188. This temporary order defined a fentanyl-related substance to mean any substance not otherwise controlled in any schedule (*i.e.,* not listed under another DEA Controlled Substance Code Number), and for which no exemption or approval is in effect under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355), that is structurally related to fentanyl by one or more of five specified structural modifications. The class of fentanyl-related substances that was the subject of the February 6, 2018, temporary scheduling order is currently listed in 21 CFR 1308.11(h)(30). Although the temporary scheduling of the fentanyl-related substances was scheduled to expire on February 6, 2020, Congress enacted a new law to extend the temporary scheduling of all of those fentanyl-related substances until May 6, 2021. (Pub. L. 116–114, Sec. 2).

As indicated above, the final rule being issued today applies to five fentanyl-related substances that were the subject of a February 1, 2018 temporary scheduling order (which was issued five days prior to the class-wide temporary scheduling of fentanyl-related substances). These five substances will now be listed in 21 CFR 1308.11(b), as specified in the text of the rule that appears below.

Scheduling Conclusion

After consideration of the relevant matter presented through public comments, the scientific and medical evaluation and accompanying recommendation of HHS, and after its own eight-factor evaluation, DEA finds that these facts and all other relevant data constitute substantial evidence of the potential for abuse of cyclopentyl fentanyl, isobutyryl fentanyl, *para*-chloroisobutyryl fentanyl, *para*-methoxybutyryl fentanyl, and valeryl fentanyl. DEA is permanently scheduling cyclopentyl fentanyl, isobutyryl fentanyl, *para*-chloroisobutyryl fentanyl, *para*-methoxybutyryl fentanyl, and valeryl fentanyl as schedule I controlled substances under the CSA.

Determination of Appropriate Schedule

The CSA establishes five schedules of controlled substances known as schedules I, II, III, IV, and V. The CSA also specifies the findings required to place a drug or other substance in any particular schedule. 21 U.S.C. 812(b). After consideration of the analysis and recommendation of the Assistant Secretary for HHS and review of all other available data, the Acting Administrator of DEA, pursuant to 21 U.S.C. 811(a) and 812(b)(1), finds the following:

(1) The abuse potential of cyclopentyl fentanyl, isobutyryl fentanyl, *para*-chloroisobutyryl fentanyl, *para*-methoxybutyryl fentanyl, and valeryl fentanyl is associated with each substance's pharmacological similarity to other schedule I and II mu-opioid receptor agonist substances which have a high potential for abuse. Similar to morphine (schedule II), fentanyl (schedule II), and several schedule I opioid substances that are structurally related to fentanyl, cyclopentyl fentanyl, isobutyryl fentanyl, *para*-chloroisobutyryl fentanyl, *para*-methoxybutyryl fentanyl, and valeryl fentanyl have been shown to bind and act as mu-opioid receptor agonists;

(2) Cyclopentyl fentanyl, isobutyryl fentanyl, *para*-chloroisobutyryl fentanyl, *para*-methoxybutyryl fentanyl, and valeryl fentanyl have no currently

accepted medical use in treatment in the United States;[4] and

(3) There is a lack of accepted safety for use of cyclopentyl fentanyl, isobutyryl fentanyl, *para*-chloroisobutyryl fentanyl, *para*-methoxybutyryl fentanyl, and valeryl fentanyl under medical supervision.

Based on these findings, the Acting Administrator of DEA concludes that cyclopentyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylcyclopentanecarboxamide), isobutyryl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylisobutyramide), *para*-chloroisobutyryl fentanyl (*N*-(4-chlorophenyl)-*N*-(1-phenethylpiperidin-4-yl)isobutyramide), *para*-methoxybutyryl fentanyl (*N*-(4-methoxyphenyl)-*N*-(1-phenethylpiperidin-4-yl)butyramide), and valeryl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylpentanamide), including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible, warrant control in schedule I of the CSA. 21 U.S.C. 812(b)(1).

This final rule does not affect the scheduling of fentanyl itself, which remains a Schedule II controlled substance.

Requirements for Handling cyclopentyl fentanyl, isobutyryl fentanyl, para-chloroisobutyryl fentanyl, para-methoxybutyryl fentanyl, and valeryl fentanyl

Cyclopentyl fentanyl, isobutyryl fentanyl, *para*-chloroisobutyryl fentanyl, *para*-methoxybutyryl fentanyl, and valeryl fentanyl will continue[5] to be subject to the CSA's schedule I regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, dispensing, importing, exporting, research, and conduct of instructional activities, including the following:

1. *Registration.* Any person who handles (manufactures, distributes, dispenses, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) cyclopentyl fentanyl, isobutyryl fentanyl, *para*-chloroisobutyryl fentanyl, *para*-methoxybutyryl fentanyl, and valeryl fentanyl, or who desires to handle cyclopentyl fentanyl, isobutyryl fentanyl, *para*-chloroisobutyryl fentanyl, *para*-methoxybutyryl fentanyl, and valeryl fentanyl, is required to be registered with DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312.

2. *Security.* Cyclopentyl fentanyl, isobutyryl fentanyl, *para*-chloroisobutyryl fentanyl, *para*-methoxybutyryl fentanyl, and valeryl fentanyl are subject to schedule I security requirements and must be handled and stored pursuant to 21 U.S.C. 821, 823, and in accordance with 21 CFR 1301.71–1301.93. Non-practitioners handling these five substances must also comply with the employee screening requirements of 21 CFR 1301.90–1301.93.

3. *Labeling and Packaging.* All labels and labeling for commercial containers of cyclopentyl fentanyl, isobutyryl fentanyl, *para*-chloroisobutyryl fentanyl, *para*-methoxybutyryl fentanyl, and valeryl fentanyl must be in compliance with 21 U.S.C. 825 and 958(e), and be in accordance with 21 CFR part 1302.

4. *Quota.* Only registered manufacturers are permitted to manufacture cyclopentyl fentanyl, isobutyryl fentanyl, *para*-chloroisobutyryl fentanyl, *para*-methoxybutyryl fentanyl, and valeryl fentanyl in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303.

5. *Inventory.* Any person registered with DEA to handle cyclopentyl fentanyl, isobutyryl fentanyl, *para*-chloroisobutyryl fentanyl, *para*-methoxybutyryl fentanyl, and valeryl fentanyl must have an initial inventory of all stocks of controlled substances (including these substances) on hand on the date the registrant first engages in the handling of controlled substances pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

After the initial inventory, every DEA registrant must take a new inventory of all stocks of controlled substances (including cyclopentyl fentanyl, isobutyryl fentanyl, *para*-chloroisobutyryl fentanyl, *para*-methoxybutyryl fentanyl, and valeryl fentanyl) on hand every two years pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

6. *Records and Reports.* Every DEA registrant is required to maintain records and submit reports with respect to cyclopentyl fentanyl, isobutyryl fentanyl, *para*-chloroisobutyryl fentanyl, *para*-methoxybutyryl fentanyl, and valeryl fentanyl, pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR parts 1304 and 1312.

7. *Order Forms.* Every DEA registrant who distributes cyclopentyl fentanyl, isobutyryl fentanyl, *para*-chloroisobutyryl fentanyl, *para*-methoxybutyryl fentanyl, and valeryl fentanyl is required to comply with the order form requirements, pursuant to 21 U.S.C. 828, and 21 CFR part 1305.

8. *Importation and Exportation.* All importation and exportation of cyclopentyl fentanyl, isobutyryl fentanyl, *para*-chloroisobutyryl fentanyl, *para*-methoxybutyryl fentanyl, and valeryl fentanyl must be in compliance with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312.

9. *Liability.* Any activity involving cyclopentyl fentanyl, isobutyryl fentanyl, *para*-chloroisobutyryl fentanyl, *para*-methoxybutyryl fentanyl, and valeryl fentanyl not authorized by, or in violation of, the CSA or its implementing regulations is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Executive Orders (E.O.) 12866, 13563, and 13771, Regulatory Planning and Review, Improving Regulation and Regulatory Review, and Reducing Regulation and Controlling Regulatory Costs

In accordance with 21 U.S.C. 811(a), this final scheduling action is subject to formal rulemaking procedures performed ''on the record after opportunity for a hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the criteria for scheduling a drug

[4] Although there is no evidence suggesting that cyclopentyl fentanyl, isobutyryl fentanyl, para-chloroisobutyryl fentanyl, para-methoxybutyryl fentanyl, and valeryl fentanyl have a currently accepted medical use in treatment in the United States, it bears noting that a drug cannot be found to have such medical use unless DEA concludes that it satisfies a five-part test. Specifically, with respect to a drug that has not been approved by FDA, to have a currently accepted medical use in treatment in the United States, all of the following must be demonstrated:

i. The drug's chemistry must be known and reproducible;

ii. there must be adequate safety studies;

iii. there must be adequate and well-controlled studies proving efficacy;

iv. the drug must be accepted by qualified experts; and

v. the scientific evidence must be widely available.

57 FR 10499 (1992).

[5] Cyclopentyl fentanyl, isobutyryl fentanyl, *para*-chloroisobutyryl fentanyl, *para*-methoxybutyryl fentanyl, and valeryl fentanyl have been subject to schedule I controls on a temporary basis, pursuant to 21 U.S.C. 811(h), by virtue of the February 1, 2018 temporary scheduling order (83 FR 4580) and the subsequent one-year extension of that order (January 30, 2020, 85 FR 5321).

or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of E.O. 12866 and the principles reaffirmed in E.O. 13563.

This final rule does not meet the definition of an E.O. 13771 regulatory action. OMB has previously determined that formal rulemaking actions concerning the scheduling of controlled substances, such as this rule, are not significant regulatory actions under section 3(f) of E.O. 12866.

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132

This rulemaking does not have federalism implications warranting the application of E.O. 13132. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule does not have tribal implications warranting the application of E.O. 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Regulatory Flexibility Act

The Acting Administrator, in accordance with the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–602, has reviewed this final rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities. On February 1, 2018, DEA published an order to temporarily place cyclopentyl fentanyl, isobutyryl fentanyl, *para*-chloroisobutyryl fentanyl, *para*-methoxybutyryl fentanyl, and valeryl fentanyl in schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). DEA estimates that all entities handling or planning to handle cyclopentyl fentanyl, isobutyryl fentanyl, *para*-chloroisobutyryl fentanyl, *para*-methoxybutyryl fentanyl, and valeryl fentanyl have already established and implemented the systems and processes required to handle these substances.

As discussed in the NPRM, there are 34 registrations authorized to handle one or more of the following substances: cyclopentyl fentanyl, isobutyryl fentanyl, *para*-chloroisobutyryl fentanyl, *para*-methoxybutyryl fentanyl, or valeryl fentanyl, as well as a number of registered analytical labs that are authorized to handle schedule I controlled substances generally. These 34 registrations represent 26 entities, of which eight are small entities. Therefore, DEA estimates eight small entities are affected by this rule.

A review of the 34 registrations indicates that all entities that currently handle cyclopentyl fentanyl, isobutyryl fentanyl, *para*-chloroisobutyryl fentanyl, *para*-methoxybutyryl fentanyl, and valeryl fentanyl also handle other schedule I controlled substances and have established and implemented (or maintain) the systems and processes required to handle these substances. Therefore, DEA anticipates that this final rule will impose minimal or no economic impact on any affected entities, and, thus, will not have a significant economic impact on any of the eight affected small entities. Therefore, DEA has concluded that this final rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.,* DEA has determined and certifies that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any 1 year * * * .'' Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521. This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act (CRA), 5 U.S.C. 804. This rule will not result in: ''an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or 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.'' However, pursuant to the CRA, DEA has submitted a copy of this final rule to both Houses of Congress and to the Comptroller General.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR part 1308 is amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. In § 1308.11:

■ a. Revise paragraphs (b)(22), (40), (56), and (59);

■ b. Add paragraph (b)(75);

■ c. Remove and reserve paragraphs (h)(23), and (h)(25) through (h)(28).

The revisions and addition read as follows:

§ 1308.11 Schedule I.

* * * * *

(b) * * *

(22) Cyclopentyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylcyclopentanecarboxamide) 9847

* * * * * * *

(40) Isobutyryl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylisobutyramide) 9827

* * * * * * *

(56) *para*-Chloroisobutyryl fentanyl (*N*-(4-chlorophenyl)-*N*-(1-phenethylpiperidin-4-yl)isobutyramide 9826

* * * * * * *

(59) *para*-Methoxybutyryl fentanyl (*N*-(4-methoxyphenyl)-*N*-(1-phenethylpiperidin-4-yl)butyramide) 9837

* * * * * * *

(75) Valeryl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylpentanamide) 9840

* * * * *

Timothy J. Shea,

Acting Administrator.

[FR Doc. 2020–22757 Filed 11–24–20; 8:45 am]

BILLING CODE 4410–09–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2018–0747; FRL–10010–12–OAR]

RIN 2060–AU16

National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing Residual Risk and Technology Review

Correction

In rule document 2020–13439 beginning on page 49724 in the issue of August 14, 2020, make the following correction:

§ 63.8000 [Corrected]

■ On page 49742, in the first column, in § 63.8000(vi), in the 14th line ''August 15, 2022'' should read ''August 15, 2018''.

[FR Doc. C1–2020–13439 Filed 11–24–20; 8:45 am]

BILLING CODE 1301–00–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 711

[EPA–HQ–OPPT–2018–0321; FRL–10016–96]

RIN 2070–AK33

Chemical Data Reporting; Final Extension of the 2020 Submission Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending the Toxic Substances Control Act (TSCA) Chemical Data Reporting (CDR) regulations by extending the submission deadline for 2020 reports to January 29, 2021. This is the final extension for the 2020 submission period only. The CDR regulations require manufacturers (including importers) of certain chemical substances included on the TSCA Chemical Substance Inventory (TSCA Inventory) to report data on the manufacturing, processing, and use of the chemical substances.

DATES: This final rule is effective November 25, 2020.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2018–0321, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West, William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280.

Please note that due to the public health emergency the EPA Docket Center (EPA/DC) and Reading Room was closed to public visitors on March 31, 2020. Our EPA/DC staff will continue to provide customer service via email, phone, and webform. For further information on EPA/DC services, docket contact information and the current status of the EPA/DC and Reading Room, please visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Susan Sharkey, Data Gathering and Analysis Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8789; email address: *sharkey.susan@epa.gov.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture (including import) chemical substances listed on the TSCA Inventory. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include but are not limited to:

- Chemical manufacturers (including importers) (NAICS codes 325 and 324110, *e.g.,* chemical manufacturing and processing and petroleum refineries).
- Chemical users and processors who may manufacture a byproduct chemical substance (NAICS codes 22, 322, 331, and 3344, *e.g.,* utilities, paper manufacturing, primary metal manufacturing, and semiconductor and other electronic component manufacturing).

B. What action is the Agency taking?

The current 2020 CDR submission period is from June 1 to November 30, 2020 (on April 9, 2020, EPA extended the September 30, 2020 deadline to November 30, 2020 (see 85 FR 19890)). EPA is issuing this amendment to extend the deadline for 2020 CDR submission reports until January 29, 2021. This is an extension for the 2020 submission period only: Subsequent submission periods (recurring every four years, next in 2024) are not being amended.

The Agency is taking this action in response to concerns raised by the regulated community about their ability to submit the required information within the prescribed period. Written requests to extend the CDR submission period have been received by the Agency starting in late-September. Copies of these letters are included in the docket (see **ADDRESSES**), and, at the time of drafting this document, include the following specific communications:

- Air Products and Chemicals, Inc. 2020 CDR 90-day Extension Request [Letter]. September 25, 2020. Certain information needed to inform submissions is stored off-site and reviewing in-person presents a logistical challenge because of the COVID–19 pandemic (administrative staff is currently on business-critical or work from home status). (Ref. 1.)
- American Chemistry Council (ACC). Request for an Extension to the TSCA Chemical Data Reporting (CDR)

2020 Submission Period [Letter]. October 26, 2020. ACC members reported a wide variety of technical issues that have impeded their ability to upload, validate, and submit electronic data submissions (including a Central Data Exchange (CDX) system crash for approximately two weeks on or about September 29, 2020, Confidential Business Information (CBI) substantiation issues, Authorized Official/Facility/Sites/Parent Company inaccuracies, Issues with inexact entries, and General form completion issues). (Ref. 2.)

• Household & Commercial Products Association (HCPA). Request for an Extension to the TSCA Chemical Data Reporting (CDR) 2020 Submission Period [Letter]. October 27, 2020. The pandemic has required the dedication of significant resources that would normally be compiling and developing the data for CDR and additional time is necessary to complete submissions. HCPA member companies are also reporting a number of significant issues with accessing and using the CDX system that has further impeded the submission process. (Ref. 3.)

• National Association of Chemical Distributors (NACD). Request for an Extension to the TSCA CDR 2020 Submission Period [Letter]. October 30, 2020. NACD members have reported ongoing problems within CDX, including system crashes, freezes, and sluggishness, difficulty loading pages, and an inability to display a preview of the final data before submission. There is also concern that the reported issues will continue and worsen as more users are logged into CDX and attempting to submit information. (Ref. 4.)

• Society of Chemical Manufacturers & Affiliates (SOCMA). Extension Request for the 2020 TSCA CDR Submission Period [Letter]. October 30, 2020. SOCMA members have reported a wide variety of technical problems with EPA's Chemical Data Exchange (CDX) system that have negatively impacted their ability to complete data submissions. This includes system-wide outages, slowdowns, inability to access and validate forms, and practical difficulties with completing joint co-manufacturing submissions. With only a month remaining before the submission deadline, the CDR reporting system continues to experience significant technical problems impeding the timely and thorough reporting of information on the production and use of chemicals in U.S. commerce. (Ref. 5.)

• American Coatings Association (ACA). Request for an Extension to the TSCA Chemical Data Reporting (CDR) 2020 Submission Period [Letter]. November 13, 2020. ACA member companies cited significant problems with bulk uploads under the CDX system in stating that an extension would ease difficulty in reporting while improving overall accuracy and quality of information submitted. In particular, ACA members have noted difficulties with bulk uploads under the CDX system, whereby system errors have not allowed members to submit files or the system improperly aligns data upon submission. ACA members also note that uploaded information fails to save, thereby requiring submitters to resubmit all information. Problems with bulk uploads have also extended to data required for CBI substantiation, where the CDX systems fails to capture all data submitted, jeopardizing claims of CBI. ACA recognizes that EPA and its contractor CGI have been working diligently to resolve these issues. (Ref. 6.)

The compelling concerns raised by industry involve restrictions on their ability to report as a result of issues with several aspects of electronic reporting. The issues are experienced by a number of submitters and have not been limited to any specific submitter or type of submitter. Using the test application, EPA confirmed the existence of these problems and the impact they had on the ability to report. Specifically, these issues include difficulties with making bulk uploads (*i.e.,* batch submissions), lack of access to the reporting tool due to a CDX system crash, and issues with certain reporting tool features associated with previewing the submissions, copying and pasting text information (such as for substantiating confidentiality claims), making claims of confidentiality, and data validations.

The Agency has worked to resolve reporting issues since learning of these issues. On November 6, 2020, EPA made the following updates to CDX: Updated validations to correct functionality, updated the functionality for co-manufactured chemicals, and updated the ability to preview the submission before submitting the report. On November 13, 2020, EPA made the following updates to CDX: Enabling reporting zero for the 2019 Production Volume when the chemical is reported as co-manufactured, and updating validations associated with not needing to report processing and use information when all of the 2019 volume is directly exported. EPA plans to deploy additional updates on November 20, 2020, including updated CBI substantiation validation and processes for co-manufactured chemicals. EPA is monitoring the implementation of these updates and will, if necessary, deploy additional updates to ensure full functionality of the reporting tool. The Agency continues to assist CDR reporters encountering issues and has been and will continue to develop rapid solutions to such issues via weekly patches to the eCDRweb reporting tool.

Because the electronic issues have been widespread, have prevented access to the reporting tool, have restricted the ability for companies to identify information that the company considers confidential, and have ultimately resulted in a reduction in the amount of time the Agency had alloted for the completion and submission of the report, EPA believes it is appropriate to extend the reporting period to provide the regulated community the time needed to complete and submit their reports. With respect to the timing of this action, the need for the Agency to extend the deadline arose as a result of issues experienced by the regulated community with several aspects of electronic reporting that were brought to the Agency's attention recently. The collective significance of these issues was not apparent until the Agency completed review of letters from Air Products and Chemicals, Inc.; the American Chemistry Council; the Household & Commercial Products Association; the National Association of Chemical Distributors; the Society of Chemical Manufacturers & Affiliates; and the American Coatings Association; dated September 25, 2020, October 26, 2020, October 27, 2020, October 30, 2020, October 30, 2020, and November 13, 2020 respectively (Refs. 1, 2, 3, 4, 5 and 6).

The Agency has quickly responded to reporting issues as they have arisen and has gained experience with the reporting tool and troubleshooting that will enable EPA to quickly and effectively respond to any additional problems that may arise following full implementation of the reporting tool fixes. While the Agency endeavors to ensure full functionality of the tool, glitches may arise, including in response to reporting tool patches or updates. EPA believes that the additional two-month extension period will help provide a buffer for any additional updates to the tool that may be needed. This extension will also provide reporters with sufficient time to carefully review and submit information through CDX, especially following any prior problems using the reporting tool. As a result, EPA believes that extending the reporting period to January 29, 2021 will provide sufficient time for reporting problems to be addressed and for reporters to timely submit information.

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

The CDR rule was issued pursuant to the authority of TSCA section 8(a), 15 U.S.C. 2607(a). In addition, section 553(b)(B) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making this rule final, extending the reporting period, without prior proposal and opportunity for comment because such notice and opportunity for comment is impracticable and unnecessary for the reasons explained in this section.

As explained in the prior section, the extent of the electronic reporting issues has unexpectedly resulted in a reduction in the amount of time the Agency had alloted under the regulations for the completion and submission of the report. The extent of the electronic reporting issues was unforeseen, given that EPA conducted a beta test with expected users of the reporting tool prior to the beginning of the submission period. Further, most sites submit CDR data during the final month of the reporting period, having collected and prepared data earlier in the submission period. Thus, the extent and magnitude of these reporting issues did not become fully manifest prior to the close of October. Given that the current reporting deadline is November 30, 2020, notice and comment procedures are impracticable to extend that deadline to address these unforeseen circumstances because the typical notice and comment rulemaking process would not allow a rule to be finalized before the current reporting deadline. Additionally, notice and comment procedures are unnecessary because this extension of the deadline merely provides the time and opportunity to submit the report as was intended under the current regulations, absent these unforeseen circumstances, and does not impact the substance of the collection or other regulatory requirements.

As indicated above, the Agency recently learned that the regulated community was having difficulty related to the required electronic reporting mechanism. Individual entities provided information about technical issues, reporting difficulties, and complications resulting from the COVID–19 pandemic. EPA is including requests for extension in the docket. Given ongoing improvements to the functionality of the electronic reporting application, EPA is extending the reporting period until January 29, 2021.

This action does not alter the substantive CDR reporting requirements in any way. The Agency also believes this extension will not result in a significant delay in the processing and availability of CDR information to potential users. This extension will not significantly impact the Agency's ability to carry out actions and activities that rely upon CDR, including work on the TSCA risk evaluations. EPA will consider CDR information as soon as it becomes available and work on risk evaluations remains ongoing. Further, this action is consistent with the public interest because it is designed to facilitate compliance with the CDR rule and to ensure that the 2020 collection includes accurate data on chemical manufacturing, processing, and use in the United States. Any impact on the regulated community is expected to be beneficial given that the extension provides additional time to submit accurate CDR reports to EPA.

Finally, section 553(d)(3) of the APA, 5 U.S.C. 553(d), provides that final rules shall not become effective until 30 days after 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 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 because the current deadline for reporting is imminent and the regulated community does not need time to prepare for this change in the reporting deadline; rather, the reporting deadline extension provides the needed time for the regulated community to meet the existing requirements.

For these reasons, the agency finds that good cause exists under APA section 553(d)(3) to make this rule effective immediately upon publication in the **Federal Register**.

II. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. Air Products and Chemicals, Inc. 2020 CDR 90-day Extension Request [Letter]. September 25, 2020.

2. American Chemistry Council. Request for an Extension to the TSCA Chemical Data Reporting (CDR) 2020 Submission Period [Letter]. October 26, 2020.

3. Household & Commercial Products Association. Request for an Extension to the TSCA Chemical Data Reporting (CDR) 2020 Submission Period [Letter]. October 27, 2020.

4. National Association of Chemical Distributors. Request for an Extension to the TSCA CDR 2020 Submission Period [Letter]. October 30, 2020.

5. Society of Chemical Manufacturers & Affiliates (SOCMA). Extension Request for the 2020 TSCA CDR Submission Period [Letter]. October 30, 2020.

6. American Coatings Association (ACA). Request for an Extension to the TSCA Chemical Data Reporting (CDR) 2020 Submission Period [Letter]. November 13, 2020.

III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is classified as a final rule because it makes an amendment to the Code of Federal Regulations (CFR). The amendment to the CFR is necessary to allow for an extension to the 2020 CDR reporting period. This action does not impose any new requirements or amend substantive requirements. As such, this action is not a ''significant regulatory action'' under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

This action does not contain any new or revised information collections subject to OMB approval under the PRA, 44 U.S.C. 3501 *et seq.* Information collection activities contained in CDR are already approved by the Office of Management and Budget (OMB) under OMB Control No. 2070–0162 (EPA ICR No. 1884).

C. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA, 5 U.S.C. 601 *et seq.* The RFA applies only to rules subject to notice and comment rulemaking requirements under the APA, 5 U.S.C. 553, or any other statute. This rule is not subject to notice and comment requirements under the APA because the Agency has invoked the APA ''good cause'' exemption.

D. Unfunded Mandates Reform Act (UMRA)

This action will not impose any enforceable duty or contain any unfunded mandate as described under Title II of UMRA, 2 U.S.C. 1531–1538 *et seq.*

E. Executive Order 13132: Federalism

This action will not have federalism impacts as defined in Executive Order 13132 (64 FR 43255, August 10, 1999) because this action will not have substantial direct effects on States, on the relationship between the Federal Government and States, or on the distribution of power and responsibilities between the Federal Government and States.

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

This action will not have tribal implications as defined in Executive Order 13175 (65 FR 67249, November 9, 2000) because this action will not have substantial direct effects on tribal governments, 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.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined under Executive Order 12866, and it does not address environmental health or safety risks disproportionately affecting children.

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

Since this action does not involve any technical standards, NTTAA section 12(d), 15 U.S.C. 272 note, does not apply to this action.

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

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

K. Congressional Review Act (CRA)

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

List of Subjects in 40 CFR Part 711

Environmental protection, Chemicals, Confidential Business Information (CBI), Hazardous materials, Importer, Manufacturer, Reporting and recordkeeping requirements.

Dated: November 17, 2020.

Alexandra Dapolito Dunn,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, for the reasons stated in the preamble, EPA amends 40 CFR chapter I as follows:

PART 711—TSCA CHEMICAL DATA REPORTING REQUIREMENTS

■ 1. The authority citation for part 711 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

■ 2. Revise § 711.20 to read as follows:

§ 711.20 When to report.

All information reported to EPA in response to the requirements of this part must be submitted during an applicable submission period. The 2020 CDR submission period is from June 1, 2020, to January 29, 2021. Subsequent recurring submission periods are from June 1 to September 30 at 4-year intervals, beginning in 2024. In each submission period, any person described in § 711.8 must report as described in this part.

[FR Doc. 2020–25824 Filed 11–24–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 200227–0066]

RTID 0648–XA664

Fisheries of the Exclusive Economic Zone Off Alaska; Several Groundfish Species in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; apportionment of reserves; request for comments.

SUMMARY: NMFS apportions amounts of the non-specified reserve to the initial total allowable catch (ITAC) of Bering Sea and Aleutian Islands (BSAI) arrowtooth flounder, BSAI ''other flatfish,'' Bering Sea subarea and Eastern Aleutian District (BS/EAI) blackspotted/rougheye rockfish, Western Aleutian District and Central Aleutian District (WAI/CAI) blackspotted/rougheye rockfish, BSAI skates; and to the total allowable catch (TAC) of BSAI Alaska plaice. This action is necessary to allow the fisheries to continue operating. It is intended to promote the goals and objectives of the fishery management plan for the BSAI management area.

DATES: Effective November 20, 2020, through 2400 hrs, Alaska local time, December 31, 2020. Comments must be received at the following address no later than 4:30 p.m., Alaska local time, December 7, 2020.

ADDRESSES: Submit your comments, identified by docket number NOAA–NMFS–2019–0074, by either of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov/docket?D=NOAA-NMFS-2019-0074* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Glenn Merrill, Assistant Regional

Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

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

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the BSAI Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2020 ITAC of BSAI arrowtooth flounder was established as 8,500 metric tons (mt), the 2020 ITAC of BSAI ''other flatfish'' was established as 3,600 mt, the 2020 ITAC of BS/EAI blackspotted/rougheye rockfish was established as 112 mt, the 2020 ITAC of WAI/CAI blackspotted/rougheye rockfish was established as 224 mt, the 2020 ITAC of BSAI skates was established as 13,866 mt, and the 2020 TAC of BSAI Alaska plaice was established as 17,450 mt by the final 2020 and 2021 harvest specifications for groundfish of the BSAI (85 FR 13553, March 9, 2020) and revised in the release of groundfish reserves (85 FR 49976, August 17, 2020). In accordance with § 679.20(a)(3) the Regional Administrator, Alaska Region, NMFS, has reviewed the most current available data and finds that the ITACs of the BSAI arrowtooth flounder, BSAI ''other flatfish,'' BS/EAI blackspotted/rougheye rockfish, WAI/CAI blackspotted/rougheye rockfish, BSAI skates; and the TAC of BSAI Alaska plaice need to be supplemented from the non-specified reserve to promote efficiency in the utilization of fishery resources in the BSAI and allow fishing operations to continue.

Therefore, in accordance with § 679.20(b)(3), NMFS apportions from the non-specified reserve of groundfish to ITACs in the BSAI management area as follows: 430 mt to BSAI arrowtooth flounder, 521 mt to BSAI ''other flatfish,'' 20 mt to BS/EAI blackspotted/rougheye rockfish, 40 mt to WAI/CAI blackspotted/rougheye rockfish, 3,340 mt to BSAI skates, and 2,600 mt to BSAI Alaska plaice. These apportionments are consistent with § 679.20(b)(1)(i) and do not result in overfishing of any target species because the revised ITACs and TACs are equal to or less than the specifications of the acceptable biological catch in the final 2020 and 2021 harvest specifications for groundfish in the BSAI (85 FR 13553, March 9, 2020).

The harvest specification for the 2020 ITACs and TACs included in the harvest specifications for groundfish in the BSAI are revised as follows: 8,930 mt for BSAI arrowtooth flounder, 4,121 mt for BSAI ''other flatfish,'' 20,050 mt for BSAI Alaska plaice, 17,206 mt for BSAI skates, 132 mt for BS/EAI blackspotted/rougheye rockfish, and 264 mt for WAI/CAI blackspotted/rougheye rockfish.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the apportionment of the non-specified reserves of groundfish to the BSAI arrowtooth flounder, BSAI ''other flatfish,'' BS/EAI blackspotted/rougheye rockfish, WAI/CAI blackspotted/rougheye rockfish, BSAI skates, and to the BSAI Alaska plaice. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 17, 2020.

Under § 679.20(b)(3)(iii), interested persons are invited to submit written comments on this action (see **ADDRESSES**) until December 7, 2020.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 20, 2020.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–26102 Filed 11–20–20; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 200227–0066]

RTID 0648–XA669

Fisheries of the Exclusive Economic Zone Off Alaska; Arrowtooth Flounder in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for arrowtooth flounder in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2020 arrowtooth flounder initial total allowable catch (ITAC) in the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), November 20, 2020, through 2400 hours, A.l.t., December 31, 2020.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2020 arrowtooth flounder ITAC in the BSAI is 8,500 metric tons (mt) as established by the final 2020 and 2021 harvest specifications for groundfish in the BSAI (85 FR 13553, March 9, 2020). In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2020 arrowtooth flounder ITAC in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,500 mt, and is

setting aside the remaining 5,000 mt as incidental catch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for arrowtooth flounder in the BSAI.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of arrowtooth flounder in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 18, 2020.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 20, 2020.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–26105 Filed 11–20–20; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 228
Wednesday, November 25, 2020

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 215, 220, and 226

[FNS–2020–0038]

RIN 0584–AE81

Restoration of Milk, Whole Grains, and Sodium Flexibilities

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

ACTION: Proposed rule.

SUMMARY: This rulemaking proposes to codify three menu planning flexibilities established by the interim final rule titled, *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements* published November 30, 2017, and made permanent with some modifications by a final rule of the same title published December 12, 2018, hereafter referred to as the 2018 Final Rule. An April 2020 court decision vacated and remanded the 2018 Final Rule. In response to the vacatur and remand of the 2018 Final Rule, this rule proposes targeted changes to: Allow National School Lunch Program and School Breakfast Program operators to permanently offer flavored, low-fat milk as part of a reimbursable meal and for sale as a competitive beverage and allow 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; allow for half of the weekly grains in the National School Lunch Program and School Breakfast Program menus to be whole grain-rich; and provide schools participating in the National School Lunch Program and School 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.

DATES: *Comment date:* Online comments submitted through the Federal eRulemaking Portal on this proposed rule must be received on or before December 28, 2020. Mailed comments on this rule must be postmarked on or before December 28, 2020.

Comments on Paperwork Reduction Act requirements: Comments on the information collection requirements associated with this rule must be received by December 28, 2020.

ADDRESSES: The USDA, Food and Nutrition Service invites interested persons to submit written comments on this proposed rule. USDA seeks comment on all aspects of this proposal.

Comments may be submitted in writing by one of the following methods:

- *Federal eRulemaking portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Regular U.S. mail:* School Programs Branch, Policy and Program Development Division, Food and Nutrition Service, P.O. Box 2885, Fairfax, Virginia 22031–0885.
- *Overnight, courier, or hand delivery:* Shawn Martin, School Programs Branch, Policy and Program Development Division, Food and Nutrition Service, 1320 Braddock Place, 4th floor, Alexandria, Virginia 22314.

All written comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the written comments publicly available via *http://www.regulations.gov.*

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:

I. Background

This rulemaking proposes to maintain operational flexibility in certain Child Nutrition Program requirements related to milk, grains, and sodium. The proposed changes are expected to be effective in the spring of 2021. The proposed changes to the milk, grains, and sodium requirements are discussed in detail in Section IV. This section provides an overview of administrative and legislative actions that precipitated this rulemaking.

The National School Lunch Program (NSLP) and School Breakfast Program (SBP) provide nutritious, well-balanced meals to millions of children each school day. Section 9(f)(1) of the Richard B. Russell National School Lunch Act (NSLA), as amended, 42 U.S.C. 1758(f)(1), requires that school meals are consistent with the goals of the latest Dietary Guidelines for Americans (Dietary Guidelines). FNS regulations at 7 CFR 210.10 and 220.8 detail the meal patterns and nutrition standards for the NSLP and SBP, respectively.

Section 201 of Public Law 111–296 (the Healthy, Hunger-Free Kids Act of 2010) amended Section 4(b) of the NSLA (42 U.S.C. 1753(b)), requires FNS to update the meal patterns and nutrition standards for school meals based on recommendations in a report issued by the Health and Medicine Division of the National Academies of Science, Engineering, and Medicine (formerly, the Institute of Medicine). In response, the final rule, *Nutrition Standards in the National School Lunch and School Breakfast Programs* (77 FR 4088, January 26, 2012), hereafter referred to as the 2012 Final Rule, updated the school meal requirements to be consistent with the 2010 Dietary Guidelines, as recommended in the report *School Meals: Building Blocks for Healthy Children.*[1]

In 2012, FNS updated the NSLP and SBP meal requirements to reflect the latest Dietary Guidelines, as required by Section 9(a)(4) of the NSLA (42 U.S.C. 1758(a)(4)). The implementing regulations increased the availability of fruits, vegetables, whole grains, and fat-free and low-fat milk in school meals; required sodium and saturated fat limits; eliminated synthetic trans-fat in the weekly school menu; and established calorie ranges to reflect the age-appropriate calorie needs of children.[2] The updated requirements

[1] Institute of Medicine. 2010. *School Meals: Building Blocks for Healthy Children.* Washington, DC: The National Academies Press. Available at: *https://www.fns.usda.gov/sites/default/files/SchoolMealsIOM.pdf.*

[2] Final rule. *Nutrition Standards in the National School Lunch and School Breakfast Programs,* 77

Continued

were largely based on recommendations issued by the Health and Medicine Division of the National Academies of Science, Engineering, and Medicine. This was the first major change to the meal patterns since 1995. The 2012 Final Rule required most schools to increase the availability of fruits, vegetables, whole grains, and fat-free and low-fat fluid milk in school meals; reduce the levels of sodium, saturated fat and trans-fat in meals; and meet the nutrition needs of schoolchildren within their age appropriate calorie requirements. These 2012 changes were intended to enhance the diet and health of schoolchildren and mitigate trends in childhood obesity.

The regulations implemented in 2012 included three key changes with regard to the milk, grains, and sodium requirements:

- Allowed flavoring only in fat-free milk in the NSLP and SBP. Prior to 2012, schools could offer flavored or unflavored, fat-free, low-fat, reduced fat, or whole milk;
- Implemented whole grain requirements and required that half of the grains offered in the NSLP and SBP be whole grain-rich beginning in SY 2012–2013 and SY 2013–2014, respectively, and required that, effective SY 2014–2015, all grains offered in both programs be whole grain-rich (meaning the grain product contains at least 50 percent whole grains and the remaining grain content of the product must be enriched). Prior to 2012, grains had to be made from any combination of enriched grains, whole grains, bran, and/or germ; and
- Required schools participating in the NSLP and SBP to gradually reduce the sodium content of meals offered on average over the school week by meeting progressively lower sodium targets over a 10-year period. At the end of the 10-year period, the sodium reduction in school breakfast and lunch would be significant. For example, schools would have had to reduce the sodium content of the meals by approximately 25–50 percent from the 2012 baseline to meet the Final Sodium Target by SY 2022–2023 (July 1, 2022). Prior to 2012, there were no limits on sodium for school meals.

While some schools successfully implemented the updated nutrition standards, others required additional flexibility and support from FNS to meet the standards. FNS continued to hear about persistent challenges with the milk, grains, and sodium requirements. The challenges identified by schools included decreased student participation, decreased meal consumption, difficulties preparing whole grain-rich food items, and limited ability to offer appealing meals with lower sodium content.

The requirement to offer exclusively whole grain-rich products was particularly challenging for some schools and, due to a long history of administrative and legislative actions allowing exemptions, it was never fully implemented nationwide. Seeking to assist schools, FNS allowed enriched pasta exemptions for SYs 2014–2015 and 2015–2016. Through successive legislative action, Congress also provided flexibilities for the whole grain-rich requirements, expanding the pasta flexibility to include other grain products. Congress also repeatedly delayed compliance with Sodium Target 2 through Federal appropriations.[3]

On May 1, 2017, the Secretary of Agriculture issued a Proclamation acknowledging the challenges that some schools faced in meeting milk, grains, and sodium requirements and committing to working with stakeholders to ensure that the requirements are practical and result in wholesome and appealing meals that schoolchildren enjoy eating. Subsequently, and consistent with the Consolidated Appropriations Act, 2017 (Pub. L. 115–31), FNS issued policy guidance (SP 32–2017, May 22, 2017, *School Meal Flexibilities for School Year 2017–2018*) providing milk, grains, and sodium flexibilities for SY 2017–2018 while taking steps to formulate practical regulatory relief in these areas. FNS policy guidance was followed by the interim final rule titled, *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements* (82 FR 56703, November 30, 2017), hereafter referred to as the 2017 Interim Final Rule, which established regulations that extended school meal flexibilities through SY 2018–2019 and applied the flavored milk flexibility to the Special Milk Program for Children (SMP) and the Child and Adult Care Food Program (CACFP) for participants age 6 and older. As a result, the regulations applicable in SY 2018–2019 provided relief with regard to the milk, grains, and sodium requirements, while retaining other essential meal standards (*e.g.,* fruit and vegetable quantities, fat restrictions, and calorie ranges) that contribute to wholesome meals.

The 2017 Interim Final Rule extended the flexibilities already allowed through policy guidance and previous appropriations legislation. In addition, the 2017 Interim Final Rule allowed milk flexibility in NSLP, SMP, SBP, and CACFP. Furthermore, the rule asked the public to submit comments on the long-term availability of the milk, grains, and sodium flexibilities. The 2017 Interim Final Rule generated significant interest. FNS received 86,247 comments, most of which were form letters that opposed the regulatory changes. Opponents argued that making the flexibilities permanent would undermine the progress already made and discourage continued progress, not support children's dietary habits, and increase children's risk of developing health problems. Opponents also argued that most schools were already compliant, and that the food industry has resources to support compliance. In general, proponents argued that the flexibilities would provide more menu planning options for schools, and thus enhance their ability to offer wholesome and appealing meals. They stated that the flexibilities would lead to increased participation and meal consumption. Writing in support of the changes, the School Nutrition Association, representing 57,000 members, urged FNS to adopt a permanent solution to operational challenges rather than temporary rules and annual waivers.

After careful consideration of the stakeholders' comments, FNS published the 2018 Final Rule giving schools the operational flexibility they needed to move forward with menu planning that met student preferences. In publishing the 2018 Final Rule, FNS determined that school nutrition operators made the case that the 2017 Interim Final Rule's targeted regulatory flexibility was practical and necessary for efficient Program operation and sought to improve student participation by enabling schools to offer children more appealing meals that would still be consistent with the goals of the DGAs. FNS recognized that allowing for taste preferences and operational flexibility was essential to incentivize the food industry's efforts to support the service of wholesome and appealing school meals.

FR 4088, January 26, 2012. Available at: *https://www.federalregister.gov/documents/2012/01/26/2012-1010/nutrition-standards-in-the-national-school-lunch-and-school-breakfast-programs.*

[3] Section 751 of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235); Section 743 of the Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112–55); Section 752 of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235); Section 733 of the Consolidated Appropriations Act, 2016 (Pub. L. 114–113); Section 747 of the Consolidated Appropriations Act, 2017 (Pub. L. 115–31); and Section 101(a)(1) of the Continuing Appropriations Act, 2018, Division D of the Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Pub. L. 115–56).

In general, the 2018 Final Rule, which became effective July 1, 2019, for SY 2019–2020, codified the flexibilities offered in the 2017 Interim Final Rule with some modifications. The optional flexibilities codified in the 2018 Final Rule included the following targeted changes; the balance of the meal pattern remained intact:

- Allowing schools in the NSLP and SBP to offer flavored, low-fat milk (1-percent fat) at lunch and breakfast and as a beverage for sale à la carte, and requiring that unflavored milk (fat-free or low-fat) be available at each school meal service;
- requiring that half of the weekly grains in the NSLP and SBP be whole grain-rich and that the remaining weekly grains offered be enriched; and
- retaining Sodium Target 1 through SY 2023–2024, recognizing more time was needed for Target 2 and moving it to SY 2024–2025, and removing the Final Target.

On April 3, 2019, the Center for Science in the Public Interest challenged the 2018 Final Rule claiming that the regulation was unlawful under the Administrative Procedure Act. On April 13, 2020, a decision by the District of Maryland in *Center for Science in the Public Interest* v. *Perdue,* 438 F. Supp. 3d 546 (D. Md. 2019), found that the 2018 Final Rule was not a logical outgrowth of the 2017 Interim Final Rule, and therefore violated the Administrative Procedure Act. Although the District Court concluded that the 2018 Final Rule was not inconsistent with Federal law, did not reflect unexplained and arbitrary decision-making, did not represent an unacknowledged and unexplained change in position, and that FNS appropriately responded to public comments, the District Court ultimately vacated the rule based on the procedural violation. The District Court found that both the elimination of the final sodium target and the elimination of the one-hundred percent whole grain-rich requirement were not logical outgrowths of the Interim Final Rule. As such, the entire rule was vacated due to these two procedural violations.

The District Court also concluded that the 2018 Final Rule was a reasonable interpretation of the relevant statutory language from the NSLA as it relates to the Dietary Guidelines and that the USDA was not arbitrary in its explanation for its decision making.

The NSLA states that schools must serve meals ''consistent with the goals of the most recent'' Dietary Guidelines, 42 U.S.C. 1758(f)(1)(A). It is well established by Federal courts that if a statute is silent or ambiguous with respect to the specific issue, an agency may provide an interpretation that is based on a permissible construction of the statute. As the District Court explained, the statutory language ''consistent with the goals of'' is ambiguous and may lead to numerous permissible interpretations. The District Court found that the USDA reasonably interpreted ''consistent with the goals of'' of the Dietary Guidelines to be a broad, deferential phrase that requires consistency with the ultimate objectives of the Dietary Guidelines—in this case, increasing whole-grain consumption and reducing sodium consumption—but that also provides USDA with flexibility to rely on its expertise to depart from the Dietary Guidelines specific consumption requirements. As the District Court decision explained, it is also reasonable for USDA to interpret ''consistent *with the goals*'' of the Dietary Guidelines as meaningfully different from ''consistent with'' the Dietary Guidelines, and to interpret that difference to permit a looser connection between the Dietary Guidelines and school meal standards. The District Court determined that the 2018 Final Rule is consistent with this interpretation as it reflects the ultimate objective of increasing whole grain consumption and decreasing sodium consumption.

The NSLA states, that USDA shall ''promulgate rules, based on the most recent Dietary Guidelines, that reflect specific recommendations, expressed in serving recommendations, for increased consumption of foods and food ingredients offered in school nutrition programs,'' 42 U.S.C. 1758(a)(4)(B), and ''promulgate proposed regulations to update the meal patterns and nutrition standards for the [school lunch and breakfast programs] . . . based on recommendations'' in the School Meals Report Dietary Guidelines and the Food and Nutrition Board of the National Research Council of the National Academy of Sciences in its report entitled ''*School Meals: Building Blocks for Healthy Children*'' [4] (''School Meals Report''), 42 U.S.C. 1753(b)(3)(A)(i). The District Court also concluded that the statutory language ''based on'' was ambiguous. Similarly to ''consistent with the goals,'' the District Court determined that USDA reasonably interpreted Congress' mandate that it promulgate rules ''based on'' the School Meals Report to broadly require it to use these resources as the ''starting point'' for or ''foundational part'' of its rulemaking regarding the school meal standards.

The 2018 Final Rule reflected this interpretation in that it used the recommendations in the Dietary Guidelines and the School Meals Report as a starting point, but provided an explanation for its departure from the specific consumption requirements based on taste and operational flexibilities, the role of product innovation, health, and the need for nationwide standards. Regarding whole grains, it explained that the whole grain-rich requirement in this final rule is a minimum standard, not a maximum, and reflects in a practical and feasible way the Dietary Guidelines' emphasis on whole grains consumption. Regarding sodium, the 2018 Final Rule explains that USDA's intention is to ensure that the sodium targets reflect the most current Dietary Guidelines, are feasible for most schools, and allow them to plan appealing meals that encourage consumption and intake of key nutrients that are essential for children's growth and development. Thus, the 2018 Final Rule demonstrated that the USDA used its expertise to balance the nutrition science in the Dietary Guidelines with the practical considerations of implementation.

In the promulgation of the 2018 rule, USDA considered student taste preferences, operational flexibilities, the role of product innovation, nutrition science, and student health. Federal courts have found that an agency's decision must show that it examined the relevant data and articulated a satisfactory explanation for its action including a rational connection between the facts found and the choice made. Furthermore, Federal courts have also found an agency's actions to be arbitrary if it does one of the following: Relies on factors that Congress did not intend for it to consider, entirely ignores important aspects of the problem, explains its decisions in a manner contrary to the evidence before it, or reaches a decision that is so implausible that it cannot be ascribed to a difference in view.

The District Court found that the USDA examined relevant data when it considered student taste preferences, operational flexibilities, and product innovation in formulating the 2018 Final Rule. Although USDA is required to consider certain factors, including nutritional science and the Dietary Guidelines, in establishing standards for the school meal programs, see, *e.g.,* 42 U.S.C. 1758(a)(1)(A), 1773(e)(1), this requirement does not exclude other factors from USDA's consideration. The

[4] Institute of Medicine. 2010. *School Meals: Building Blocks for Healthy Children.* Washington, DC: The National Academies Press. Available at: *https://www.fns.usda.gov/sites/default/files/SchoolMealsIOM.pdf.*

District Court continued by stating that Congress has the authority to limit the factors the USDA considers when promulgating rules, but that it had not explicitly chosen to do so. USDA provided a satisfactory explanation to the District Court that regulatory certainty was essential to incentivize the food industry's efforts to support the service of wholesome and appealing school meals.

The District Court found that the USDA had considered student taste preferences, operational flexibilities, and the role of product innovation at the expense of student health and nutritional science and balanced these considerations against each other. Concerning whole-grain requirements, the District Court found that the USDA was permitted to balance the nutritional benefits of whole grains against the need for gradual adjustments in school menu planning, procurement, and food service equipment. As for sodium requirements, the District Court found that the USDA did not act arbitrarily by balancing nutrition science, practical application of requirements, and the need to ensure that children receive wholesome and appealing meals. Furthermore, the 2018 Final Rule did explain that almost a quarter of schools had asked for hardship exemptions from the whole-grain rich requirement for SY 2017–2018 and that continuing to operate these nationwide programs in an ad hoc fashion, with recurrent exemptions, was not feasible. The Final Rule also made clear that it was a minimum standard, not a maximum and that program operators may exceed the 2018 Final Rule's minimum requirements, and that USDA would continue to provide training and technical assistance resources to assist schools in increasing whole-grain content and decreasing sodium content in school meals.

The USDA acknowledged in the 2018 Final Rule that it was shifting its policy to find a better balance of practical operational concerns with student health needs. Federal courts have repeatedly found that an agency may not depart from prior policy sub silentio or simply disregard rules that are still in effect. However, Federal courts have permitted an agency to change its existing policies if it provides a reasoned explanation for the change. The District Court found that the USDA offered a reasoned explanation for the change of policy from the 2012 Final Rule's whole grain requirements and sodium targets to the 2018 Final Rule. The 2018 Final Rule explained that the USDA balanced practical operational concerns with student health needs in forming the altered whole grains standard.

The District Court also found that the USDA's decision to delay Sodium Target 2 was similarly adequate. The 2018 Final Rule delayed this target to provide schools more time for gradual sodium reduction. USDA established this delay for practical reasons, such as the fact that many schools are not equipped for scratch cooking, which makes further sodium reduction challenging.

This more flexible approach to sodium reduction allows more time for product reformulation, school menu adjustments, food service changes, personnel training, and changes in student preferences. Keeping the original date for Sodium Target 2 could potentially lower the acceptance of meals by students, who are currently accustomed to eating foods with higher sodium content outside of school. This could negatively impact program participation and contribute to food waste. Regarding elimination of the Final Target, the District Court found that it was within USDA's discretion to wait until after the new Dietary Guidelines and DRIs were released to set any final targets for sodium content. The District Court found that the USDA adequately explained and acknowledged its shift in policy from the 2012 Final Rule to the 2018 Final Rule.

This proposed rule seeks to remedy the procedural issues in the 2018 Final Rule by proposing to codify the operational flexibilities offered in the 2018 Final Rule. Codifying these flexibilities would provide the operational flexibility schools had been calling for and that Congress had repeatedly required through appropriations, while reflecting the recommendations of the Dietary Guidelines, as Section 9(a)(4), 42 U.S.C. 1758(a)(4) requires. The targeted optional flexibilities offered in this proposed rule apply only to the milk, grains, and sodium requirements that were addressed in the 2018 Final Rule and to which schools are accustomed. This rulemaking would help schools continue to provide wholesome and appealing meals that reflect the Dietary Guidelines and meet the needs and preferences of their students.

Since publication of the 2018 Final Rule, several relevant actions have taken place. USDA's School Meals Nutrition Cost Study (SNMCS), a rigorous evaluation conducted by an independent contractor, found high compliance in a nationally representative sample of schools in SY 2014–2015. Compared to school meals served before the new standards (SY 2009–2010), breakfasts and lunches served in 2014–2015 scored more than 20 percentage points higher on the Healthy Eating Index (HEI), a measure of overall diet quality. Both breakfasts and lunches showed significant reductions in empty calories, added sugars, and refined grains, and significant improvements in total fruit, whole fruit, and whole grains.[5] These changes in the lunch line influence what students are eating. In SY 2014–2015, NSLP participants had significantly higher average HEI–2010 scores than matched nonparticipants, with higher intake of vegetables, whole grains, and dairy, and lower intakes of refined grains and empty calories. Looking at intakes across a 24-hour period, lunches made a larger contribution to participating students' overall intakes than non-participants, which speaks to the important role that school meals play for the youth who depend on them.

On October 20, 2020, the U.S. Surgeon General released ''The Surgeon General's Call to Action to Control Hypertension'' [6] (Call to Action) to help improve hypertension control across the U.S. The Call to Action highlights the need to help Americans, including young children, reduce sodium intake through evidence-based interventions that can be implemented in diverse settings, including schools, in order to reduce the risk of hypertension and later cardiovascular disease.

However, many schools reported challenges in implementing or maintaining compliance with certain nutrition standards, including the cost and availability of foods, limited staff and equipment resources, and difficulty understanding the new nutrition standards.[7] Providing more flexibility that may not significantly affect HEI scores, but could elicit continued participation and acceptance of the meals would benefit more children, providing more children nutrition that they actually consume (versus throw in the trash). Further, the SNMCS found food waste was highest among categories directly affected by these proposed changes.

As previously stated, this rule proposes retaining Target 2, but allowing more time for product

[5] Gearan EC & MK Fox, 2020, SMNCS Vol 2.

[6] See *https://www.cdc.gov/bloodpressure/CTA.htm.*

[7] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study: Volume 1—School Meal Program Operations and School Nutrition Environments, by Sarah Forrestal et al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

reformulation. Reaching this requires a more gradual process. FNS must ensure continued participation in the program during this process—if children will not eat the healthy food served in schools, children are not benefiting from the nutrition standards enacted. Students need to eat the food to acquire the nutrition, meaning we need to increase participation and decrease food waste.

II. Timeline and Instructions to Commenters

FNS requests comments on the final flexibilities that were implemented in SY 2019–2020, which this rule proposes to codify without change. Comments on the day-to-day impact of these flexibilities from State agencies, schools, the food industry, nutrition advocates, parents and guardians, and other stakeholders will be extremely helpful in the development of the final rule. FNS will consider all relevant comments submitted during the 30-day comment period for this rulemaking, and intends to issue a final rule in spring 2021 to ensure that stakeholders can continue to rely on the operational flexibilities proposed in this rule.

III. Need for Action

As explained in detail in the 2017 Interim Final Rule, widespread improvements to the NSLP and SBP meal patterns were first implemented in 2012; since then administrative and Congressional action has provided short-term assistance to schools facing challenges in fulfilling certain requirements, namely the grains and sodium requirements. This approach, however, did not allow enough lead time to have a significant beneficial impact on menu planning, procurement, and contract decisions made in advance of the school year. To implement recurring appropriations legislation, FNS developed and disseminated policy memoranda to State agencies and schools. This created a time lag that reduced the potential impact of the flexibilities. It also caused confusion, as the Congressional flexibilities were limited to specific school years, and were therefore issued through multiple memoranda with various effective dates that State agencies and schools were required to track. For example, FNS issued several memoranda in response to annual appropriations legislation addressing the whole grain-rich requirement. These include SP 20–2015, *Requests for Exemption from the School Meals' Whole Grain-Rich Requirement for School Years 2014–2015 and 2015–2016;* SP 33–2016, *Extension Notice: Requests for Exemption from the School Meals' Whole Grain-Rich Requirement for School Year 2016–2017;* and SP 32–2017, *School Meal Flexibilities for School Year 2017–2018.*[8]

With these considerations in mind, FNS published the 2017 Interim Final Rule and, ultimately, the 2018 Final Rule related to milk, grains, and sodium. Through these actions, FNS responded to the need for more operational flexibilities to accommodate menu planning, procurement challenges, local operational differences, taste, and community preferences. These actions were targeted to the areas of the meal pattern that have been continually troublesome since its inception in 2012. This proposed rule seeks to respond to the need for continued flexibility regarding these specific requirements.

FNS recognizes that schools, for several years now, have come to rely on the operational flexibilities proposed in this rule. In fact, due to the continued Congressional and administrative actions described above, many schools have never truly implemented the 2012 requirements for grains as written in the 2012 Final Rule and have not prepared for stricter sodium standards. Moreover, once FNS took action on these flexibilities with a regulation, States and schools became even more reliant on the flexibilities. With the vacatur of the 2018 Final Rule, there is a renewed need for these operational flexibilities. Based on the District Court action, schools are expected to revert immediately to the previous requirements of the 2012 regulations. However, section 2202(a) of the Families First Coronavirus Response Act (the FFCRA) (Pub. L. 116–127), permits the Secretary to establish a waiver for the purpose of providing meals under the Child Nutrition Programs with appropriate safety measures with respect to COVID–19, which FNS recently extended in the Nationwide Waiver to Allow Meal Pattern Flexibility in the Child Nutrition Programs—Extension #5, and which remains in effect through June 30, 2021. Without additional regulatory action, schools will have to immediately implement Sodium Target 2 and ensure that all grains served are whole grain rich, and would be restricted from serving flavored low-fat milk upon expiration of the FFCRA waivers. Schools and manufacturers are unprepared for these immediate and drastic changes to the meal programs.

This proposed rule reinforces FNS's commitment to a process that will result in a final rule that provides long-term operational flexibility for the milk, grains, and sodium requirements and provides schools with adequate time to implement important changes. To require a return to these strict standards would be especially burdensome to schools who cannot meet these standards without continued operational flexibility.

Product Development Challenges

As explained in detail in the 2017 Interim Final Rule, since 2012, the school food industry has advised FNS that product development and testing take considerable time.[9] Food manufacturers suggest that it takes at least two to three years to reformulate and develop food products that support new requirements. The process involves innovation, research and development, testing, commercialization, launch, and marketing. Food manufacturers have also noted several specific barriers to meeting the lower sodium targets, including a low level of demand for these products outside of the school market, the cost and time involved in reformulating existing products, and challenges with replacing sodium in some foods given its functionality (*e.g.,* adding flavor or preserving food). They have also indicated that a significant investment of time and resources is necessary to effect even marginal sodium reductions. School food manufacturers have made it known that transitioning to Sodium Target 2 requires product reformulation and innovation in the form of new technology and/or food products. Making these changes can present significant challenges in the school marketplace. Additionally, a professional association and policy advocacy organization stated that the final target is fundamentally unattainable. They expressed concern that the final sodium target relies on changes to manufacturing processes that could use technologies or chemical substitutes that pose greater health risks than the sodium they would replace.[10]

[8] See discussion in the interim final rule *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements* (82 FR 56703, at 56704, November 30, 2017). Available at: *https://www.federalregister.gov/documents/2017/11/30/2017-25799/child-nutrition-programs-flexibilities-for-milk-whole-grains-and-sodium-requirements.*

[9] See discussion in the interim final rule *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements* (82 FR 56703 at 56705, November 30, 2017). Available at: *https://www.federalregister.gov/documents/2017/11/30/2017-25799/child-nutrition-programs-flexibilities-for-milk-whole-grains-and-sodium-requirements.*

[10] See discussion in the final rule *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium* Requirements (83 FR 63775, at 63782 December 12, 2018). Available at: *https://*

Continued

Food manufacturers note that innovations for grain products can also take several years, and involve steps similar to those needed to reformulate products lower in sodium. The formulation and processing of foods made with whole grains differ from and can be more challenging to manufacture than those made with refined grains. Manufacturers have indicated that in the past, when companies reformulated products early, they incurred significantly more costs compared to those that took a ''wait and see'' approach. The persistent uncertainty about the whole grain-rich requirement and the possibility of further meal pattern changes resulting from legislative activity have deterred manufacturers from investing time or resources to develop additional whole grain-rich products.

While product-specific information is proprietary, the overwhelming and consistent message is that it will be difficult, time-consuming, and expensive to develop products that meet the final sodium target, and the 100 percent whole grain-rich requirement and that, most importantly, students will eat. Practically, even if the food industry is able to eventually develop products meeting these strict standards, if students will not eat them, there is no benefit to the strict standards. Instead, as proposed, the standards would allow for healthy products that are still acceptable to students. If the proposed standards are finalized, manufacturers will have the incentive to commit to reformulating products and work towards innovative solutions knowing that the program requirements are stable, attainable, and acceptable to students. Given their unique perspective on product development and reformulation, FNS welcomes input from the school food industry in developing the final rule.

Operational Challenges

This proposed rule seeks to address the operational challenges experienced by some schools. It seeks to ease specific requirements beginning in SY 2021–2022, to help children gradually adjust to and enjoy school meals that are consistent with science-based recommendations. This proposed rule seeks to give menu planners more flexibility to make procurement decisions that reflect local preferences, empowering them in ways that may increase student participation and meal consumption.

Although many schools have had success in implementing the 2012 meal patterns and nutrition standards, FNS recognizes that many schools have not yet fully implemented the 2012 meal patterns due to feasibility and student preferences. In fact, due to administrative and Congressional action many schools have never implemented the grains and sodium requirements as intended by the 2012 Final Rule. This proposed rule aims to ensure that the operational flexibilities would be available for those schools that need them. It is important to stress that the proposed changes are optional, intended as additional tools for schools across the country working to provide students with wholesome meals they enjoy eating. In addition, as noted in the 2017 Interim Final Rule and in the 2018 Final Rule, and as allowed in 7 CFR 210.19(e), State agencies have discretion to set stricter requirements that are not inconsistent with the minimum nutrition standards for school meals.

IV. Discussion of Proposed Changes

Milk Flexibility

Previous and Current Requirements

The 2012 Final Rule required milk offered in the NSLP, SBP, and CACFP to be fat-free or low-fat milk,[11] and limited flavored milk to fat-free milk only. On May 5, 2017, through the Consolidated Appropriations Act, 2017 (Pub. L. 115–31), for SY 2017–2018, Congress instructed the Secretary to allow State agencies to grant exemptions for the service of flavored, low-fat milk (1 percent fat), through the NSLP and SBP and as a competitive food available for sale, provided schools demonstrated hardship by documenting a reduction in student milk consumption or increase in milk waste. The 2017 Interim Final Rule allowed NSLP, SMP, SBP, and CACFP operators the option to serve flavored, low-fat milk as part of the reimbursable meal, and for schools, as a competitive beverage for sale, during SY 2018–2019. NSLP and SBP operators that chose to exercise this option were not required to demonstrate a reduction in student milk consumption or an increase in milk waste, but were expected to incorporate this option into the weekly menu in a manner consistent with the dietary specifications for these programs. This flexibility was intended to encourage children's consumption of fluid milk and to ease administrative burden for schools, institutions, and facilities participating in multiple Child Nutrition Programs. The 2018 Final Rule, implemented in SY 2019–2020, and vacated in April 2020, maintained this flexibility as proposed in the 2017 Interim Final Rule, but added a requirement that unflavored milk be offered at each meal service. Due to the vacatur of the 2018 Final Rule, the 2012 requirements are currently in effect.

Proposal

In this proposed rule, FNS seeks to continue the flavored milk flexibility, which has been available in some form since SY 2017–2018.[12] This proposed rule would provide schools the option to offer flavored, low-fat milk in reimbursable school meals, and maintain the requirement that unflavored milk be offered at each meal service. For consistency, the flavored, low-fat milk option would be extended to beverages for sale during the school day, and would also apply in the SMP and CACFP for participants ages 6 and older. FNS recognizes that regulatory consistency across programs facilitates administration and operation at the State and local levels and responds to stakeholder concerns. The Summer Food Service Program (SFSP) currently allows flavored, low-fat milk in reimbursable meals; therefore, this rulemaking does not include a proposed change to milk service in the SFSP.

In addition, FNS proposes a technical correction to clarify in CACFP regulations that lactose-free and reduced-lactose fluid milk meet the CACFP meal pattern requirements for fluid milk. Current NSLP and SBP regulations allow schools to serve lactose-free and reduced-lactose milk to meet the fluid milk requirements for reimbursable meals (7 CFR 210.10(d) and 220.8(d)). FNS has clarified that these options are also available in CACFP through policy, and it is generally understood that lactose-free and reduced-lactose milk are considered fluid milk in the CACFP. Clarifying in CACFP regulations that lactose-free and reduced-lactose milk may be served as milk in reimbursable meals builds greater consistency in program regulations and is expected to reduce confusion for CACFP institutions and facilities, as well as families.

Through this proposal, FNS seeks to maintain operational regulatory flexibilities that schools have come to rely on, and that FNS believes may

www.federalregister.gov/documents/2018/12/12/2018-26762/child-nutrition-programs-flexibilities-for-milk-whole-grains-and-sodium-requirements.

[11] Program operators in the CACFP and SMP are required to serve unflavored milk to children through age five, whole milk for children age one, and low-fat or fat-free milk for children age two through five.

[12] FNS issued SP 32–2017 guidance on May 22, 2017, implementing Section 747 of the Consolidated Appropriations Act, 2017 (Pub. L. 115–31), which provides flexibilities related to whole grains, sodium, and flavored milk for school year (SY) 2017–2018.

enhance milk consumption among children. Aligning the meal patterns across Child Nutrition Programs when appropriate provides consistency and stability for schools, institutions, and facilities operating multiple Child Nutrition Programs. FNS's intent to expand milk options is also based on concerns over decreasing milk consumption in the U.S. population. Data from USDA's Economic Research Service shows a decrease in fluid milk consumption from 196 pounds per person in 2000 to 141 pounds per person in 2019.[13] Milk is an important source of calcium, vitamin D and potassium and this rule aims to increase children's consumption of milk.

Consistent with comments received for the 2017 Interim Final Rule and the requirement included in the 2018 Final Rule, this proposed rule would also require that schools that choose to offer flavored milk also offer unflavored milk (fat-free or low-fat) at each meal service. This proposal would ensure that milk variety in the NSLP and SBP is not limited to flavored milk, underscoring the importance of having unflavored milk as an option at each meal service. For example, parents and guardians may prefer that their child consumes unflavored milk, and unflavored milk may be a more appropriate pairing with a student's meal (*e.g.,* with breakfast cereal). It is also intended to help schools that choose to offer flavored milk to stay within the weekly dietary specifications, as flavored milk is higher in calories than unflavored milk. Further, every edition of the Dietary Guidelines since 1980, including the *Scientific Report of the 2020 Dietary Guidelines Advisory Committee,*[14] has recommended reducing added sugar intake. Consistent with this recommendation, many State agencies have promoted unflavored milk in the NSLP and SBP as the lower-sugar option.

The proposed requirement to ensure that unflavored milk is available on the school breakfast and lunch menu would not apply in the NSLP afterschool snack service, the SMP, or the CACFP, consistent with existing requirements for those Programs. These meal services do not have a requirement to offer a variety of fluid milk, as they are smaller in size and generally have fewer resources than schools that participate in the NSLP and SBP.

Accordingly, this proposed rule seeks to amend the following milk provisions:

- NSLP (7 CFR 210.10(d)(1)(i); 7 CFR 210.11(m)(1)(ii), (m)(2)(ii) and (m)(3)(ii));
- SBP (7 CFR 220.8(d));
- SMP (7 CFR 215.7(a)(3)); and
- CACFP (7 CFR 226.20(a)(1)(iii) and (iv), and 7 CFR 226.20(c)(1), (2) and (3)).

Whole Grain-Rich Flexibility

Previous and Current Requirements

The 2012 Final Rule revised the NSLP and SBP meal patterns to require that, beginning in SY 2014–2015, all grains offered on the school menu meet the FNS whole grain-rich criteria. To meet FNS's whole grain-rich criteria, a product must contain at least 50 percent whole grains and the remaining grain content of the product must be enriched. Due to reported limitations on the availability of certain products that met this criterion when the whole grain-rich requirement first went into effect, FNS allowed State agencies the option to provide certain exemptions for SY 2014–2015. As noted earlier, successive legislative action in 2012, 2015, and 2016 impeded full implementation of the whole grain-rich requirement. For SY 2017–2018, Congress extended the option allowing State agencies to grant whole grain-rich exemptions to SFAs that requested exemptions and demonstrated hardship in procuring or preparing specific products that met the whole grain-rich criteria and were acceptable to students.

For SY 2018–2019, the 2017 Interim Final Rule provided State agencies discretion to grant exemptions to the whole grain-rich requirement to SFAs that demonstrated hardship in meeting the whole grain-rich criteria. SFAs that received an exemption were required to offer at least half of the weekly grains as whole grain-rich.

The 2018 Final Rule, implemented in SY 2019–2020, and vacated in April 2020, required that at least half of the weekly grains offered in the NSLP and SBP meet the whole grain-rich criteria specified in FNS guidance, and that the remaining grain items offered must be enriched; exemptions were no longer required. This decision, which was recommended by the School Nutrition Association, representing 57,000 school nutrition professionals, eliminated the requirement that SFAs request exemptions based on hardship, which many commenters, including State agencies and schools, described as burdensome. Due to the vacatur of the 2018 Final Rule, the 2012 requirements are currently in effect.

Proposal

This rulemaking proposes to require that at least half of the weekly grains offered in the NSLP and SBP meet the whole grain-rich criteria specified in FNS guidance,[15] and that the remaining grain items offered must be enriched. This proposal is consistent with FNS's commitment to simplify operational procedures and increase operational flexibility.

Maintaining the grains requirement that menu planners have grown accustomed to would allow schools to continue to provide menu items that meet local preferences. For example, since certain regional foods are not widely available in acceptable whole grain-rich varieties, granting more flexibility through this change would help ensure that schools have more options to meet the expectations of their students. This proposal would not require schools to submit whole grain-rich exemption requests based on hardship as was required in the 2017 Interim Final Rule.

As previously described, the requirement to offer exclusively whole grain-rich products has been challenging for some schools and, due to a long history of administrative and legislative actions allowing exemptions, it was never fully implemented nationwide. FNS recognizes that continually granting short-term exemptions to the whole grain-rich requirement has created confusion for menu planners. Schools and the food industry have requested a workable regulatory solution that provides the long-term operational flexibility needed for food procurement and product reformulation.

The whole grain-rich requirement in this proposed rule would remain a minimum—not a maximum—standard. By maintaining the whole grain-rich requirement that was in place from SY 2012–2013 through SY 2013–2014, and then again in SY 2019–2020, FNS acknowledges the nutritional benefits of whole grains, while emphasizing the need for taste and operational flexibility in school menu planning, procurement, and food service equipment. As noted above, the requirement is a minimum

[13] U.S. Department of Agriculture Economic Research Service. *Dairy products: Per capita consumption, United States (Annual).* September 2020. Available at: *https://www.ers.usda.gov/data-products/dairy-data/.*

[14] Dietary Guidelines Advisory Committee. 2020. *Scientific Report of the 2020 Dietary Guidelines Advisory Committee: Advisory Report to the Secretary of Agriculture and the Secretary of Health and Human Services.* U.S. Department of Agriculture, Agricultural Research Service, Washington, DC. Available at: *https://www.dietaryguidelines.gov/2020-advisory-committee-report.*

[15] 7 CFR 210.10(c)(2)(iv) *Grains component.* (A) *Enriched and whole grains.* Whole grain-rich products must contain at least 50 percent whole grains and the remaining grains in the product must be enriched.

standard; at least half of the grains offered weekly must be whole grain-rich, and the other grain items offered must be enriched. Schools are encouraged to exceed this threshold, if possible. The Dietary Guidelines describe whole grains as a source of dietary fiber, iron, zinc, and other key nutrients, and recommend including whole grains in a healthy eating pattern while limiting the intake of refined grains.

FNS believes the food industry will continue efforts to develop more acceptable, affordable whole grain-rich products that are appealing to students. For instance, whole grain-rich pizza crust and different types of breads, such as whole grain-rich pita and flatbread, are now available to schools. In cases where additional product research and development continue to be necessary, this proposal would provide the food industry time to develop whole grain-rich food products that are suitable for reheating and hot holding, resulting in more acceptable meals for students. These appealing, new products could assist schools in sustaining student participation, encouraging meal consumption, and limiting food waste.

Accordingly, this proposed rule seeks to amend the following grains provisions:

- NSLP (7 CFR 210.10(c)(2)(iv)(B)); and
- SBP (7 CFR 220.8(c)(2)(iv)(B)).

Sodium Flexibility

Previous and Current Requirements

The 2012 Final Rule also set average weekly sodium limits for school meals.[16] The 2012 Final Rule initiated a gradual reduction of the sodium content of school meals by establishing two intermediate sodium targets and a final sodium target. The targets were calculated based on the sodium recommendation from the 2010 Dietary Guidelines, which was subsequently reinforced by the 2015–2020 Dietary Guidelines. To facilitate sodium reduction over a 10-year period, the 2012 Final Rule required compliance with Sodium Target 1 beginning July 1, 2014 (SY 2014–2015), Target 2 beginning July 1, 2017 (SY 2017–2018), and the Final Target beginning July 1, 2022 (SY 2022–2023). As noted in the 2012 Final Rule, meeting Target 1 required menu and recipe modification, reaching Target 2 requires product reformulation, and meeting the Final Target would require innovation by product manufacturers. As noted previously, recognizing the challenges schools and the food industry were facing with regard to sodium reduction, Congress repeatedly delayed compliance with Sodium Target 2 through Federal appropriations.[17]

The 2017 Interim Final Rule retained Sodium Target 1 through SY 2018–2019, and requested comments on continuing Target 1 for a longer time period. It also retained Target 2 and the Final Target as part of the gradual sodium reduction timeline. The 2018 Final Rule, which was vacated in April 2020, provided schools even more time for gradual sodium reduction by maintaining Sodium Target 1 through the end of SY 2023–2024; delaying compliance with Target 2 until SY 2024–2025; and eliminating the Final Target. Due to the vacatur of the 2018 Final Rule, the 2012 requirements are currently in effect.

Proposal

This proposed rule seeks to maintain Sodium Target 1 requirements through SY 2023–2024 (June 30, 2024); delay required compliance with Target 2 requirements to SY 2024–2025 (July 1, 2024); and remove the Final Target. This change to the sodium requirements is consistent with previous Congressional actions directing USDA to maintain Sodium Target 1.

While FNS recognizes the importance of reducing the sodium content of school meals, this proposal reflects a recognition that reaching this objective requires a more gradual process—extended beyond the planned 10 years. A 2019 FNS study on sodium found that many challenges to meeting stricter standards remain. Food manufacturers noted the difficulty of decreasing sodium in processed food products, including bakery items, when sodium serves a functional purpose (*e.g.,* salt to strengthen gluten, baking soda to help baked goods rise). In particular, manufacturers were concerned that the Final Target could affect the ability to produce these products and that the shelf life for food products would be shorter without enough salt to act as a preservative. Additionally, schools were concerned that foods reformulated to meet Target 2 standards did not taste good and were not accepted by students, which contributed to lower school meal participation and cost implications.[18] Procuring lower sodium products is an especially important factor for those schools that are not equipped for scratch cooking. Extending the sodium reduction timeline allows more time for product reformulation, school menu adjustments, food service changes, personnel training, and adapting student preferences.

By proposing to retain Sodium Target 2, FNS recognizes the need to continue improving the nutritional quality of school meals. Most Americans exceed the Dietary Guidelines' recommended intakes for sodium, including nearly 9 in 10 children.[19] Consuming too much sodium can lead to high blood pressure (hypertension), and raising an individual's risk of having a heart attack or stroke. Reducing sodium in children's diets—including in school meals—helps to support their overall health and wellbeing. However, as commenters on the 2017 Interim Final Rule noted, the Final Sodium Target is fundamentally unattainable and could require changes to manufacturing processes that could require technologies or chemical substitutes that pose greater health risks than the sodium they would replace.[20] Further, as the District Court acknowledged when vacating the 2018 Final Rule, FNS is permitted to deviate from the Final Sodium Target for the purpose of providing feasible goals for schools that increase consumption of meals.

FNS remains committed to strong nutrition standards for school meals, consistent with the statutory requirement that school meals reflect the Dietary Guidelines. In the 2018 Final Rule, FNS also indicated an intention to consider the ongoing update of the current Dietary Reference Intakes (DRI) for sodium and potassium.

[16] For the sake of clarity, it is important to note that the sodium limit applies to the average meal offered during the school week; it does not apply per day, per meal, or per food item. Menu planners may offer a relatively high sodium meal or high sodium food at some point during the week if meals with lower to moderate sodium content are offered the rest of the week.

[17] Section 751 of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub .L. 113–235); Section 743 of the Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112–55); Section 752 of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235); Section 733 of the Consolidated Appropriations Act, 2016 (Pub. L. 114–113); Section 747 of the Consolidated Appropriations Act, 2017 (Pub. L. 115–31); and Section 101(a)(1) of the Continuing Appropriations Act, 2018, Division D of the Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Pub. L. 115–56).

[18] Gordon, E., Morrissey, N., Adams, E., et al. Successful Approaches To Reduce Sodium in School Meals Study. Prepared by 2M Research and Abt Associates, Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, June 2019. Project Officer: Holly Figueroa. Available online at: *www.fns.usda.gov/research-and-analysis.*

[19] Centers for Disease Control and Prevention. *Salt.* Available at: *https://www.cdc.gov/salt/index.htm.*

[20] See discussion in the final rule *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium* Requirements (83 FR 63775, at 63782 December 12, 2018). Available at: *https://www.federalregister.gov/documents/2018/12/12/2018-26762/child-nutrition-programs-flexibilities-for-milk-whole-grains-and-sodium-requirements.*

The DRIs, a set of reference values used to plan and assess the diets of healthy individuals and groups developed by the National Academies of Sciences, Engineering, and Medicine, were updated in 2019.[21] The DRI recommendations update the 2005 DRI for sodium and incorporate the new DRI concept of dietary intake recommendations to reduce the risk of chronic disease. The DRIs for sodium are generally consistent with those reflected in the 2015 Dietary Guidelines for Americans. While the DRIs recommended further reductions in sodium intake for young children, no specific recommendations relating to schools have been provided. In this proposed rule, FNS intends to ensure that the sodium targets reflect the most recent DRIs, are feasible for most schools, and allow schools to plan appealing meals that encourage consumption and intake of key nutrients that are essential for children's growth and development.

In recognition of the need for continued review of the most current recommendations, as well as the need to provide adequate notice to stakeholders of any adjustments in the requirements, this proposed rule would retain the sodium reduction timeline set in the 2018 Final Rule. Extending Target 1, delaying Target 2 implementation, and refraining from setting sodium reduction goals beyond Target 2 would give FNS the opportunity to assess the impact of the forthcoming 2020 Dietary Guidelines on school meals and maintain the regulatory plan relied upon by schools and the food industry. This timeline is intended to address concerns regarding student acceptability and consumption of meals with lower sodium, food service operational issues, product reformulation and innovation challenges, and the importance of safeguarding the health of millions of schoolchildren.

Reverting to a more aggressive timeline while schools are facing the effects of a global pandemic would create challenges for which schools and the food industry are unprepared. The most recent data collected and analyzed by FNS on this topic indicated that 81 percent of schools were not meeting Target 2 sodium levels in SY 2014–2015.[22] Given the need for operational flexibility around the Targets over the past years, requiring those schools to immediately meet Target 2 and move to the Final Target by July 1, 2022, as required under the 2012 requirements, would be nearly impossible, especially given the expectation by schools and the school food industry that these targets had been delayed or eliminated.

Instead, the sodium timeline proposed by this rule would provide the operational flexibility and time necessary for manufacturers, producers, and vendors to develop and produce compliant products. This proposed rule acknowledges the persistent menu planning challenges experienced by schools, which have become infinitely more difficult during the ongoing global pandemic, seeks to balance nutrition science, practical application of requirements, and the need to ensure that children receive school meals they will eat, and reaffirms the agency's commitment to give schools more control over food service decisions and greater ability to offer wholesome and appealing meals that reflect local preferences.

FNS will continue to engage with the public, health advocates, nutrition professionals, schools, and the food industry to gather input on needs and challenges associated with managing sodium levels in school meals. In addition, FNS will continue to ensure that low-sodium products are offered through USDA Foods; develop recipes that assist with sodium reduction; and provide menu planning resources, technical assistance, and information to schools through the FNS Team Nutrition initiative.

Accordingly, this proposed rule seeks to amend the following sodium provisions:

- NSLP (7 CFR 210.10(f)(3)); and
- SBP (7 CFR 220.8(f)).

Procedural Matters

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been determined to be economically significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Economic Summary

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). This proposed rule is likely to have an economic impact of $100 million or more in any one year, and therefore, meets the definition of ''economically significant'' under Executive Order 12866. The RIA for the 2012 Final Rule, underscores the importance of recognizing the linkage between poor diets and health problems such as childhood obesity. In addition to the impacts on the health of children, the RIA also cites information regarding the social costs of obesity and the additional economic costs associated with direct medical expenses of obesity. The RIA for the 2012 Final Rule included a literature review to describe qualitatively the benefits of a nutritious diet to combat obesity and did not estimate individual health benefits or decreased medical costs that could be directly attributed to the changes in the 2012 Final Rule, due to the complex nature of factors that impact food consumption and obesity.[23] FNS believes the specific flexibilities proposed in this rule are intended to ease burden and increase feasibility while ensuring the majority of the changes resulting from the 2012 Final Rule remain intact.

The Secretary of Agriculture acknowledged the operational challenges in meeting the meal standards related to flavored milk, whole grain-rich requirements, and sodium targets in the May 1, 2017, Proclamation and committed to working with stakeholders to ensure that school meal requirements are practical and result in wholesome and appealing meals. The 2017 Interim Final Rule, established regulations that extended

[21] Dietary Reference Intake for Sodium and Potassium, National Academies of Sciences, Engineering, and Medicine, *https://www.nap.edu/resource/25353/030519DRISodiumPotassium.pdf.*

[22] Based on an internal FNS analysis using data from: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, School Nutrition and Meal Cost Study, Final Report Volume 2: Nutritional Characteristics of School Meals by Elizabeth Gearan, Mary Kay Fox, Katherine Niland, Dallas Dotter, Liana Washburn, Patricia Connor, Lauren Olsho, and Tara Wommak. Project Officer: John Endahl. Alexandria, VA: April 2019.

[23] *https://www.gpo.gov/fdsys/pkg/FR-2012-01-26/pdf/2012-1010.pdf:* ''Because of the complexity of factors that contribute both to overall food consumption and to obesity, we are not able to define a level of disease or cost reduction that is attributable to the changes in meals expected to result from implementation of the rule. As the rule is projected to make substantial improvements in meals served to more than half of all school-aged children on an average school day, we judge that the likelihood is reasonable that the benefits of the rule exceed the costs, and that the final rule thus represents a cost-effective means of conforming NSLP and SBP regulations to the statutory requirements for school meals.''

the school meal flexibilities through SY 2018–2019. FNS published the 2018 Final Rule, providing the operational flexibilities needed to move forward with menu planning that met student preferences.

As noted in the preamble, on April 13, 2020, the 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. This rule proposes similar flexibilities addressed in the 2017 Interim Final Rule and the 2018 Final Rule. The purpose of this rule is to ease operational burden and provide school nutrition professionals the operational flexibility needed to successfully operate the Child Nutrition Programs. This rule proposes the following changes beginning in SY 2021–2022:

- Allow NSLP and SBP operators to permanently offer flavored, low-fat milk as part of the reimbursable meal and for sale as a competitive beverage. Also allow flavored, low-fat milk in the SMP and CACFP for participants ages 6 and older;
- Require that at least half of the weekly grains offered in the NSLP and SBP to be whole grain-rich; and
- Provide schools participating in the NSLP and SBP more time for gradual sodium reduction by retaining Sodium Target 1 through the end of SY 2023–2024; continuing to Target 2 in SY 2024–2025 and eliminating the Final Target.

FNS expects the health benefits of the meal standards, which are mainly left intact, to be similar to the overall benefits of improving the diets of children cited in the RIA for the 2012 Final Rule. While the changes in this proposed rule would provide operational flexibilities to the meal standards, the targeted nature of the three specific changes address persistent challenges with milk, grain, and sodium requirements. Schools must continue to meet the same caloric and fat limits specified in the 2012 Final Rule irrespective of whether they use the flexibilities proposed in this rule. The nation's students will continue to benefit from the changes in the 2012 Final Rule, and the health benefits of a nutritious diet to reduce obesity qualitatively described in the 2012 RIA still apply. The updated standards are associated with higher nutritional quality for lunches among low-income, low-middle-income, and middle-high income NSLP participants from 2013 to 2016 compared to nonparticipants.[24]

As noted above, this proposed rule would ease the operational challenges associated with these three requirements while balancing the nutrition science and operational concerns. While there have been many successes in the implementation of the 2012 Final Rule,[25] some schools still face challenges with fully implementing the suite of changes. A 2019 FNS study found that, in SY 2014–2015, the majority of SFA directors rated the new nutrition standards as helpful in meeting the underlying nutrition goals for children, including decreasing children's sodium intakes, meeting—but not exceeding—children's calorie requirements, and increasing the variety of vegetables. However, many reported challenges in implementing or maintaining compliance with certain nutrition standards, including the cost and availability of foods, limited staff and equipment resources, and difficulty understanding the new nutrition standards.[26] Among students who have ever eaten a school lunch, just over half (52 percent) reported that the school lunch was only okay, more than one-third (36 percent) reported that they liked the school lunch, and 12 percent said they did not like the school lunch. Students who usually never eat a school lunch cited that they preferred to eat a lunch brought from home and that they did not like school lunch/the taste in general as reasons for not participating in the NSLP (52 percent and 40 percent respectively).[27] The operational flexibilities in this rule provide the relief that some SFAs need to successfully offer wholesome and appealing meals to students they enjoy eating.

FNS is committed to nutrition science, but also understands the importance of practical requirements for schools to successfully operate the Child Nutrition Programs. The changes set forth in this rule still show progress in school meal nutrition, and children would continue to be offered and exposed to a variety of nutritious food choices. Further, FNS does not anticipate this proposed rule would deter the significant progress made to date[28] by State and local operators, USDA, and industry manufacturers to achieve healthy, palatable meals for students.[29] The operational flexibilities in this rule provide industry the ability to commit to reformulating products and work towards innovative solutions.

Two key questions we would like response from the public on:

1. Is there any feedback on costs or benefits experienced in using the provided flexibilities since the Final Rule was enacted?
2. Are there any advantages or challenges from SFAs that are implementing these flexibilities to meet the weekly nutrient requirements (*i.e.,* calories, saturated fat, etc.)?

Cost Impact

FNS anticipates minimal if any costs associated with the proposed changes to the nutrition standards for milk, grains, and sodium. The overall meal components, macro nutrient, and calorie requirements for the lunch and breakfast programs remain unchanged. Schools would choose whether or not to use the milk flexibility, and may exceed the minimum whole grain-rich requirements and sodium standards proposed in this rule. While the average cost to produce a school lunch has increased significantly since SY 2005–2006, the higher nutritional quality of NSLP lunches did not cost significantly

[24] Association of the Healthy, Hunger-Free Kids Act With Dietary Quality Among Children in the U.S. National School Lunch Program: *https://jamanetwork.com/journals/jama/article-abstract/2768807.*

[25] Robert Wood Johnson Foundation's Bridging the Gap Release on School Meals Perceptions in Childhood Obesity. September 2013. *http://www.rwjf.org/en/library/research/2014/06/bridging-the-gap-s-work-on-childhood-obesity.html.*

[26] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study: Volume 1—School Meal Program Operations and School Nutrition Environments, by Sarah Forrestal et. al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[27] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, School Nutrition and Meal Cost Study, Final Report Volume 4: Student Participation, Satisfaction, Plate Waste, and Dietary Intakes by Mary Kay Fox, Elizabeth Gearan, Charlotte Cabili, Dallas Dotter, Katherine Niland, Liana Washburn, Nora Paxton, Lauren Olsho, Lindsay LeClair, and Vinh Tran. Project Officer: John Endahl. Alexandria, VA: April 2019.

[28] FNS National Data Bank Administrative Data: 99.8% of lunches served in fiscal year (FY) 2019 received the performance based reimbursement for compliance with the meal standards. This includes lunches served in SFAs granted whole grain exemptions.

[29] Across all schools, NSLP lunches with HEI–2010 scores in the third or highest quartiles of the distribution were associated with significantly higher student participation rates, relative to NSLP lunches with HEI–2010 scores in the lowest quartile of the distribution: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, School Nutrition and Meal Cost Study, Final Report Volume 4: Student Participation, Satisfaction, Plate Waste, and Dietary Intakes by Mary Kay Fox, Elizabeth Gearan, Charlotte Cabili, Dallas Dotter, Katherine Niland, Liana Washburn, Nora Paxton, Lauren Olsho, Lindsay LeClair, and Vinh Tran. Project Officer: John Endahl. Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/researchand-analysis.*

more to produce than those of lower nutritional quality.[30] The changes proposed in this rule are not expected to measurably impact program costs overall and there will be variation across schools electing some, all, or none of these proposed flexibilities. Under the proposed changes, schools would continue to work with existing school foodservice resources to serve nutritious and appealing meals that meet the overarching meal standards.

Milk Flexibility

As stated in the 2017 Interim Final Rule, there may be some cases in which flavored, low-fat milk is slightly more expensive, and some in which it is slightly less expensive, compared to the varieties currently permitted in the 2012 Final Rule. However, any overall difference in cost is likely to be minimal. The requirement that unflavored milk be offered at each school meal service is not expected to impact cost. Unflavored milk was a popular offering prior to the 2012 Final Rule. In SY 2009–2010, the most commonly offered milks were unflavored, low-fat (73 percent of all daily NSLP menus) and flavored, low-fat (63 percent).[31] In SY 2014–2015, 91 percent of all daily menus offered flavored fat-free and unflavored low fat milk. Unflavored fat-free milk was offered in half of all daily lunch menus.[32] Given that unflavored milk was already a part of most school meal menus prior to the new standards, the requirement to offer unflavored along with flavored milk is not anticipated to be an additional burden or cost, as schools are accustomed to offering it to satisfy the milk variety requirement.

Whole Grain-Rich Flexibility

The changes in this proposed rule would provide schools the operational flexibility to offer some non-whole grain-rich products that are appealing to students without the administrative burden of the exemption process. All grains offered were required to be whole grain-rich starting in SY 2014–2015; however exemptions were available to schools starting in the same year. Only 27 percent of weekly lunch menus offered only whole grain-rich items in SY 2014–2015. The majority (87 percent) of weekly lunch menus did offer at least 50 percent grains as whole grain-rich.[33]

Relative to the 2012 Final Rule, the requirement that at least half of the weekly grains offered in NSLP and SBP are whole grain-rich may provide savings for some SFAs facing challenges procuring certain whole grain-rich products; however, FNS expects that as more products become available, any differential costs associated with whole grain-rich and non-whole grain-rich products will normalize in the market. The availability of whole grain-rich products through USDA Foods[34] and the commercial market has increased significantly since the implementation of the 2012 Final Rule and continues to progress, providing new and affordable options to integrate into school meal menus. The majority of grain products offered in schools are moving toward whole grain-rich, and that the remaining challenges are specific to certain products.[35] Due to the wide variation in local adoption of this flexibility, any potential overall savings are likely minimal.

Sodium Flexibility

This proposed rule would extend Sodium Target 1 through SY 2023–2024, require compliance with Sodium Target 2 in SY 2024–2025, and would eliminate the final Sodium Target. The extension of Target 1 and the resulting delay of the implementation of Target 2 to SY 2024–2025 would provide additional time to assess potential changes, including regulatory adjustments to incorporate updated recommendations from the 2020 Dietary Guidelines for Americans. FNS recognizes the need for sodium reduction in school meals and is retaining Target 2 in this proposed rule.

FNS anticipates schools will continue their efforts to reduce sodium in school meals while industry will continue to work towards lower sodium formulations. FNS does not anticipate any measurable costs associated with this change, as it allows additional time for schools and industry to reduce sodium levels in meals with practical requirements.[36]

Overview of Public Comments From 2017 Interim Final Rule

There were about 20 comment submissions that provided input on risks or benefits of the 2017 Interim Final Rule. The comments expressed concern that the flexibilities could lower health benefits over time of the meal standards if children are offered more sodium, fewer whole grain-rich foods, and milk with higher calories and saturated fat. The following sections review the changes and provide additional information regarding potential nutritional impacts.

Milk Flexibility

In this proposed rule, FNS would allow NSLP and SBP operators the

[30] School Nutrition and Meal Cost Study (SNMCS) for SY 2014–2015 reported the cost of producing an NSLP lunch in the average SFA was $3.81, which was 26 percent greater than the comparable (inflation-adjusted) cost in SY 2005–2006 ($3.03). The reported cost per SBP breakfast in 2015 dollars for the average SFA did not change significantly from SY 2005–2006 to SY 2014–2015 after adjusting for inflation. The overall nutritional quality of NSLP lunches is not associated with the reported cost to produce these meals. NSLP lunches of higher nutritional quality, as measured by the Healthy Eating Index (HEI)–2010, did not cost significantly more to produce than those of lowest nutritional quality. The average reported cost for schools with lunches in the highest quartile of the HEI–2010 (scores between 85.2 and 97.9 out of a possible 100) was $3.90 and was not statistically different than the reported cost of $3.85 for schools with lunches in the lowest quartile of the HEI2010 distribution (scores between 60.5 and 78.9). U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 3: School Meal Costs and Revenues by Vinh Tran et. al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/researchand-analysis.*

[31] U.S. Department of Agriculture, Food and Nutrition Service, Office of Research and Analysis, School Nutrition Dietary Assessment Study IV, Vol. I: School Foodservice Operations, School Environments, and Meals Offered and Served, by Mary Kay Fox, Elizabeth Condon, Mary Kay Crepinsek, et al. Project Officer, Fred Lesnett Alexandria, VA: November 2012. Available online at: *www.fns.usda.gov/research-and-analysis.*

[32] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[33] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[34] Information about USDA Foods is available online at: *https://www.fns.usda.gov/usda-fis.*

[35] Over 85 percent of grain items offered in school meals during SY 2014–2015 were identified as whole grain-rich. Internal Analysis of data from: U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et. al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[36] In the RIA for the final rule, *Nutrition Standards in the National School Lunch and School Breakfast Programs* (77 FR 4088), meeting the first sodium target was not estimated as a separate cost due to the fact that the first target was meant to be met using food currently available when the target went into effect in SY 2014–2015 (or by making minimal changes to the foods offered). While the regulatory impact analyses did not estimate a separate cost to implement Sodium Target 1, it did factor in higher labor costs for producing meals that meet all the meal standards at full implementation to factor in the costs of schools replacing packaged goods to food prepared from scratch. Over 5 years, the final rule estimated that total SFAs costs would increase by $1.6 billion to meet all standards. The cost estimate extended only through FY 2016, two years before the 2012 Final Rule's second sodium target would have taken effect. The second sodium target was designed to be met with the help of industry changing food processing technology.

option to offer flavored, low-fat milk and require that unflavored milk be offered at each meal service. The flavored milk flexibility would be extended to beverages for sale during the school day and would also apply in the SMP and CACFP for participants ages 6 years and older.

As noted in the 2017 Interim Final Rule, the regulatory impact analyses for the 2012 Final Rule did not estimate the health benefits associated with specific changes in meal components such as the exclusion of flavored, low-fat milk. The decision to allow flavored low-fat milk reflects the concerns of declining milk consumption and the importance of the key nutrients provided by milk for school-aged children.[37]

Menu planners must make necessary adjustments in the weekly menu to account for the additional calories and fat content associated with offering flavored low-fat milk because this proposed rule would not change the upper caloric and fat limits specified in the 2012 Final Rule. The requirement to offer unflavored milk at each meal service ensures that students would have access to a choice in milk types and also prevents schools from only offering different flavored milk types to satisfy the milk variety requirement. FNS estimates the nutritional impact of allowing flavored, low-fat milk to be minimal. The added calories and fat would be managed by the upper caloric and fat limits. Further, student intake of key nutrients provided through milk would increase if milk consumption increases, including calcium, vitamin D, and vitamin B12, helping participants meet the Dietary Reference Intakes.[38] Flavored milks are also wasted less than other milks in the school meals programs.[39] The type of milk most frequently consumed was flavored, fat-free milk[40] in SY 2014–2015, indicating student preference for flavored milks, and as noted earlier, flavored, low-fat milk was a popular choice prior to the 2012 Final Rule. Allowing flavored, low-fat milk as an option may decrease waste and increase nutrient consumption.

Whole Grain-Rich Flexibility

Starting in SY 2021–2022, this proposed rule would require that at least half of the weekly grains offered in the NSLP and SBP meet the whole grain-rich criteria specified in FNS guidance, and the remaining grain items offered must be enriched. This flexibility would ease burden while ensuring the majority of the changes resulting from the 2012 Final Rule remain intact.

The requirement to offer all whole grain-rich items was never fully implemented due to a long history of administrative and legislative actions allowing exemptions. As noted earlier in SY 2014–2015, the first year in which all grains were required to be whole grain-rich, only 27 percent of weekly lunch menus actually met this requirement. However, the majority (87 percent) of weekly lunch menus offered at least 50 percent of the grains as whole grain-rich. In SBP, about half of all weekly breakfast menus offered only whole grain-rich grains, while 95 percent of all weekly breakfast menus offered at least 50 percent of the grains as whole grain-rich. However, schools still made considerable progress offering whole grain-rich products.[41]

In SY 2014–2015, even though almost three quarters of weekly lunch menus did not meet the 100 percent whole grain-rich requirement, the HEI–2010 component score[42] for whole grains in NSLP lunches served improved significantly from SY 2009–2010 to SY 2014–2015, by 71 percentage points (from 25 to 95 percent of the maximum score).[43] Similarly for SBP breakfasts served, the score for whole grains increased by 58 percentage points (from 38 to 96 percent of the maximum score) over the same time period.[44] These high scores were achieved with very few menus meeting the requirement that all grains must be whole grain-rich.

Schools that have already made strides toward meeting the 100 percent whole grain-rich requirement can continue their current path with the flexibility to accommodate local preferences and intermittent challenges related to the food supply or market. Industry continues to work diligently to increase the number of products reformulated to be whole grain-rich and appealing to students. While significant progress has been made, schools still face challenges with serving all whole grain-rich items. In SY 2014–2015, more than half of students who had ever eaten a school lunch reported that they never or only sometimes liked the whole grain-rich foods that were available.[45]

[37] *https://www.gpo.gov/fdsys/pkg/FR-2017-11-30/pdf/2017-25799.pdf*

[38] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

School Nutrition and Meal Cost Study on SY 2014–2015 found that ''the vast majority of average weekly lunch menus were consistent with the DRI-based target for calcium (91 percent to virtually all weekly menus). This is driven by the fact that virtually all NSLP lunches prepared included a serving of milk (typically one cup), which provides all or most of the targeted amount of calcium.'' Similarly, the study also found that milk accounts for 10 percent of dietary fiber at breakfast. And that ''lunches consumed by NSLP participants provided significantly more vitamins D and B12, on average, than lunches consumed by matched nonparticipants. This finding is consistent with the fact that NSLP participants were more likely than matched nonparticipants to consume milk at lunch.''

[39] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 4: Student Participation, Satisfaction, and Dietary Intakes by Mary Kay Fox et. al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[40] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 4: Student Participation, Satisfaction, and Dietary Intakes by Mary Kay Fox et. al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[41] 70 percent of the weekly menus offered at least 80 percent of the grain items as whole grain-rich: U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et. al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[42] ''The Healthy Eating Index (HEI) is a measure of diet quality used to assess how well a set of foods aligns with key recommendations of the *Dietary Guidelines for Americans.* The HEI uses a scoring system to evaluate a set of foods. The scores range from 0 to 100. An ideal overall HEI score of 100 reflects that the set of foods aligns with key dietary recommendations from the *Dietary Guidelines for Americans.*

[43] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et. al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et. al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[44] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et. al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[45] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 4: Student Participation, Satisfaction, and Dietary Intakes by Mary Kay Fox et. al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

FNS does not have evidence that setting the whole grain-rich requirement to a percentage between 50 and 100 percent would successfully address the specific concerns and challenges cited by this requirement. Schools should be mindful of the progress to-date by ensuring school meal participants are continuously exposed to whole grain-rich offerings. Both NSLP and SBP participants had significantly higher usual daily intakes of whole grains than similar students not eating school meals. Specifically, NSLP participants were more likely than nonparticipants to consume a whole grain-rich bread, roll, bagel, and other plain bread.[46] Similarly, at breakfast, higher SBP participant consumption of whole grains was also associated with lower consumption of ''empty calories.'' [47]

The proposed change would result in some decrease in whole grain-rich offerings, and children may not receive the same level of key nutrients associated with whole grain-rich items. This rule would not change requirement that the grains that are not whole must be enriched.[48] Schools choosing to offer only half of the grain offerings as whole grain-rich will likely reduce the amount of dietary fiber available to children, making it more challenging for schools to meet the DRI-target for dietary fiber for school meals. Less than two-thirds (62 percent) of average weekly lunch menus in elementary schools and less than half in middle and high schools (46 percent and 38 percent, respectively) were consistent with the DRI-based target for dietary fiber. Additionally, mean usual dietary fiber intakes of both NSLP participants and matched nonparticipants were low, relative to the benchmark on which the DRIs are based.[49] Fiber is identified as a nutrient of concern in the most recent Dietary Guidelines.[50]

By continuing to require that at least half of the offered grain items be whole grain-rich, this rule would continue to ensure that children are exposed to whole grain-rich products. The change in this proposed rule would allow more time for industry to develop appealing whole grain-rich items. Additionally, USDA Foods, which makes up about 15 to 20 percent of the food items offered on an average school day, continues to develop new whole grain-rich products each year. This proposed flexibility would allow additional flexibility for schools that are still struggling to serve all whole grain-rich products and would allow for additional time for the availability of innovative whole grain-rich items.

Sodium Flexibility

This proposed rule would extend Sodium Target 1 through the end of SY 2023–2024, require compliance with Sodium Target 2 starting in SY 2024–2025, and eliminate the Final Target that would have gone into effect in SY 2022–2023. In SY 2014–2015, the first year Target 1 was scheduled to take effect, 72 percent of all average weekly NSLP menus, and 67 percent of all average weekly SBP menus met Target 1.[51]

There has been significant progress to date with sodium reduction in school meals. From SY 2009–2010 to SY 2014–2015, the average sodium content of NSLP lunches served decreased by 19 percent (from 1,375 mg to 1,105 mg).[52] Similarly, the average sodium content of SBP breakfasts served decreased by 23 percent overall (from 618 mg to 473 mg) during the same time frame.[53] [54]

Prior to the updated 2012 standards, sodium levels only slightly decreased between 5-year periods, by 2 percent overall for NSLP lunches and 11 percent for SBP breakfasts between SY 2004–2005 and SY 2009–2010. The updated standards had a significant impact on sodium levels in the school meal programs.

[46] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 4: Student Participation, Satisfaction, and Dietary Intakes by Mary Kay Fox et. al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[47] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 4: Student Participation, Satisfaction, and Dietary Intakes by Mary Kay Fox et. al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[48] Enriched grains are refined grains that have been processed to remove the nutrient-rich bran and germ, and then have thiamin, riboflavin, niacin, folic acid, and iron added after processing. Similarly, a food that is fortified has certain vitamins and minerals added to increase the nutritional quality. *https://fns-prod.azureedge.net/sites/default/files/resource-files/SP37_CACFP16-2019os.pdf#page=3.*

[49] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, School Nutrition and Meal Cost Study, Final Report Volume 4: Student Participation, Satisfaction, Plate Waste, and Dietary Intakes by Mary Kay Fox, Elizabeth Gearan, Charlotte Cabili, Dallas Dotter, Katherine Niland, Liana Washburn, Nora Paxton, Lauren Olsho, Lindsay LeClair, and Vinh Tran. Project Officer: John Endahl. Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[50] U.S. Department of Health and Human Services and U.S. Department of Agriculture. 2015–2020 Dietary Guidelines for Americans. 8th Edition. December 2015. Available at *http://health.gov/dietaryguidelines/2015/guidelines/.*

[51] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[52] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 4: Student Participation, Satisfaction, and Dietary Intakes by Mary Kay Fox et al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[53] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et. al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[54] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et. al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.* This improvement is also reflected in the HEI–2010 score for sodium, which has increased by 17 percentage points from SY 2009–2010 to SY 2014–2015, meaning that the concentration of sodium in NSLP lunches has decreased over time.

[55] U.S. Department of Agriculture, Food and Nutrition Service, Office of Research, Nutrition and Analysis, School Nutrition Dietary Assessment Study III, Vol. I: School Foodservice, School Food Environment, and Meals Offered and Served, by Anne Gordon, et al. Project Officer: Patricia McKinney. Alexandria, VA: 2007. Available online at: *www.fns.usda.gov/research-and-analysis.*

[56] U.S. Department of Agriculture, Food and Nutrition Service, Office of Research and Analysis, School Nutrition Dietary Assessment Study IV, Vol. I: School Foodservice Operations, School Environments, and Meals Offered and Served, by Mary Kay Fox, Elizabeth Condon, Mary Kay Crepinsek, et al. Project Officer, Fred Lesnett Alexandria, VA: November 2012. Available online at: *www.fns.usda.gov/research-and-analysis.*

[57] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, School Nutrition and MealCost Study, Final Report Volume 2: Nutritional Characteristics of School Meals by Elizabeth Gearan, Mary Kay Fox,Katherine Niland, Dallas Dotter, Liana Washburn, Patricia Connor, Lauren Olsho, and Tara Wommak. Project Officer: John Endahl. Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

COMPARISON OF NSLP AND SBP SODIUM LEVELS IN MENUS SERVED

	Sodium (mg) in menus served:			Sodium (mg) in menus Served:			Sodium (mg) in menus prepared:		
	SY 2004–2005 [55]			SY 2009–2010 [56]			SY 2014–2015 [57]		
	NSLP	SBP	Total	NSLP	SBP	Total	NSLP	SBP	Total
Elementary	1,278	631	1,909	1,324	569	1,893	1,125	505	1,630
Middle	1,407	761	2,168	1,392	687	2,079	1,200	564	1,764
High	1,529	884	2,413	1,515	703	2,218	1,345	584	1,929
All	1,348	701	2,049	1,375	618	1,993	1,105	473	1,578

Sodium values are calculated using menus served to students that are weighted based on student preference patterns. This enables a comparison of sodium values across the three study years.

School children are consuming a considerable amount of sodium, and school meals contribute to their daily total. In 2011–2012, more than 9 in 10 U.S. school children consumed more sodium than the age-specific Tolerable Upper Intake Level established by the Food and Nutrition Board, NASEM (over 130 to 150 percent of the daily recommended amount).[58] On average, most students consumed 14 percent of their daily sodium intake at breakfast, 31 percent at lunch, 39 percent at dinner, and the remaining 16 percent through snacks.[59]

In SY 2014–2015, 81 percent of NSLP participants and similar nonparticipants had usual sodium intakes that exceeded the Tolerable Upper Intake Level recommended in the 2010 Dietary Guidelines for Americans. Lunches consumed by NSLP participants provided significantly less sodium than lunches consumed by similar nonparticipants.[60]

The impact of extending Sodium Target 1 through SY 2023–2024 increases the average daily sodium level permitted by about 55–70 mg for breakfast and 300–340 mg for lunch depending on the age/grade group compared to Sodium Target 2. In SY 2014–2015, about 19 percent of average weekly NSLP menus met Target 2, and 52 percent of average weekly SBP menus met Target 2.[61] The elimination of the Final Target would allow 55–70 mg per day more sodium for breakfast and 300–340 mg per day for lunch.[62]

The extension of Target 1 and delay in Target 2 would provide additional time for FNS to assess the 2020 Dietary Guidelines for Americans, which are scheduled for release at the end of 2020. Extending the Sodium Target 1 through SY 2023–2024 would allow FNS to incorporate the latest scientific evidence into the school meal standards, including time needed for potential regulatory changes. The updated DRIs, as noted in the preamble of this rule, were released in 2019. The updated DRIs recommend lower levels of sodium intake for children ages 1 to 13 years.[63]

The DRI recommendations update the 2005 DRI for sodium and incorporate the new DRI concept of dietary intake recommendations to reduce the risk of chronic disease. As part of the new DRI concept, the 2019 DRI on sodium includes a Chronic Disease Risk Reduction Intake (CDRR) level for all age groups over 12 months of age. The risk that was previously captured in the Tolerable Upper Intake Level (UL) of the 2005 DRI for sodium is now captured in the CDRR. To reduce the risk of chronic disease in the population, daily sodium intakes should be below the CDRR.

The 2019 CDRR daily level for sodium for children aged 14 to 18 years is 2300 mg/day, the same level as the 2005 UL. However, the 2019 CDRR daily level for younger children is lower than the 2005 UL. This means prior to the 2019 DRIs update, Sodium Target 2 would have accounted for 71 to 74 percent of the UL compared to accounting for 87 to 95 percent of the new CDRR for the K–5 and 6–8 age grade/group.

COMPARISON OF CHRONIC DISEASE RISK REDUCTION INTAKE LEVEL AND TOLERABLE UPPER INTAKE LIMIT TO SCHOOLS MEALS (NSLP+SBP) SODIUM TARGET LEVELS

Grade/age	2019 Chronic disease risk reduction intake (CDRR) level (mg)	Target 1 (%)	Target 2 (%)	Target 3 *(%)	2005 Tolerable upper intake (UL) level (mg)	Target 1 (%)	Target 2 (%)	Target 3 * (%)
K–5 (4–8)	1,500	118.0	94.7	71.3	1,900	93.2	74.7	56.3
6–8 (9–13)	1,800	108.9	87.2	65.6	2,200	89.1	71.4	53.6
9–12 (14–18)	2,300	89.6	71.7	53.9	2,300	89.6	71.7	53.9

* Target 3 is presented for demonstration purposes, this rule proposed to eliminate Sodium Target 3.

Salt preferences develop in childhood and can influence long term sodium intakes. In adults, there is moderate to strong evidence for a causal and intake-response relationship between sodium intake and cardiovascular risk factors, including hypertension. Reducing daily sodium intake below the CDRR reduces these risks and would particularly

[58] Sodium Intake among U.S. School-Aged Children: National Health and Nutrition Examination Survey, 2011–2012 Quader, Zerleen S. et al. Journal of the Academy of Nutrition and Dietetics, Volume 117, Issue 1, 39–47.e5.

[59] Sodium Intake among U.S. School-Aged Children: National Health and Nutrition Examination Survey, 2011–2012 Quader, Zerleen S. et al. Journal of the Academy of Nutrition and Dietetics, Volume 117, Issue 1, 39–47.e5.

[60] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 4: Student Participation, Satisfaction, and Dietary Intakes by Mary Kay Fox et al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[61] Unpublished data from published study. U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[62] 0.95% of all schools average weekly NSLP menus and 34% of average weekly SBP menus met Target 3.

[63] National Academies of Sciences, Engineering, and Medicine 2019. Dietary Reference Intakes for Sodium and Potassium. Washington, DC: The National Academies Press. *https://doi.org/10.17226/25353.*

benefit groups with higher prevalence and risk for hypertension and cardiovascular disease, including older adults and certain racial and ethnic groups, particularly non-Hispanic black groups.[64] In SY 2014–2015 about 73 percent of Non-Hispanic black children usually participated in NSLP and about 46 percent participated in SBP. On average elementary school participation was higher than middle and high school participation in both the NSLP and SBP.[65]

Despite insufficient evidence to assess the relationship of sodium intake and cardiovascular risk in children, the development of salt preferences early in life, evidence that blood pressure and cardiovascular disease risk factors track from early childhood into adulthood, and the public health importance of cardiovascular health, contributed to the rational for establishing the CDRR for children and adolescents.[66] While the DRIs recommended further reductions in sodium intake for young children, no specific recommendations relating to school meals have been provided.

FNS is mindful of the change in sodium recommendations, which will be considered in the 2020 Dietary Guidelines for Americans. Publication of the 2020 Dietary Guidelines will provide an additional opportunity to assess the impact of the recommendations on school meals. FNS remains committed to strong nutrition standards for school meals, consistent with the statutory requirement that school meals reflect the Dietary Guidelines, including sodium targets that are achievable for most schools, and allow schools to plan appealing meals that encourage student participation.

The proposed changes in this rule would allow the slow introduction to lower sodium foods and meals to students and for industry to develop and test consistent lower sodium products that are palatable for students. According to a 2019 FNS study on successful approaches to reduce sodium, SFAs noted that there needs to be a gradual change to give time for students to adjust to taste/flavor change. Gradual implementation allowed students adequate time to adjust and increase acceptance.[67] There also appears to be variation in the acceptance of lower sodium foods across student age and school type and location. High school students were perceived as less receptive to lower sodium alternatives due to established taste preferences and easy access to off-campus food, while elementary schools reported fewer barriers to student acceptance when implementing sodium standards. Smaller, rural SFAs also reported fewer resources for purchasing and procuring foods, while large urban SFAs procured higher quantities of food at lower costs, with access to a larger number of suppliers.[68]

While the majority of average weekly menus in SY 2014–2015 met Sodium Target 1,[69] compliance with Sodium Target 1 was associated with a significantly lower NSLP participation rate (54 percent versus 64 percent). Additionally, elementary and middle school students in schools meeting Sodium Target 1 had significantly lower levels of student satisfaction with school lunches. Meeting Sodium Target 1 was also associated with a significantly lower level of student satisfaction across all types of schools for school breakfast.[70] These findings demonstrate time is needed to be able to successfully develop lower sodium products that appeal to children.

There were also concerns from Food Service Management Companies (FSMCs) that the Final Sodium Target could create inequities across companies. Larger FSMCs indicated they were positioned and equipped to meet sodium targets in different ways than smaller FSMCs. Larger FSMCs have a broader capacity to work with food manufacturers compared to the smaller, more regional FSMCs. There was also concern that the Final Sodium Target may be so low in sodium that it will affect the ability to produce processed food products, including bakery items, when sodium serves a functional purpose (*e.g.,* salt to strengthen gluten, baking soda to help baked goods rise and extended shelf life).[71]

The proposed flexibilities to the nutrition standards would allow additional time to work with available products to provide wholesome and appealing meals to students within available resources. This may increase student consumption of school meals and reduce food waste and revenue loss. While the changes resulting from the 2012 Final Rule may not have resulted in long-term impacts for participation in some schools,[72] FNS understands there is a wide variation in challenges encountered by schools. The changes in this proposed rule would provide the local level control necessary to successfully operate the school meal programs.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this rule would not have a significant impact on a substantial number of small entities.

This proposed rule would not have an impact on small entities because it adds flexibility to current Child Nutrition Program regulations, the changes

[64] National Academies of Sciences, Engineering, and Medicine 2019. Dietary Reference Intakes for Sodium and Potassium. Washington, DC: The National Academies Press. *https://doi.org/10.17226/25353.*

[65] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, School Nutrition and Meal Cost Study, Final Report Volume 4: Student Participation, Satisfaction, Plate Waste, and Dietary Intakes by Mary Kay Fox, Elizabeth Gearan, Charlotte Cabili, Dallas Dotter, Katherine Niland, Liana Washburn, Nora Paxton, Lauren Olsho, Lindsay LeClair, and Vinh Tran. Project Officer: John Endahl. Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[66] National Academies of Sciences, Engineering, and Medicine 2019. Dietary Reference Intakes for Sodium and Potassium. Washington, DC: The National Academies Press. *https://doi.org/10.17226/25353.*

[67] SFAs measured student acceptance over time and in single occurrences by monitoring food waste, informally discussing preferences with students, and formally and regularly polling students on satisfaction.

[68] Gordon, E., Morrissey, N., Adams, E., et al. Successful Approaches To Reduce Sodium in School Meals Study. Prepared by 2M Research and Abt Associates, Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, June 2019. Project Officer: Holly Figueroa. Available online at: *www.fns.usda.gov/research-and-analysis.*

[69] U.S. Department of Agriculture, Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals, by Elizabeth Gearan et al. Project Officer, John Endahl, Alexandria, VA: April 2019. Available online at: *www.fns.usda.gov/research-and-analysis.*

[70] For NSLP student satisfaction 43 percent versus 64 percent for elementary schools and 27 percent versus 49 percent for middle schools; overall for all school types in SBP 53 percent versus 63 percent; and for specific school types in SBP 58 percent versus 83 percent for elementary schools and 29 percent versus 54 percent for high schools. U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, School Nutrition and Meal Cost Study, Final Report Volume 4: Student Participation, Satisfaction, Plate Waste, and Dietary Intakes by Mary Kay Fox, Elizabeth Gearan, Charlotte Cabili, Dallas Dotter, Katherine Niland, Liana Washburn, Nora Paxton, Lauren Olsho, Lindsay LeClair, and Vinh Tran. Project Officer: John Endahl. Alexandria, VA: April 2019.

[71] Gordon, E., Morrissey, N., Adams, E., et al. Successful Approaches To Reduce Sodium in School Meals Study. Prepared by 2M Research and Abt Associates. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, June 2019. Project Officer: Holly Figueroa. Available online at: *www.fns.usda.gov/research-and-analysis.*

[72] Vaudrin N, Lloyd K, Yedidia MJ, Todd M, Ohri-Vachaspati P. Impact of the 2010 US Healthy, Hunger-Free Kids Act on School Breakfast and Lunch Participation Rates Between 2008 and 2015. *Am J Public Health.* 2018;108(1):84–86. doi:10.2105/AJPH.2017.304102.

intended through this proposed rule are expected to benefit small entities operating meal programs under 7 CFR parts 210, 215, 220, and 226. The impacts are not expected to be significant.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as a major rule as defined by 5 U.S.C. 804(2).

Executive Order 13771

Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and provides that the cost of planned regulations be prudently managed and controlled through a budgeting process. This proposed rule's designation under E.O. 13771 will be informed by comments received. It alleviates the milk, grains, and sodium requirements in the Child Nutrition Program and provides flexibilities similar to those made available as a result of appropriations legislation in effect for SY 2017–2018 and administrative actions.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local or Tribal governments, in the aggregate, or the private sector, of $146 million or more (when adjusted for inflation; GDP deflator source: Table 1.1.9 at *http://www.bea.gov/iTable*) in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and Tribal governments or the private sector of $146 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The NSLP, SMP, SBP, and the CACFP are listed in the Catalog of Federal Domestic Assistance under NSLP No. 10.555, SMP No. 10.556, SBP No. 10.553, and CACFP No. 10.558, respectively, and are subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

Since the Child Nutrition Programs are State-administered, USDA's FNS Regional Offices have formal and informal discussions with State and local officials, including representatives of Indian Tribal Organizations, on an ongoing basis regarding program requirements and operations. This provides FNS with the opportunity to receive regular input from program administrators and contributes to the development of feasible program requirements.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13132.

The Department has considered the impact of this proposed rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under section 6(b) of the Executive Order, a federalism summary is not required.

Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed the proposed rule, in accordance with Department Regulation 4300–004, Civil Rights Impact Analysis, to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. A comprehensive Civil Rights Impact Analysis (CRIA) was conducted on the proposed rule, including an analysis of any available participant data and provisions contained in the rule. The CRIA outlines mitigation, outreach, and monitoring and evaluation strategies to lessen any possible civil rights impacts. FNS finds the implementation of the mitigation, outreach, and monitoring and evaluation strategies outlined in the CRIA by the FNS Civil Rights Division and FNS Child Nutrition staff may lessen these impacts. If deemed necessary, the FNS Civil Rights Division will propose additional mitigation strategies to alleviate impacts that may result from the implementation of this rule.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Office of Tribal Relations (OTR) has assessed the impact of this proposed rule on Indian tribes and determined that this rule does not, to the best of its knowledge, have tribal implications that require tribal consultation under E.O. 13175. If consultation is requested, OTR will work with FNS to ensure quality consultation is provided.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR part 1320) requires the Office of Management and Budget (OMB) to approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This rule contains information collections that have been approved by OMB under OMB #0584–0006 (7 CFR part 210 National School Lunch Program), expires 7/31/2023; OMB #0584–0012 (7 CFR part 220, School Breakfast Program) expires 4/30/2022; OMB # 0584–0005 (7 CFR part 215—Special Milk Program for Children)

expires 7/31/2022, and 0584–0055 (Child and Adult Care Food Program), expired 2/29/2020. However, the provisions of this rule do not impose new or existing information collection requirements subject to approval by the OMB under the Paperwork Reduction Act of 1994.

E-Government Act Compliance

The Department 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.

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 proposed to be amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

■ 1. The authority citation for 7 CFR part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

■ 2. In § 210.10:

■ a. Revise the table in paragraph (c) introductory text;

■ b. Add a sentence to the end of paragraph (c)(2)(iv)(A); and

■ c. Revise paragraphs (c)(2)(iv)(B), (d)(1)(i), and (f)(3).

The revisions and addition read as follows:

§ 210.10 Meal requirements for lunches and requirements for after school 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]	[e] 1	[e] 1	[e] 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 Target 1 (mg) [h i]	≤1,230	≤1,360	≤1,420
Trans fat [h j]	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] At least half of the grains offered weekly must be whole grain-rich as specified in FNS guidance, and the remaining grain items offered must be enriched.
[g] All fluid milk must be fat-free (skim) or low-fat (1 percent fat or less). Milk may be unflavored or flavored provided that unflavored milk is offered at each meal service.
[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 are not allowed.
[i] Sodium Target 1 is effective from July 1, 2014 (SY 2014–2015) through June 30, 2024 (SY 2023–2024). Sodium Target 2 (shown) is effective July 1, 2024 (SY 2024–2025).
[j] Food products and ingredients must contain zero grams of *trans* fat (less than 0.5 grams) per serving.

* * * * *

(2) * * *

(iv) * * *

(A) * * * The whole grain-rich criteria included in FNS guidance may be updated to reflect additional information provided by industry on the food label or a whole grains definition by the Food and Drug Administration.

(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. At least half of the grains offered weekly must meet the whole grain-rich criteria specified in FNS guidance, and the remaining grain items offered must be enriched.

* * * * *

(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. Low-fat or fat-free lactose-free and reduced-lactose fluid milk may also be offered. Milk may be unflavored or flavored provided that unflavored milk is offered at each meal service.

* * * * *

(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 1: July 1, 2014 (SY 2014–2015) (mg)	Target 2: July 1, 2024 (SY 2024–2025) (mg)
K–5	≤1,230	≤935
6–8	≤1,360	≤ 1,035
9–12	≤1,420	≤1,080

* * * * *

§ 210.11 [Amended]

■ 3. In § 210.11, in paragraphs (m)(1)(ii), (m)(2)(ii), and (m)(3)(ii) add the words ''or flavored'' after the word ''unflavored''.

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

■ 4. The authority for 7 CFR 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 six years old and older must be served low-fat (1 percent fat or less) or fat-free (skim) milk. Milk may be unflavored or flavored.

* * * * *

PART 220—SCHOOL BREAKFAST PROGRAM

■ 6. The authority citation for 7 CFR 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 revise paragraphs (c)(2)(iv)(A), (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 [f] (cups)	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 Target 1 (mg) [h i]	≤540	≤600	≤640
Trans fat [h j]	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] At least half of the grains offered weekly must be whole grain-rich as specified in FNS guidance, and the remaining grain items offered must be enriched. 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 fat-free (skim) or low-fat (1 percent fat or less). Milk may be unflavored or flavored provided that unflavored milk is offered at each meal service.
[g] The average daily calories for a 5-day school week 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] Sodium Target 1 is effective from July 1, 2014 (SY 2014–2015) through June 30, 2024 (SY 2023–2024). Sodium Target 2 (shown) is effective July 1, 2024 (SY 2024–2025).
[j] Food products and ingredients must contain zero grams of *trans* fat (less than 0.5 grams) per serving.

* * * * *

(2) * * *

(iv) * * *

(A) *Enriched and whole grains.* All grains must be made with enriched and whole grain meal or flour, in accordance with the most recent FNS guidance on grains. Whole grain-rich products must contain at least 50 percent whole grains and the remaining grains in the product must be enriched. The whole grain-rich criteria included in FNS guidance may be updated to reflect additional information provided by industry on the food label or a whole grains definition by the Food and Drug Administration. Schools may substitute meats/meat alternates for grains, after the daily grains requirement is met, to meet the weekly grains requirement. One ounce equivalent of meat/meat alternate is equivalent to one ounce equivalent of grains.

* * * * *

(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 (1/5) for each additional day. When schools operate less than 5 days per week, they may decrease the weekly quantity by approximately 20 percent (1/5) for each day less than 5. The servings for biscuits, rolls, muffins, and other grain/bread varieties are specified in FNS guidance. At least half of the grains offered weekly must meet the whole grain-rich criteria specified in FNS guidance, and the remaining grain items offered must be enriched.

* * * * *

(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 (1percent fat or less). Milk with higher fat content is not allowed. Low-fat or fat-free lactose-free and reduced-lactose fluid milk may also be offered. Milk may be unflavored or flavored provided that unflavored milk is offered at each meal service. Schools must also comply with other applicable fluid milk requirements in § 210.10(d) 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 1: July 1, 2014 (SY 2014–2015) (mg)	Target 2: July 1, 2024 (SY 2024–2025) (mg)
K–5	≤540	≤485
6–8	≤600	≤535
9–12	≤640	≤570

* * * * *

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

■ 8. The authority citation for 7 CFR 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, revise paragraph (a)(1) and the tables to paragraphs (c)(1), (c)(2), and (c)(3) to read as follows:

§ 226.20 Requirements for meals.

(a) * * *

(1) *Fluid milk.* Fluid milk must be served as a beverage or on cereal, or a combination of both. Lactose-free and reduced-lactose milk that meet the fat content and flavor specifications for each age group may also be offered.

(i) *Children 1 year old.* Unflavored whole milk must be served.

(ii) *Children 2 through 5 years old.* Either unflavored low-fat (1 percent) or unflavored fat-free (skim) milk must be served.

(iii) *Children 6 years old and older.* Low-fat (1 percent fat or less) or fat-free (skim) milk must be served. Milk may be unflavored or flavored.

(iv) *Adults.* Low-fat (1 percent fat or less) or fat-free (skim) milk must be served. Milk may be unflavored or flavored. 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 low-fat (1 percent fat or less) or fat-free (skim) milk for children 6 years old and older and adults, and may be unflavored or flavored. 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 low-fat (1 percent fat or less) or fat-free (skim) milk for children 6 years old and older and adults, and may be unflavored or flavored. 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), unflavored fat-free (skim) milk for children six 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. 2020–25761 Filed 11–24–20; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 55

[Docket ID OCC–2020–0042]

RIN 1557–AF05

Fair Access to Financial Services

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency is proposing a regulation to ensure that national banks and Federal savings associations offer and provide fair access to financial services.

DATES: Comments must be received on or before January 4, 2021.

ADDRESSES: Commenters are encouraged to submit comments through the Federal eRulemaking Portal, if possible. Please use the title ''Fair Access to Financial

Services'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

• *Federal eRulemaking Portal—Regulations.gov* Classic or *Regulations.gov* Beta.

Regulations.gov Classic: Go to *https://www.regulations.gov/.* Enter ''Docket ID OCC–2020–0042'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments. For help with submitting effective comments, please click on ''View Commenter's Checklist.'' Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.

Regulations.gov Beta: Go to *https://beta.regulations.gov/* or click ''Visit New *Regulations.gov* Site'' from the *Regulations.gov* classic homepage. Enter ''Docket ID OCC–2020–0042'' in the Search Box and click ''Search.'' Public comments can be submitted (1) via the ''Comment'' box located below the displayed document information or (2) by clicking on the document title and then clicking on the ''Comment'' box on the top-left side of the screen. For help with submitting effective comments, please click on ''Commenter's Checklist.'' For assistance with the *Regulations.gov* Beta site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday-Friday, 9 a.m.–5 p.m. ET. or email *regulations@erulemakinghelpdesk.com.*

• *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

• *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2020–0042'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, email addresses, and phone numbers. Comments, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action through *Regulations.gov* Classic or *Regulations.gov* Beta.

Regulations.gov Classic: Go to *https://www.regulations.gov/.* Enter ''Docket ID OCC–2020–0042'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on ''View all documents and comments in this docket'' and then using the filtering tools on the left side of the screen. Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov.* The docket may be viewed after the close of the comment period in the same manner as during the comment period.

Regulations.gov Beta: Go to *https://beta.regulations.gov/* or click ''Visit New *Regulations.gov* Site'' from the *Regulations.gov* classic homepage. Enter ''Docket ID OCC 2020–0042'' in the Search Box and click ''Search.'' Click on the ''Comments'' tab. Comments can be viewed and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen. Supporting materials can be viewed by clicking on the ''Documents'' tab and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen. For assistance with the *Regulations.gov* Beta site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday-Friday, 9 a.m.–5 p.m. ET or email *regulations@erulemakinghelpdesk.com.* The docket may be viewed after the close of the comment period in the same manner as during the comment period.

FOR FURTHER INFORMATION CONTACT: Karen McSweeney, Special Counsel, or Emily Boyes, Counsel, Chief Counsel's Office, (202) 649–5490, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Introduction

Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) included a revised statement of the mission of the Office of the Comptroller of the Currency (OCC or agency).[1] Codified at 12 U.S.C. 1, it charged the OCC with assuring the safety and soundness of, and compliance with laws and regulations, fair access to financial services, and fair treatment of customers by, the institutions and other persons subject to its jurisdiction. Title III also enhanced the supervision of national banks and Federal savings associations and transferred primary supervisory and regulatory authority for Federal savings associations to the OCC. In addition, Title III reaffirmed the agency's authority to establish regulations governing the operations of national banks and granted additional authority to do the same for Federal savings associations.

In one respect, the Dodd-Frank Act's amendments to 12 U.S.C. 1 recognized a broad and longstanding anti-discrimination principle that individuals are entitled to be treated fairly by national banks and Federal savings associations (banks). That principle is reinforced by specific laws such as the Equal Credit Opportunity Act, Fair Housing Act, and Community Reinvestment Act, among others. In another respect, the Dodd-Frank Act's articulation of ''fair access'' as a distinct concept implies a right of individual bank customers, whether natural persons or organizations, to have access to financial services based on their individual characteristics and not on their membership in a particular category of customers.[2]

Consistent with the Dodd-Frank Act's mandate of fair access to financial services and since at least 2014, the OCC has repeatedly stated that while banks are not obligated to offer any particular financial service to their customers, they must make the services they do offer available to all customers except to the extent that risk factors particular to an individual customer dictate otherwise. As the OCC's then-Comptroller stated in a 2014 speech:

> No matter what type of business you are dealing with, you have to exercise some sound judgment, conduct your due diligence, and evaluate customers individually. Even in areas that traditionally have been viewed as inherently risky, you should be able to appropriately manage the risk. This is basic risk management, and that's a business that the institutions we at the OCC supervise excel at. You shouldn't feel that you can't bank a customer just because they fall into a category that on its face appears to carry an elevated level of risk. Higher-risk categories of customers call for stronger risk management and controls, not a strategy of total avoidance. Obviously, if the risk posed by a business or an individual is too great to be managed successfully, then you have to turn that customer away. But you should only make those decisions after appropriate due diligence.[3]

[1] Public Law 111–203, 124 Stat. 1376, 1520–1528 (July 21, 2010).

[2] For purposes of this rulemaking, the term financial services includes financial products and services.

[3] Remarks by Thomas J. Curry, Comptroller of the Currency, before the Association of Certified Anti-Money Laundering Specialists (Mar. 17, 2014), *available at https://occ.gov/news-issuances/speeches/2014/pub-speech-2014-39.pdf.*

This principle of individual, rather than category-based, customer risk evaluation has since been reinforced in numerous OCC reports, the testimony of OCC officials, and other agency releases.[4]

On at least two occasions, the OCC has issued guidance to specifically address reports of banks refusing to provide access to financial services to entire industry categories engaged in lawful business activities without regard to the risk factors of the individual customers in these industry categories. In 2014, amid reports of banks refusing to provide financial services to the entire category of money services businesses (MSBs), the OCC issued a clarification of its supervisory expectations with regard to banks offering financial services to MSBs.[5] The guidance emphasized that banks should not ''engage in the termination of entire categories of customers'' and stated that ''banks are expected to assess the risks posed by an *individual* MSB customer on a *case-by-case* basis and to implement controls to manage the relationship commensurate with the risk associated with *each customer.*'' [6]

In 2016, the OCC addressed a similar issue in the context of foreign correspondent banking. In guidance issued that year, the OCC made clear that refusing to service the entire category of foreign correspondent banking was inconsistent with supervisory expectations and that banks must decide whether to serve individual firms ''based on analysis of the risks presented by *individual* foreign financial institutions and the bank's ability to manage those risks.'' [7]

Despite the OCC's statements and guidance over the years about the importance of assessing and managing risk on an individual customer basis, some banks continue to employ category-based risk evaluations to deny customers access to financial services. This happens even when an individual customer would qualify for the financial service if evaluated under an objective, quantifiable risk-based analysis. These banks are often reacting to pressure from advocates from across the political spectrum whose policy objectives are served when banks deny certain categories of customers access to financial services.

The pressure on banks has come from both the for-profit and nonprofit sectors of the economy and targeted a wide and varied range of individuals, companies, organizations, and industries. For example, there have been calls for boycotts of banks that support certain health care and social service providers, including family planning organizations, and some banks have reportedly denied financial services to customers in these industries.[8] Some banks have reportedly ceased to provide financial services to owners of privately owned correctional facilities that operate under contracts with the Federal Government and various state governments.[9] Makers of shotguns and hunting rifles have reportedly been debanked in recent years.[10] Independent, nonbank automated teller machine operators that provide access to cash settlement and other operational accounts, particularly in low-income communities and thinly-populated rural areas, have been affected.[11] Globally, there have been calls to de-bank large farming operations and other agricultural business.[12] And companies that operate in industries important to local economies and the national economy have been cut off from access to financial services, including those that operate in sectors of the nation's infrastructure ''so vital to the United States that their incapacitation or destruction would have a debilitating effect on security, national economic security, national public health or safety, or any combination thereof.'' [13]

It is our understanding that some banks have taken these actions based on criteria unrelated to safe and sound banking practices, including (1) personal beliefs and opinions on matters of substantive policy that are more appropriately the purview of state and Federal legislatures; (2) assessments ungrounded in quantitative, risk-based analysis; and (3) assessments premised on assumptions about future legal or political changes. In some cases, banks appear to have denied persons access to financial services without even attempting to price the financial services to reflect the perceived risk. Particularly in light of the now-discredited Operation Choke Point, in which certain government agencies (but not the OCC) were revealed to have pressured banks to cut off access to financial services to disfavored (but not unlawful) sectors of the economy, the OCC believes these criteria are not, and cannot serve as, a legitimate basis for refusing to grant a person or entity access to financial services. Bank actions based on these criteria are inconsistent with a bank's legal

[4] *See, e.g.,* OCC Bulletin 2014–58, ''Banking Money Services Businesses: Statement on Risk Management'' (Nov. 19, 2014); OCC 2015 Annual Report, *available at https://www.occ.gov/publications-and-resources/publications/annual-report/files/2015-annual-report.pdf;* Testimony of Daniel P. Stipano, Deputy Chief Counsel, OCC (July 15, 2014) (Stipano Testimony), before the U.S. House of Representatives, Subcommittee on Oversight and Investigations, *available at https://occ.gov/news-issuances/congressional-testimony/2014/pub-test-2014-101-written.pdf;* OCC Spring 2015 Semiannual Risk Perspective From the National Risk Committee, *available at https://www.occ.gov/publications-and-resources/publications/semiannual-risk-perspective/files/pub-semiannual-risk-perspective-spring-2015.pdf;* Remarks by Thomas J. Curry, Comptroller of the Currency, before the Association of Certified Anti-Money Laundering Specialists 15th Annual Anti-Money Laundering and Financial Crime Conference (Sept. 28, 2016), *available at https://www.occ.gov/news-issuances/speeches/2016/pub-speech-2016-117.pdf;* and GAO Report 20–46, ''Bank Secrecy Act, Examiners Need More Information on How to Assess Banks' Compliance Controls for Money Transmitter Accounts'' (Dec. 2019).

[5] OCC Bulletin 2014–58, ''Banking Money Services Businesses: Statement on Risk Management'' (Nov. 19, 2014).

[6] *Id.* (emphasis added); *see also* Stipano Testimony.

[7] OCC Bulletin 2016–32, ''Risk Management Guidance on Foreign Correspondent Banking: Risk Management Guidance on Periodic Risk Reevaluation of Foreign Correspondent Banking'' (Oct. 5, 2016) (emphasis added), *available at https://www.occ.gov/news-issuances/bulletins/2016/bulletin-2016-32.html; see also* News Release 2016–123, ''OCC Releases Risk Reevaluation Guidance for Foreign Correspondent Banking'' (Oct. 5, 2016).

[8] *American Banker,* ''BankThink JPMorgan, Condoms and the Problem of Reputational Risk'' (Mar. 26, 2014); *Bloomberg Businessweek,* ''The Most Difficult Business You Could Run: Why It's So Hard to Run an Abortion Clinic'' (Feb. 24, 2016); *Association of Mature Citizens,* ''You May Not Support Planned Parenthood . . . But Your Favorite Companies Do'' (Oct. 12, 2017).

[9] *Reuters,* ''JPMorgan backs away from private prison finance'' (Mar. 5, 2019); *Forbes Magazine,* ''GEO Group Running Out of Banks as 100% of Known Banking Partners Say 'No' to the Private Prison Sector'' (Sept. 30, 2019).

[10] *American Banker,* ''Florida gun maker told to find new bank, CEO claims'' (Oct. 09, 2018); *New York Times,* ''Citigroup Sets Restrictions on Gun Sales by Business Partners'' (Mar. 22, 2018); *New York Times,* ''How Banks Could Control Gun Sales if Washington Won't'' (Feb. 19, 2018).

[11] Letter dated November 11, 2020, from Rep. Rose (R–TN) *et al.* to Acting Comptroller B. Brooks, OCC; Vice Chair of Supervision R. Quarles *et al.,* Board of Governors of the Federal Reserve System (Federal Reserve); and Chair J. McWilliams, Federal Deposit Insurance Corporation (FDIC).

[12] *See, e.g., Plant Based News,* ''Banks Facing Calls To 'Stop Funding Factory Farming' To Protect Animals, The Planet, And Public Health'' (Nov. 10, 2020), *available at https://plantbasednews.org/news/environment/banks-told-stop-funding-factory-farming; Change.org,* ''Development banks: Stop investing in industrial animal agriculture,'' *available at https://www.change.org/p/world-bank-development-banks-stop-investing-in-industrial-animal-agriculture.*

[13] *See* Letter dated June 16, 2020, from Sen. Sullivan (R–AK), Sen. Murkowski (R–AK), and Rep. Young (R–AK) to Acting Comptroller B. Brooks, OCC; Chair J. Powell *et al.,* Federal Reserve; and Chair J. McWilliams, FDI; *see also* U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency, ''Critical Infrastructure Sectors,'' *available at https://www.cisa.gov/critical-infrastructure-sectors; Presidential Policy Directive 21* (PPD–21), ''Critical Infrastructure Security and Resilience'' (Feb. 12, 2013).

responsibility to provide fair access to financial services.

In June 2020, the Alaska Congressional delegation sent a letter to the OCC discussing decisions by several of the nation's largest banks to stop lending to new oil and gas projects in the Arctic.[14] The letter noted the critical importance of the energy sector to the U.S. economy, as well as the jobs, state revenue, and diplomatic and national security benefits attributable to the oil and gas industries targeted by the banks' actions.[15] In the letter, the authors described as unfair the effects of this decreased lending on Alaska Native communities on the state's North Slope, as well as on the population of the state as a whole. The letter also stated that, although the authors believed that the banks' rationale was political in nature, the banks had ostensibly relied on claims of reputation risk to justify their decisions.

In response to this letter, the OCC requested information from several large banks to better understand their decisionmaking. The responses received indicate that, over the course of 2019 and 2020, these banks had decided to cease providing financial services to one or more major energy industry categories, including coal mining, coal-fired electricity generation, and/or oil exploration in the Arctic region. The terminated services were not limited to lending, where risk factors might justify not serving a particular client (*e.g.,* when a bank lacked the expertise to evaluate the collateral value of mineral rights in a particular region or because of a bank's concern about commodity price volatility). Instead, certain banks indicated that they were also terminating advisory and other services that are unconnected to credit or operational risk. In several instances, the banks indicated that they intend only to make exceptions when benchmarks unrelated to financial risk are met, such as whether the country in which a project is located has committed to international climate agreements and whether the project controls carbon emissions sufficiently.

Neither the OCC nor banks are well-equipped to balance risks unrelated to financial exposures and the operations required to deliver financial services. For example, climate change is a real risk, but so is the risk of foreign wars caused in part by U.S. energy dependence and the risk of blackouts caused by energy shortages. Furthermore, balancing these risks is the purview of Congress and Federal energy and environmental regulators. It is one thing for a bank not to lend to oil companies because it lacks the expertise to value or manage the associated collateral rights; it is another for a bank to make that decision because it believes the United States should abide by the standards set in an international climate treaty. Organizations involved in politically controversial but lawful businesses—whether family planning organizations, energy companies, or otherwise—are entitled to fair access to financial services under the law. In order to ensure that banks provide customers with fair access to financial services, and consistent with longstanding OCC policy, a bank's decision not to serve a particular customer must be based on an individual risk management decision about that individual customer, not on the fact that the customer operates in an industry subject to a broad categorical exclusion created by the bank.[16]

While all banks have the responsibility to provide fair access to financial services, it is particularly important that the nation's largest banks fulfill this obligation. Large banks exercise sufficient market power to influence the price of financial services, and only the largest banks have the diversified balance sheets and sophisticated risk management systems to serve certain industries. It is also fair to place particular responsibilities on the largest banks because their systemic importance often results in their receiving assistance and favorable treatment from the government during periods of financial distress. In addition, these banks have positioned themselves to provide services to all sectors of the economy by virtue of the scale and breadth of their technical expertise. In contrast, smaller banks generally are not in a position to influence the price of services, are not systemically significant, may lack comprehensive technical expertise across the full range of banking services, and have limited capacity to bear overhead costs (*e.g.,* salaries of loan officers and industry-specific subject-matter experts and the cost of maintaining extensive physical offices and branch locations)—all of which limit the number of sectors of the economy they can serve.

The dominant market position of the large bank population is clear when all OCC-regulated institutions with assets of $100 billion or more are considered. Together, these banks account for approximately 55 percent of the total assets and deposits of all U.S. banks and hold approximately 50 percent of the dollar value of outstanding loans and leases in the United States.[17] In light of this market position, a decision by one or more of these banks not to provide a person with fair access to financial services could have a significant effect on that person, the nation's financial and economic systems, and the global economy. This effect is all the more likely if the financial service at issue is not available on reasonable terms elsewhere.

To address the concerns identified above, the OCC is proposing a regulation to clarify (1) the obligation of large banks to provide fair access to financial services, consistent with the Dodd-Frank Act's mandate[18] and (2) the parameters of this requirement. Unlike prior articulations of the fair access principle discussed above, this OCC action would have the force and effect of law and enable the agency to take supervisory or enforcement action, when appropriate.[19]

[14] *See* Letter dated June 16, 2020, from Sen. Sullivan (R–AK), Sen. Murkowski (R–AK), and Rep. Young (R–AK) to Acting Comptroller B. Brooks, OCC; Chair J. Powell *et al.,* Federal Reserve; and Chair J. McWilliams, FDIC.

[15] The energy sector (which includes the interrelated segments of electricity, oil, and natural gas) is one of the nation's 16 critical infrastructure sectors. *See* U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency, ''Critical Infrastructure Sectors,'' Energy Sector, *available at https://www.cisa.gov/energy-sector* (''The U.S. energy infrastructure fuels the economy of the 21st century. Without a stable energy supply, health and welfare are threatened, and the U.S. economy cannot function. [PPD–21] identifies the Energy Sector as uniquely critical because it provides an 'enabling function' across all critical infrastructure sectors. More than 80 percent of the country's energy infrastructure is owned by the private sector, supplying fuels to the transportation industry, electricity to households and businesses, and other sources of energy that are integral to growth and production across the nation.'').

[16] Other Federal agencies have taken similar actions to ensure that private institutions do not use their market position to make public policy. *See e.g.,* News Release, U.S. Department of Labor Announces Final Rule To Protect Americans' Retirement Investments (Oct. 30, 2020) *available at https://www.dol.gov/newsroom/releases/ebsa/ebsa20201030,* discussing U.S. Department of Labor Final Rule, ''Financial Factors in Selecting Plan Investments,'' 85 FR 72846 (Nov. 13, 2020).

[17] Reports of Condition and Income, June 30, 2020.

[18] As previously noted, the OCC's responsibility to ensure that banks provide fair access to financial services originated with the Dodd-Frank Act. The OCC has the responsibility to interpret this ambiguous language and provide the necessary clarity for the banks it supervises. *See Chevron U.S.A., Inc.* v. *Nat. Res. Def. Council, Inc.,* 467 U.S. 837, 843 (1984) (''[I]f the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.''); *see also* 12 U.S.C. 93a (authorizing the OCC to prescribe rules and regulations to carry out the responsibilities of the office). This proposal is not intended to affect in any way the applicability of antitrust laws to any bank action, including any unlawful anticompetitive agreement. *See, e.g.,* 15 U.S.C. 1 *et seq.*

[19] *See* Notice of Proposed Rulemaking: ''Role of Supervisory Guidance,'' 85 FR 70512 (Nov. 5, 2020)

II. Description of the Proposal

The proposed rule would create a new part 55 to address fair access to financial services, drawing both on principles of long-established antitrust law and on the OCC guidance and other statements referenced above. It would apply to any ''covered bank,'' which is defined in proposed § 55.1(a)(1)(i) as an entity for which the OCC is the appropriate Federal banking agency under 12 U.S.C. 1813(q)(1) that has the ability to (1) raise the price a person has to pay to obtain an offered financial service from the bank or from a competitor or (2) significantly impede a person, or a person's business activities, in favor of or to the advantage of another person. Under proposed § 55.1(a)(1)(ii), a bank would be presumed not to meet the definition of covered bank if it has less than $100 billion in total assets.[20] Under proposed § 55.1(a)(1)(iii), however, a bank is presumed to meet the definition of covered bank if it has $100 billion. A bank that meets the criteria in paragraph (a)(1)(iii) can seek to rebut the presumption that it is a covered bank under this rule by submitting to the OCC written materials that, in the agency's judgment, demonstrate the bank does not meet the definition of a covered bank.

In addition to the proposed $100 billion asset threshold, the OCC contemplated including a separate threshold, linked to national market share of any financial service, as an alternative for a bank to be presumed to meet the definition of a covered bank. A national market share threshold would recognize that some banks have less significant on-balance sheet assets but nonetheless have a market position that provides them with the ability to (1) raise the price a person has to pay to obtain a financial service offered by the bank from the bank or from a competitor or (2) significantly impede a person, or a person's business activities, in favor of or to the advantage of another person. The OCC invites public comment on whether the agency should include a percent of national market share threshold as another reason for a bank to be presumed to meet the definition of covered bank and, if so, whether a 10 percent, 20 percent, or other percent of the national market share would be the appropriate threshold. The OCC also invites public comment on whether a presumption different than the $100 billion asset threshold presumption proposed in § 55.1(a)(1)(ii) and (iii) would be more effective to capture banks that meet the definition of covered bank in § 55.1(a)(1)(i) and to exclude banks that do not meet these standards.

Section 55.1(a)(2) would define ''financial service'' to mean a financial product or service. Section 55.1(a)(3) would define ''person'' to mean any natural person or any partnership, corporation, or other business or legal entity.

For a covered bank's board and its management to carry out their core risk management responsibilities, the rule would require that a covered bank provide fair access to its financial services with relevant risks quantified and managed, including through pricing, as needed. The covered bank's board and management would ultimately be responsible for ensuring that the bank's operations are consistent with its obligation to provide fair access to financial services, including through established written policies and procedures. Upon review of a covered bank's operations, including its written policies and procedures, it should be clear whether the bank is providing persons access to financial services based on quantitative, impartial risk-based standards or on a basis that is not tied to individual risk assessment and risk management.

Specifically, proposed § 55.1(b) states that to provide fair access to financial services, a covered bank shall (1) make each financial service it offers available to all persons in the geographic market served by the covered bank on proportionally equal terms;[21] (2) not deny any person a financial service the bank offers except to the extent justified by such person's quantified and documented failure to meet quantitative, risk-based standards established in advance by the covered bank; (3) not deny any person a financial service the bank offers when the effect of the denial is to prevent, limit, or otherwise disadvantage the person from entering or competing in a market or business segment or in such a way that benefits another person or business activity in which the covered bank has a financial interest; and (4) not deny, in coordination with others, any person a financial service the covered bank offers.

Under this proposed rule, if a covered bank offers cash management services or commercial lending and specifically provides such services to a large retailer, the bank would be required to offer such services to any other lawful business (*e.g.,* an electric utility or a family planning organization) on proportionally equal terms. The covered bank's decision to deny one of these services to a person could not include consideration of the bank's opinion (or the opinion of its employees or customers) of the person, the person's legal business endeavors, or any lawful activity in which the person is engaging or has engaged. However, the covered bank must consider factors such as compliance with laws and regulations and safety and soundness, in deciding whether to provide services to the person.[22]

Furthermore, under the proposal, a covered bank could deny a person access to a financial service without violating its obligation to provide fair access to financial services if the bank's decision is justified by the quantified and documented failure of the person to meet quantitative, impartial risk-based standards established by the bank in advance (*e.g.,* the person's inability to pay for the service or creditworthiness or an objective assessment of the person's collateral). Nothing in the proposal would require a bank to offer a particular service; the proposal requires only that the financial services offered by a bank to some customers are offered on proportionally equal terms to all customers engaged in lawful activities.

A covered bank should also consider whether it has the expertise or knowledge to offer a service in a given market. For example, while the rule would not require a covered bank to provide asset-based lending services collateralized by accounts receivable, if the bank provides this service to some

for a discussion of the difference between agency guidance and regulations.

[20] The $100 billion threshold is a commonly used threshold for large banks. *See, e.g.,* Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements, 84 FR 59230 (Nov. 1, 2019) (establishing risk-based categories for determining applicability under the agencies' regulatory capital rule and liquidity coverage ratio rule and stating that the ''rule seeks to better align the regulatory requirements for large banking organizations with their risk profiles, taking into account the size and complexity of these banking organizations as well as their potential systemic risks. The final rule is consistent with considerations and factors set forth under section 165 of the [Dodd-Frank Act], as amended by the Economic Growth, Regulatory Relief, and Consumer Protection Act'' (citations omitted)).

[21] Providing financial services on proportionally equal terms includes, at a minimum, ensuring that pricing and denial decisions are commensurate with measurable risks based on quantitative and qualitative characteristics. Additionally, this provision would prohibit a bank from engaging in geography-based redlining, for example, by refusing to provide financial services to customers solely based on where the customer or the customer's business activity is located when the customer or business activity is within the geographic market served by the covered bank.

[22] This includes, for example, the Bank Secrecy Act, anti-money laundering regulations, and applicable consumer protection laws, such as fair lending and anti-discrimination laws.

customers, then it would be impermissible for the bank to categorically deny access to this service to firms in a particular sector, given that the risks attendant to this type of lending reflect the risks of the firm's customers' accounts payable and would not change based on the sector in which the firm operates. A covered bank that operates consistent with this proposal would satisfy its obligation to provide fair access to financial services.

The OCC invites comments on all aspects of this proposal.

III. Regulatory Analyses

Paperwork Reduction Act. In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* the OCC may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The proposed rule contains no information collection requirements under the PRA. Therefore, no filings will be made with OMB.

Regulatory Flexibility Act. The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the Small Business Administration (SBA) for purposes of the RFA to include commercial banks and savings institutions with total assets of $600 million or less and trust companies with total assets of $41.5 million or less) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. The OCC currently supervises approximately 745 small entities. Because the proposed rule would apply generally to OCC-supervised banks that have $100 billion or more in total assets, the proposed rule would not affect any small OCC-supervised entities. Therefore, the OCC certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act. Consistent with the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1532, the OCC considers whether the proposed rule includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million adjusted for inflation (currently $157 million) in any one year. If any covered banks have risk-based standards that include criteria that would not be allowed under the proposed rule, the elimination of the prohibited criteria would impose little, if any, burden on covered banks. Therefore, the proposed rule would not result in an expenditure of $157 million or more annually by state, local, and tribal governments, or by the private sector.

Riegle Community Development and Regulatory Improvement Act. Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA), 12 U.S.C. 4802(a), in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, the OCC must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA, 12 U.S.C. 4802(b), requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form. The OCC invites comments that will inform its consideration of the administrative burdens and the benefits of its proposal, as well as the effective date of the final rule.

List of Subjects in 12 CFR Part 55

Banks and banking, Definitions, Federal savings associations, National banks, Risk, Safety and soundness.

For the reasons set out in the preamble, the OCC proposes to add part 12 CFR part 55, consisting of §§ 55.1 and 55.2, to read as follows:

PART 55—FAIR ACCESS TO FINANCIAL SERVICES

Authority: 12 U.S.C. 1 *et seq.* and 12 U.S.C. 93a.

§ 55.1 Fair access to financial services.

(a) For purposes of this section:

(1)(i) *Covered bank* means an entity for which the Office of the Comptroller of the Currency is the appropriate Federal banking agency as defined in 12 U.S.C. 1813(q)(1) that has the ability to:

(A) Raise the price a person has to pay to obtain an offered financial service from the bank or from a competitor; or

(B) Significantly impede a person, or a person's business activities, in favor of or to the advantage of another person.

(ii) A bank is presumed not to meet the definition of covered bank in paragraph (a)(1)(i) of this section if it has less than $100 billion in total assets.

(iii) A bank is presumed to meet the definition of covered bank in paragraph (a)(1)(i) of this section if it has $100 billion or more in total assets. A bank that meets the criteria in this paragraph (a)(1)(iii) can seek to rebut this presumption by submitting to the Office of the Comptroller of the Currency written materials that, in the agency's judgment, demonstrate the bank does not meet the definition of covered bank in paragraph (a)(1)(i) of this section.

(2) *Financial service* means a financial product or service.

(3) *Person* means:

(i) Any natural person; or

(ii) Any partnership, corporation, or other business or legal entity.

(b) To provide fair access to financial services, a covered bank shall:

(1) Make each financial service it offers available to all persons in the geographic market served by the covered bank on proportionally equal terms;

(2) Not deny any person a financial service the bank offers except to the extent justified by such person's quantified and documented failure to meet quantitative, impartial risk-based standards established in advance by the covered bank;

(3) Not deny any person a financial service the bank offers when the effect of the denial is to prevent, limit, or otherwise disadvantage the person:

(i) From entering or competing in a market or business segment; or

(ii) In such a way that benefits another person or business activity in which the covered bank has a financial interest; and

(4) Not deny, in coordination with others, any person a financial service the bank offers.

§ 55.2 [Reserved]

Brian P. Brooks,

Acting Comptroller of the Currency.

[FR Doc. 2020–26067 Filed 11–24–20; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–1059; Airspace Docket No. 20–AGL–40]

RIN 2120–AA66

Proposed Revocation of Class E Airspace and Amendment of Class E Airspace; Lone Rock, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revoke the Class E surface airspace at Tri-County Regional Airport, Lone Rock, WI, and amend the Class E airspace extending upward from 700 feet above the surface at Tri-County Regional Airport and Richland Airport, Richland Center, WI. The FAA is proposing this action as the result of airspace reviews caused by the decommissioning of the Lone Rock VHF omnidirectional range (VOR) navigation aid as part of the VOR Minimum Operational Network (MON) Program. The names and geographic coordinates of the airports would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before January 11, 2021.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2020–1059/Airspace Docket No. 20–AGL–40, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

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: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

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 would revoke the Class E surface airspace at Tri-County Regional Airport, Lone Rock, WI, and amend the Class E airspace extending upward from 700 feet above the surface at Tri-County Regional Airport and Richland Airport, Richland Center, WI, which is contained within the Lone Rock, WI, airspace legal description, to support instrument flight rule operations at these airports.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2020–1059/Airspace Docket No. 20–AGL–40.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at https://www.regulations.gov. Recently published rulemaking documents can also be accessed through the FAA's web page at https://*www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by:

Revoking the Class E surface airspace at Tri-County Regional Airport, Lone Rock, WI, as the weather reporting and communications requirements of FAA Order 7400.2M, Procedures for Handling Airspace Matters, are no longer being met to retain this airspace;

Amending the Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile (increased from a 6.4-mile) radius of Tri-County Regional Airport, Lone Rock,

WI; removing the city associated with the airport to comply with changes in FAA Order 7400.2M; and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database;

And amending the Class E airspace extending upward from 700 feet above the surface to within a 6.4-mile (decreased from a 7.3-miles) radius of Richland Airport, Richland Center, WI, which is contained within the Lone Rock, WI, airspace legal description; and updating the name (previously Richland Center Airport) and geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is the result of airspace reviews caused by the decommissioning of the Lone Rock VOR, which provided navigation information for the instrument procedures these airports, as part of the VOR MON Program.

Class E airspace designations are published in paragraph 6002 and 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.

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

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for 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 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

AGL WI E2 Lone Rock, WI [Remove]

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

* * * * *

AGL WI E5 Lone Rock, WI [Amended]

Tri-County Regional Airport, WI
(Lat. 43°12′43″ N, long. 90°10′47″ W)
Richland Airport, WI
(Lat. 43°17′00″ N, long. 90°17′54″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Tri-County Regional Airport, and within a 6.4-mile radius of the Richland Airport.

Issued in Fort Worth, Texas, on November 19, 2020.

Steven T. Phillips,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2020–25973 Filed 11–24–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 523 and 541

[BOP–1176P]

RIN 1120–AB76

FSA Time Credits

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would codify the Bureau of Prisons (Bureau) procedures regarding time credits as authorized by the First Step Act of 2018 (FSA), hereinafter referred to as ''FSA Time Credits.'' The FSA provides that eligible inmates may earn FSA Time Credits towards pre-release custody or early transfer to supervised release for successfully completing approved Evidence-Based Recidivism Reduction programs or Productive Activities that are assigned to the inmate based on the inmate's risk and needs assessment. Eligible inmates include those individuals who are sentenced under the U.S. Code and in the custody of the Bureau. However, as required by the FSA, an inmate cannot earn FSA Time Credits if he or she is serving a sentence for a disqualifying offense or has a disqualifying prior conviction. However, these inmates can still earn other benefits, as authorized by the Bureau, for successfully completing recidivism reduction programming.

DATES: Electronic comments must be submitted, and written comments must be postmarked, no later than 11:59 p.m. on January 25, 2021.

ADDRESSES: Please submit electronic comments through the *regulations.gov* website, or mail written comments to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street NW, Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 353–8248.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *www.regulations.gov.* If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also locate

all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment contains so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted *www.regulations.gov.*

Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

The Proposed Rule

This proposed rule would codify the Bureau of Prisons (Bureau) procedures regarding FSA Time Credits as authorized by 18 U.S.C. 3632(d)(4) and Section 101 of the First Step Act of 2018 (Pub. L. 115–391, December 21, 2018, 132 Stat 5194) (FSA). The FSA provides that an eligible inmate in Bureau custody who successfully completes an Evidence-Based Recidivism Reduction program or Productive Activity that is assigned to the inmate based on the inmate's risk and needs assessment may earn FSA Time Credits to be applied towards pre-release custody (*i.e.,* transfer to a Residential Reentry Center (RRC) or home confinement for service of a portion of the inmate's sentence) or early transfer to supervised release (*i.e.,* early satisfaction of the inmate's sentence) under 18 U.S.C. 3624(g). This proposed rule does not address the procedures for determining whether an individual inmate will have FSA Time Credits applied towards prerelease custody, early transfer to supervised release, a combination of both, or neither; this proposed rule only addresses the procedures for earning, awarding, loss, and restoration of FSA Time Credits.

As required by the FSA in 18 U.S.C. 3632(d)(4)(D), an inmate cannot earn FSA Time Credits if he or she is serving a sentence for a disqualifying offense or has a disqualifying prior conviction as specified in 18 U.S.C. 3632(d)(4)(D). However, these inmates can still earn other benefits as authorized by the Bureau for successfully completing recidivism reduction programming.

The Bureau proposes to add a new subpart E to part 523 of Chapter V, entitled ''FSA Time Credits,'' which would contain regulations defining terms in more detail and describing how inmates may earn or forfeit FSA Time Credits. Section 523.40 would set forth the purpose of the subpart. The Bureau's proposed definitions of an Evidence-Based Recidivism Reduction program and Productive Activity in § 523.41 conform to the definitions provided by the FSA in 18 U.S.C. 3635(3) and (5) respectively.

The regulation next addresses successful completion, indicating that eligible inmates must successfully complete each Evidence-Based Recidivism Reduction program or Productive Activity that are assigned to the inmate based on the inmate's risk and needs assessment before they may earn FSA Time Credits. The requirements to successfully complete an Evidence-Based Recidivism Reduction program or Productive Activity are defined by the Bureau for each Evidence-Based Recidivism Reduction program or Productive Activity. The requirements will be based on the specific elements of each Evidence-Based Recidivism Reduction program or Productive Activity, and may vary based on the curricula, duration, or the specific needs or of either the Evidence-Based Recidivism Reduction program/Productive Activity or the inmate participating.

Eligible inmates are also described in this section: An ''eligible inmate'' is any inmate sentenced under the U.S. Code and in the custody of the Bureau who is not serving a term of imprisonment for a conviction specified in 18 U.S.C. 3632(d)(4)(D). An inmate who is in the custody of the Bureau, but is serving a term of imprisonment for a conviction under the law of one of the fifty (50) states, the District of Columbia, Guam, Puerto Rico, the U.S. Virgin Islands, the Commonwealth of the Mariana Islands, American Samoa, or any other territory or possession of the United States is not an ''eligible inmate.'' As the FSA also indicates, an inmate who is eligible to earn FSA Time Credits and not subject to a final order of removal under immigration laws as defined in 8 U.S.C. 1101(a)(17) may have FSA Time Credits applied towards pre-release custody or early transfer to supervised release under 18 U.S.C. 3624(g).

The proposed regulations also explain in § 523.42 that eligible inmates must successfully complete each Evidence-Based Recidivism Reduction program or Productive Activity that is assigned to the inmate based on the inmate's risk and needs assessment before they may earn FSA Time Credits. Consistent with the FSA, FSA Time Credits will not be given for anything less than successful completion. After successful completion of an Evidence-Based Recidivism Reduction program or Productive Activity, an eligible inmate may be awarded ten days of FSA Time Credits for every thirty ''days'' of participation. A ''day'' is a unit defined as one eight-hour-period of a successfully completed Evidence-Based Recidivism Reduction program or Productive Activity. The Bureau derives its proposal for earning FSA Time Credits from 18 U.S.C. 3632(d)(4)(A)(i), which indicates that inmates ''shall earn 10 days of Time Credits for every 30 days of successful participation in evidence-based recidivism reduction programming or productive activities.''

As authorized by the FSA in 18 U.S.C. 3632(d)(4)(A)(ii), inmates may earn an additional five days of FSA Time Credits for every thirty ''days'' (with a ''day'' defined as one eight-hour-period) of participation in a successfully completed Evidence-Based Recidivism Reduction program or Productive Activity that is assigned to the inmate based on the inmate's risk and needs assessment if the inmate is at a minimum or low risk for recidivating and has had no increased risk of recidivism over the most recent two consecutive assessments conducted by the Bureau of Prisons.

FSA Time Credits may only be earned for successful completion of an Evidence-Based Recidivism Reduction program and Productive Activity assigned to the inmate based on the inmate's risk and needs assessment, and only for those successfully completed on or after January 15, 2020. Additionally, an inmate may only earn FSA Time Credits after the date that inmate's term of imprisonment commences, which is defined as when the inmate arrives or voluntarily surrenders at the facility where the sentence will be served. Further, FSA Time Credits can only be earned while an inmate is in a Bureau facility, and will not be earned if an inmate is in a Residential Reentry Center or on home confinement.

FSA Time Credits may be lost through inmate discipline procedures described in 28 CFR part 541 if an inmate violates prison rules or requirements/rules of an Evidence-Based Recidivism Reduction program or Productive Activity. The FSA authorizes the Bureau to develop

procedures for the reduction of FSA Time Credits for inmates under these circumstances. *See* 18 U.S.C. 3632(e). If this occurs, inmates may seek review of the loss of earned FSA Time Credits through the Bureau's Administrative Remedy Program (28 CFR part 542).

Also, inmates may have part or all of the lost FSA Time Credits restored to them, to be determined on a case-by-case basis, after clear conduct for at least four consecutive risk assessments. In the case of a loss of FSA Time Credits due to a violation of the requirements and/or rules of an Evidence-Based Recidivism Reduction program or Productive Activity, an inmate may have FSA Time Credits restored if the inmate successfully completes an Evidence-Based Recidivism Reduction program or Productive Activity assigned to the inmate based on the inmate's risk and needs assessment after the date of the rule or program violation, again, to be determined on a case-by-case basis.

The Bureau also proposes to make conforming amendments in 28 CFR part 541 to regulations on inmate discipline. As part of the FSA Time Credits proposal, the Bureau proposes to add in § 541.3, Table 1 (Prohibited Acts and Available Sanctions), appropriate sanctions to allow for forfeiture of FSA Time Credits in escalating amounts depending on the severity level of the prohibited act committed. The FSA Time Credit forfeiture sanctions mirror the current forfeiture sanctions in place for loss of Good Conduct Time. If an inmate commits a second violation of the same Low Severity prohibited act code within a six months, that inmate may receive a sanction of forfeiture of up to 7 days of FSA Time Credits, but a third violation of the same prohibited act within six months period may result in a sanction of forfeiture of up to 14 days of FSA Time Credits. For commission of a prohibited act in the Moderate category, a sanction up to 30 days of FSA Time Credits credit may be applied. Commission of a High Severity act may result in forfeiture of up to 60 days of FSA Time Credits, and commission of a Greatest Severity act may result in forfeiture of up to 120 days of FSA Time Credits.

All sanctions involving loss of FSA Time Credits may only be imposed by in the discretion of a Disciplinary Hearing Officer (DHO) after the process described in 28 CFR part 541, and may also be appealed through the Bureau's Administrative Remedy Process described in 28 CFR part 542. The procedures in 28 CFR parts 541 and 542 allow for inmate discipline and an appeals process that are both well-established and consistent with current Bureau operations. Bureau DHOs will use their considerable correctional experience and training, as they currently do, and will only, after careful consideration of several factors, including the nature and seriousness of the violation in connection with the FSA Time Credit Program, limit appropriate sanctions to befit the nature of the prohibited act committed.

Regulatory Analyses

Executive Orders 12866, 13563, and 13771

This proposed rule falls within a category of actions that the Office of Management and Budget (OMB) has determined constitutes a ''significant regulatory actions'' under section 3(f) of Executive Order 12866 and, accordingly, it was reviewed by OMB.

The economic impact of this proposed rule is limited to a specific subset of inmates who are eligible to both earn and apply FSA Time Credits towards additional prerelease custody or early transfer to supervised release.

Under the FSA, FSA Time Credits may be earned by an eligible inmate who is assessed to have a minimum or low risk for recidivating and who has had no increased risk of recidivism over the most recent two consecutive assessments conducted by the Bureau. Consistent with the FSA, inmates in Bureau custody are assessed under its risk assessment system, Prisoner Assessment Tool Targeting Estimated Risk and Need (PATTERN), which includes both static and dynamic elements. For example on August 27, 2020, 131,386 inmates had been assessed under PATTERN and received a PATTERN score were in Bureau custody. The PATTERN scores for the entire group of 131,386 were: 50,060 classifed as high; 25,043 classified as medium; 38,084 classified as low; and 18,199 classified as minium. Of these inmates, approximately 65,000 would be ineligible to earn FSA Time Credits under the FSA due to the inmate's crime of conviction. This data represent a snapshot of those inmates in Bureau custody as of August 27, 2020. The Bureau anticipates that this data will change continually, as inmates in custody earn reductions in PATTERN risk classification, based on program participation and other dynamic factors, and inmates enter and release from Bureau custody.

The Bureau anticipates that as a result of this proposed rule and the FSA, additional inmates will engage in programming to earn FSA Time Credits. As discussed above, FSA Time Credits may be earned for successful completion of an Evidence-Based Recidivism Reduction program or Productive Activity that is assigned to an inmate based on the inmate's needs assessment. The current list of these programs can be found at: *https://www.bop.gov/inmates/fsa/docs/evidence_based_recidivism_reduction_programs.pdf.* These programs are available to all inmates regardless of an inmate's elibility to earn FSA Time Credits. At present, the Bureau has existing funding that provides for each of the Evidence-Based Recidivism Reduction programs and Productive Activities listed, so the Bureau will not experience current additional programming costs as a reslt of the proposed rule.

The proposed rule may also result in movement of eligible inmates who earn FSA Time Credits from Bureau facilities to prerelease custody in the community (including Residential Reentry Centers (RRCs) and/or home confinement) earlier in the course of their confinement and for a longer period of time than would have previously occurred. In some cases, this transfer of time from secured confinement to prerelease custody may result in increased costs, depending on the relative costs of the inmate's current facility and the costs associated with housing and/or supervision in prerelease custody.

The proposed rule may also result in the early transfer of inmate from custody to supervised release, functionally shortening their sentences. In such cases, the Bureau would benefit from the avoidance of costs which would otherwise have been incurred to confine the affected inmates for that amount of time.

Notably, this proposed rule is limited to the processes for earning, awarding, and losing FSA Time Credits, and does not address the mechanisms through which those FSA Time Credits may be applied towards additional time in prerelease custody or early transfer to supervised release. Future decisions on that issue will significantly impact the relative amount of cost increases and cost savings to the Bureau. At present, therefore, specific costs or savings for these future actions cannot be calculated. Further, any increased costs or savings resulting from application of this proposed rule will only be realized at the end of an eligible inmate's sentence, as they are transferred to prerelease custody and/or released earlier to commence their term of supervised release. Therefore, the increased costs or cost savings realized from this proposed rule will not be fully realized for years to come, as increasing

numbers of inmates have opportunities to earn FSA Time Credits over their terms of incarceration. Any economic impacts will occur gradually over time as the number of impacted inmates, and the quantity of time credits they accrue, increase.

For these reasons, it is not possible to forecast the actual economic effect which may occur as a result of this proposed rule. However, given the mix of cost increases and savings which may result, the overall long-term economic impact is expected to be marginal in either direction.

Executive Order 13132

This proposed rule will not have substantial direct effect on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this proposed rule and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This proposed rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act. This proposed rule is a not major rule as defined by the Congressional Review Act, 5 U.S.C. 804. This proposed rule will not result in an annual effect on the economy of $100,000,000 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 export markets.

List of Subjects

28 CFR Part 523

Prisoners.

28 CFR Part 541

Administrative practice and procedure, Prisoners.

Michael D. Carvajal,

Director, Federal Bureau of Prisons.

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, we propose to amend 28 CFR parts 523 and 541 as follows:

PART 523—COMPUTATION OF SENTENCE

■ 1. The authority citation for 28 CFR part 523 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3568 (repealed November 1, 1987 as to offenses committed on or after that date), 3621, 3622, 3624, 3632, 3635, 4001, 4042, 4081, 4082 (Repealed in part as to conduct occurring on or after November 1, 1987), 4161–4166 (repealed October 12, 1984 as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510.

■ 2. Add Subpart E to part 523, to read as follows:

Subpart E—First Step Act Time Credits

Sec.
523.40 Purpose.
523.41 Definitions.
523.42 Earning First Step Act Time Credits.
523.43 Loss of FSA Time Credits.

§ 523.40 Purpose.

(a) The purpose of this subpart is to describe time credits authorized by 18 U.S.C. 3632(d)(4) and Section 101 of the First Step Act of 2018 (Pub. L. 115–391, December 21, 2018, 132 Stat 5194) (FSA), hereinafter referred to as ''FSA Time Credits''.

(b) Generally, as defined and described in this subpart, an eligible inmate who successfully completes an Evidence-Based Recidivism Reduction program or Productive Activity that is assigned to the inmate based on the inmate's risk and needs assessment may earn FSA Time Credits to be applied towards pre-release custody or early transfer to supervised release under 18 U.S.C. 3624(g).

§ 523.41 Definitions.

(a) *Evidence-Based Recifivism Reduction program.* (1) *Definition.* A group or individual activity that:

(i) Has been shown by empirical evidence to reduce recidivism or is based on research indicating that it is likely to be effective in reducing recidivism; and

(ii) Is designed to help prisoners succeed in their communities upon release from prison.

(2) *Types of Evidence-Based Recidivism Reduction programs.* Evidence-Based Recidivism Reduction programs may include programs involving the following types of activities:

(i) Social learning and communication, interpersonal, anti-bullying, rejection response, and other life skills;

(ii) Family relationship building, structured parent-child interaction, and parenting skills;

(iii) Classes on morals or ethics;

(iv) Academic classes;

(v) Cognitive behavioral treatment;

(vi) Mentoring;

(vii) Substance abuse treatment;

(viii) Vocational training;

(ix) Faith-based classes or services;

(x) Civic engagement and reintegrative community services;

(xi) Inmate work/employment opportunities;

(xii) Victim Impact Classes or other Restorative justice programs; and

(xiii) Trauma counseling and trauma-informed support programs.

(b) *Productive activity.* A group or individual activity that allow an inmate with a minimum or low risk of recidivating to remain productive and thereby maintain a minimum or low risk of recidivating.

(c) *Successful completion.* (1) An eligible inmate must successfully complete an Evidence-Based Recidivism Reduction program or Productive Activity before the inmate may earn FSA Time Credits for that Evidence-Based Recidivism Reduction program or Productive Activity.

(2) The requirements to successfully complete an Evidence-Based Recidivism Reduction program or Productive Activity are defined by the Bureau of Prisons (Bureau) for each Evidence-Based Recidivism Reduction program or Productive Activity. The requirements to successfully complete an Evidence-Based Recidivism Reduction program or Productive Activity will be based on the specific elements of each Evidence-Based Recidivism Reduction program or Productive Activity, and may vary based on the curricula, duration, or the specific needs or requirements of either the Evidence-Based Recidivism Reduction program or Productive Activity or the inmate participating.

(d) *Eligible inmates.* (1) *Definition.* An ''eligible inmate'' is any inmate who is

sentenced under the U.S. Code and in the custody of the Bureau who is not serving a term of imprisonment for a conviction specified in 18 U.S.C. 3632(d)(4)(D). Only an ''eligible inmate'' is eligible to earn FSA Time Credits. An inmate who is in the custody of the Bureau, but is serving a term of imprisonment pursuant to only a conviction for an offense under the law of one of the fifty (50) states, the District of Columbia, Guam, Puerto Rico, the U.S. Virgin Islands, the Commonwealth of the Mariana Islands, American Samoa, or any other territory or possession of the United States is not an ''eligible inmate.''

(2) *Eligible to have FSA Time Credits applied towards pre-release custody or early transfer to supervised release.* Any inmate who is subject to a final order of removal under immigration laws as defined in 8 U.S.C. 1101(a)(17) is not eligible to have FSA Time Credits applied towards pre-release custody or early transfer to supervised release under 18 U.S.C. 3624(g).

§ 523.42 Earning First Step Act Time Credits.

An eligible inmate who successfully completes an Evidence-Based Recidivism Reduction program or Productive Activity that is assigned to the inmate based on the inmate's risk and needs assessment may earn FSA Time Credits as follows:

(a) An eligible inmate must successfully complete each Evidence-Based Recidivism Reduction program or Productive Activity before the inmate may earn FSA Time Credits. FSA Time Credits will not be given for anything less than successful completion of each Evidence-Based Recidivism Reduction program or Productive Activity.

(b) After an eligible inmate successfully completes an Evidence-Based Recidivism Reduction program or Productive Activity, the eligible inmate will be awarded ten days of FSA Time Credits for every thirty ''days'' of participation in a successfully completed Evidence-Based Recidivism Reduction program or Productive Activity. For purposes of earning FSA Time Credits, a ''day'' is defined as one eight-hour period of participation in an Evidence-Based Recidivism Reduction program or Productive Activity that an eligible inmate successfully completes.

(c) *Low/Minimum recidivism risk.* An eligible inmate will earn an additional five days of FSA Time Credits for every thirty ''days'' of participation in a Evidence-Based Recidivism Reduction program or Productive Activity that the eligible inmate successfully completes if the inmate:

(1) Is determined by the Bureau to be at a minimum or low risk for recidivating; and

(2) Has not increased his or her risk of recidivism over the most recent two consecutive risk and needs assessments conducted by the Bureau. For purposes of earning FSA Time Credits, a ''day'' is defined as one eight-hour period of participation in an Evidence-Based Recidivism Reduction program or Productive Activity that an eligible inmate successfully completes.

(d) *When FSA Time Credits may be earned.* FSA Time Credits may only be earned by an eligible inmate:

(1) For an Evidence-Based Recidivism Reduction program or Productive Activity authorized by the Bureau, that is assigned to the particular inmate based on his or her risk and needs assessment, and which the eligible inmate successfully completes on or after January 15, 2020; and

(2) After the date that the inmate's term of imprisonment commences. An inmate's term of imprisonment commences when the inmate arrives or voluntarily surrenders at the designated Bureau facility where the sentence will be served.

(3) FSA Time Credits can only be earned while an eligible inmate is in a Bureau facility. FSA Time Credits will not be earned in a Residential Reentry Center or on home confinement.

§ 523.43 Loss of FSA Time Credits.

(a) Inmates may lose earned FSA Time Credits for violation of prison rules, or requirements and/or rules of an Evidence-Based Recidivism Reduction program or Productive Activity. The procedures for loss of FSA Time Credits are those described in 28 CFR part 541.

(b) Inmates may seek review of the loss of earned FSA Time Credits through the Bureau's Administrative Remedy Program (28 CFR part 542).

(c) Inmates who have lost FSA Time Credits under this regulation may have part or all of the FSA Time Credits restored to them, on a case-by-case basis, after:

(1) Clear conduct for at least four consecutive risk and needs assessments; or

(2) In the case of a loss of FSA Time Credits due to a violation of the requirements and/or rules of an Evidence-Based Recidivism Reduction program or Productive Activity, after successful completion of an Evidence-Based Recidivism Reduction program or Productive Activity assigned based on the risk and needs assessment after the date of the rule or program violation.

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

■ 2. The authority citation for part 541 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

■ 3. In § 541.3, amend Table 1 by adding the entry B.2 under the headings ''Available Sanctions for Greatest Severity Level Prohibited Acts'', ''Available Sanctions for High Severity Level Prohibited Acts'', ''Available Sanctions for Moderate Severity Level Prohibited Acts'', and ''Available Sanctions for Low Severity Level Prohibited Acts'' to read as follows:

§ 541.3 Prohibited acts and available sanctions

* * * * *

TABLE 1—PROHIBITED ACTS AND AVAILABLE SANCTIONS

*	*	*	*	*	*	*
Available Sanctions for Greatest Severity Level Prohibited Acts						
*	*	*	*	*	*	*
B.2	Forfeit up to 120 days of FSA Time Credits.					

TABLE 1—PROHIBITED ACTS AND AVAILABLE SANCTIONS—Continued

* * * * * * *	
Available Sanctions for High Severity Level Prohibited Acts	
* * * * * * *	
B.2	Forfeit up to 60 days of FSA Time Credits.
* * * * * * *	
Available Sanctions for Moderate Severity Level Prohibited Acts	
* * * * * * *	
B.2	Forfeit up to 30 days of FSA Time Credits.
* * * * * * *	
Available Sanctions for Low Severity Level Prohibited Acts	
* * * * * * *	
B.2	Forfeit up to 7 days of FSA Time Credits (only where the inmate is found to have committed a second violation of the same prohibited act within 6 months; forfeit up to 14 days of FSA Time Credits (only where the inmate is found to have committed a third violation of the same prohibited act within 6 months).
* * * * * * *	

* * * * *

■ 4. Amend § 541.7, by revising paragraph (f) to read as follows:

§ 541.7 Unit Discipline Committee (UDC) review of the incident report.

* * * * *

(f) Sanctions. If you committed a prohibited act or acts, the UDC can impose any of the available sanctions in Tables 1 and 2, except loss of good conduct sentence credit, FSA Time Credits, disciplinary segregation, or monetary fines.

[FR Doc. 2020–25597 Filed 11–24–20; 8:45 am]

BILLING CODE 4410–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2016–0074; FRL–10016–90–Region 5]

Air Plan Approval; Wisconsin; Partial Approval and Partial Disapproval of the Oneida County SO_2 Nonattainment Area Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove a revision to the Wisconsin State Implementation Plan (SIP) for attaining the 2010 primary, health-based 1-hour sulfur dioxide (SO_2) national ambient air quality standard (NAAQS or ''standard'') for the Oneida County SO_2 nonattainment area. This SIP revision (hereinafter referred to as Wisconsin's Oneida County SO_2 plan or plan) includes Wisconsin's attainment demonstration and other attainment planning elements required under the Clean Air Act (CAA). EPA is proposing to approve some elements of the Oneida County SO_2 plan and disapprove some elements of the plan, including the attainment demonstration, since it contains facility credit for a stack height that does not meet the regulations for good engineering practice stack height regarding the prohibition of air pollution dispersion techniques.

DATES: Comments must be received on or before December 28, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2016–0074 at *http://www.regulations.gov,* or via email to *Aburano.Douglas@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Jennifer Liljegren, Physical Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6832, *Liljegren.Jennifer@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

SUPPLEMENTARY INFORMATION:

I. Why was Wisconsin required to submit a plan for the Oneida County SO_2 nonattainment area?

On June 22, 2010, EPA published a new 1-hour primary SO_2 NAAQS of 75 parts per billion (ppb). This standard is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour average

concentrations does not exceed 75 ppb, as determined in accordance with appendix T of 40 CFR part 50.[1] On August 5, 2013, EPA designated a first set of 29 areas of the country as nonattainment for the 2010 SO_2 NAAQS, including the Oneida County SO_2 nonattainment area in Wisconsin.[2] These area designations became effective on October 4, 2013. Section 191(a) of the CAA directs states to submit SIPs for areas designated as nonattainment for the SO_2 NAAQS (hereinafter called ''plans'' or ''nonattainment plans'') to EPA within 18 months of the effective date of the designation, *i.e.,* by no later than April 4, 2015 in this case. Under CAA section 192(a), these plans are required to have measures that will provide for attainment of the NAAQS as expeditiously as practicable, but no later than five years from the effective date of designation, *i.e.,* October 4, 2018, for the Oneida County SO_2 nonattainment area.

In response to the requirement for SO_2 nonattainment plan submittals, Wisconsin submitted to EPA the Oneida County SO_2 plan on January 22, 2016, and submitted supplemental information on July 18, 2016, and November 29, 2016.

For reasons described in the following sections, EPA is proposing to disapprove portions of the Oneida County SO_2 plan. Finalization of this action would start sanctions clocks which can be stopped only if the conditions of EPA's regulations at 40 CFR 52.31 are met.

If EPA finalizes the disapproval that EPA is proposing here, that action would initiate a new sanctions clock under section 179, providing for new source sanctions if EPA has not approved a revised plan within 18 months after final disapproval, and providing for highway funding sanctions if EPA has not approved a revised plan within 6 months thereafter, as well as initiating an obligation for EPA to promulgate a Federal implementation plan within 24 months unless in the meantime Wisconsin has submitted and EPA has approved a plan addressing these attainment planning requirements.

The remainder of this preamble describes the requirements that nonattainment plans must meet in order to obtain EPA approval, provides the history and description of EPA's stack height regulations (which are pertinent to Wisconsin's plan for Oneida County), provides a review of the Oneida County SO_2 plan with respect to these requirements, and describes EPA's proposed action on the plan.

On September 10, 2020, following discussions between EPA and Wisconsin regarding the requirements of EPA's stack height regulations, Wisconsin sent EPA a letter, included in the docket for this proposed action, expressing a desire for additional analyses of the ''formula GEP height'' (see 40 CFR 51.100(ii)(2) for EPA's regulations addressing formula height demonstrations) for the Ahlstrom-Munksjo facility and committing to adopt a limit consistent with EPA's stack height regulations by April 1, 2021. However, this letter does not provide any technical information that affects EPA's review of Wisconsin's existing plan that was submitted to EPA, and the commitment for an additional submittal does not serve as a substitute for a plan with suitable, enforceable limits. Therefore, this recent letter does not alter EPA's review of Wisconsin's Oneida County SO_2 plan.

II. Requirements for Nonattainment Plans

Nonattainment plans for SO_2 must meet the applicable requirements of the CAA, specifically sections 110, 172, 191, and 192. EPA's regulations governing nonattainment SIP submissions are set forth at 40 CFR part 51, with specific procedural requirements and control strategy requirements codified at subparts F and G, respectively. Soon after Congress enacted the 1990 Amendments to the CAA, EPA issued comprehensive guidance on SIP revisions in the ''General Preamble for the Implementation of Title I of the CAA Amendments of 1990'' (''General Preamble'').[3] Among other things, the General Preamble addressed SO_2 SIP submissions and fundamental principles for SIP control strategies.[4] On April 23, 2014, EPA issued recommended guidance for meeting the statutory requirements in SO_2 SIP submissions in a document entitled ''Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions'' (''2014 SO_2 Guidance''). In the 2014 SO_2 Guidance, EPA described the statutory requirements of CAA section 172(c) for a complete nonattainment plan, including: An accurate emissions inventory of current emissions for all sources of SO_2 within the nonattainment area; an attainment demonstration; a demonstration of RFP; implementation of RACM (including RACT); new source review; enforceable emission limitations and control measures; and adequate contingency measures for the affected area.

For EPA to fully approve a SIP revision as meeting the requirements of CAA sections 110, 172, 191, and 192, and EPA's regulations at 40 CFR part 51, the plan for an affected area must demonstrate to EPA's satisfaction that each of the aforementioned requirements has been met. Under CAA section 110(l), EPA may not approve a plan that would interfere with any applicable requirement concerning NAAQS attainment and RFP, or any other applicable requirement. Under CAA section 193, no requirement in effect (or required to be adopted by an order, settlement, agreement, or plan in effect before November 15, 1990) in any area that is nonattainment for any air pollutant may be modified in any manner unless it ensures equivalent or greater emission reductions of such air pollutant.

Sections 172(c)(1) and 172(c)(6) of the CAA direct states with areas designated as nonattainment to demonstrate that the submitted plan and the emissions limitations and control measures in it provide for attainment of the NAAQS. 40 CFR part 51, subpart G further delineates the control strategy requirements that plans must meet, and EPA has long required that all SIPs and control strategies reflect four fundamental principles of quantification, enforceability, replicability, and accountability.[5] SO_2 nonattainment plans must consist of two components: (1) Emission limits and other control measures that ensure implementation of permanent, enforceable, and necessary emission controls, and (2) a modeling analysis that meets the requirements of 40 CFR part 51, appendix W and demonstrates that these emission limits and control measures provide for timely attainment of the primary SO_2 NAAQS as expeditiously as practicable, but no later than the attainment date for the affected area. In cases where the necessary emission limits have not previously been made a part of the state's SIP or have not otherwise become federally enforceable, the plan needs to include the necessary enforceable limits in an adopted form suitable for incorporation into the SIP in order for the plan to be approved by EPA. In all cases, the emission limits and control measures must be accompanied by appropriate methods and conditions to determine compliance with the respective emission limits and control measures

[1] 75 FR 35520, codified at 40 CFR 50.17(a)–(b).

[2] 78 FR 47191, codified at 40 CFR part 81, subpart C.

[3] 57 FR 13498 (April 16, 1992).

[4] Id. at 13548–13549, 13567–13568.

[5] Id. at 13567–13568.

and must be quantifiable (*i.e.,* a specific amount of emission reduction can be ascribed to the measures), fully enforceable (*i.e.,* specifying clear, unambiguous and measurable requirements for which compliance can be practicably determined), replicable (*i.e.,* the procedures for determining compliance are sufficiently specific and objective so that two independent entities applying the procedures would obtain the same result), and accountable (*i.e.,* source specific limits must be permanent and must reflect the assumptions used in the SIP demonstrations).

EPA's 2014 SO_2 Guidance recommends that the emission limits be expressed as short-term average limits not to exceed the averaging time for the applicable NAAQS that the limit is intended to help maintain (*e.g.,* addressing emissions averaged over one hour for the 2010 SO_2 NAAQS), but it also describes the option to utilize emission limits with longer averaging times of up to 30 days as long as the state meets various recommended criteria.[6] The 2014 SO_2 Guidance recommends that, should states and sources utilize longer averaging times (such as, for example, 24-hours or 30 days), the longer-term average limit should be set at an adjusted level that reflects a stringency comparable to the 1-hour average limit at the critical emission value shown to provide for attainment. Additional discussion of EPA's rationale for approving longer-term average limits in selected cases has been provided in several notices of proposed rulemaking, for example for the Pekin, Illinois area (see 82 FR 46434, Oct. 5, 2017), for the Steubenville, Ohio-West Virginia area (see 84 FR 29456, June 24, 2019), and for the Central New Hampshire area (see 82 FR 45242, Sep. 28, 2017).

Attainment demonstrations for the 2010 1-hour primary SO_2 NAAQS must demonstrate future attainment and maintenance of the NAAQS in the entire area designated as nonattainment (*i.e.,* not just at the violating monitor) by using air quality dispersion modeling (see appendix W) to show that the mix of sources and enforceable control measures and emission rates in an identified area will not lead to a violation of the SO_2 NAAQS. For the short-term (*i.e.,* 1-hour) standard, EPA believes that dispersion modeling, using allowable emissions and addressing stationary sources in the affected area (and in some cases those sources located outside the nonattainment area that may affect attainment in the area) is technically appropriate. This approach is also efficient and effective in demonstrating attainment in nonattainment areas because it takes into consideration combinations of meteorological and source operating conditions that may contribute to peak ground-level concentrations of SO_2.

Preferred air quality models for use in regulatory applications are described in appendix A of EPA's ''Guideline on Air Quality Models'' (appendix A of 40 CFR part 51, appendix W (''appendix W'')).[7] In general, nonattainment SIP submissions must demonstrate the adequacy of the selected control strategy using the applicable air quality model designated in appendix W.[8] However, where an air quality model specified in appendix W is inappropriate for the particular application, the model may be modified or another model substituted, if EPA approves the modification or substitution.[9] In 2005, EPA promulgated the American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD) as the Agency's preferred near-field dispersion model for a wide range of regulatory applications addressing stationary sources (*e.g.,* in estimating SO_2 concentrations) in all types of terrain based on an extensive developmental and performance evaluation. Supplemental guidance on modeling for purposes of demonstrating attainment of the SO_2 standard is provided in appendix A of the 2014 SO_2 Guidance. Appendix A provides extensive guidance on the modeling domain, the source inputs, assorted types of meteorological data, and background concentrations. Consistency with the recommendations in the 2014 SO_2 Guidance is generally necessary for the attainment demonstration to offer adequately reliable assurance that the plan provides for attainment.

The meteorological data used in the analysis should generally be processed with the most recent version of AERMET, which is the meteorological data preprocessor for AERMOD. Estimated concentrations should include ambient background concentrations, follow the form of the standard, and be calculated as described in EPA's August 23, 2010 clarification memorandum.[10]

Of particular relevance to Wisconsin's submittal are requirements in 40 CFR 51.100, generally referred to as the stack height regulations. These regulations, which implement CAA section 123, require that if the GEP stack height exceeds the height resulting from the 40 CFR 51.100(ii)(2) formulae and is determined based on the results of a special study, typically a fluid modeling or wind tunnel study, then additional requirements relating to emissions control must first be met. These additional requirements would result in a more stringent limit than that which is proposed for the Ahlstrom-Munksjo facility in the Wisconsin's Oneida County SO_2 plan. The history and nature of the stack height regulations are described in the following section.

III. History and Nature of Stack Height Regulations

Given the significance of the stack height regulations for EPA's review of Wisconsin's submittal, and given the distinctive nature of these regulations, a discussion of the history of these regulations is necessary to provide perspective on EPA's application of these requirements. Prior to the enactment of the CAA Amendments of 1977, some parties expressed the view that ''the solution to pollution is dilution.'' This viewpoint in effect argues that meeting air quality standards by building sufficiently tall stacks, thereby enhancing the degree of dispersion between the time a plume is released and the time the plume reaches ground level, should be an acceptable alternative to meeting air quality standards by reducing emissions. Other parties argued that dilution is not the solution to pollution, that the use of excessively tall stacks without any reduction to the atmospheric loading of pollutants should not be a permissible means for meeting air quality standards. Congress ultimately adopted the latter perspective, as reflected in its enactment of section 123 in its CAA Amendments of 1977. As discussed in a court ruling upholding this interpretation of section 123, Congress ''refused to allow reliance'' on tall stacks because ''dispersion techniques do not reduce the amount of pollution in the air, but merely spread it around, exporting it to other areas . . . and exposing previously pristine areas to contamination.'' *Sierra Club* v. *EPA,* 719 F. 2d at 441 (D.C. Cir. 1983).

The pertinent text of CAA section 123(a) indicates that the degree of emission limitation required for control of any air pollutant under an applicable implementation plan shall not be affected in any manner by so much of the stack height of any source as exceeds good engineering practice (as determined under regulations

[6] 2014 SO_2 Guidance, 22–39.

[7] EPA published revisions to appendix W on January 17, 2017, 82 FR 5182.

[8] 40 CFR 51.112(a)(1).

[9] 40 CFR 51.112(a)(2); appendix W, section 3.2.

[10] ''Applicability of Appendix W Modeling Guidance for the 1-hr SO_2 National Ambient Air Quality Standard'' (August 23, 2010).

promulgated by the Administrator). EPA's regulations implementing section 123 reside at 40 CFR 51.118–51.119, and in a series of definitions at 40 CFR 51.100(ff)–(nn). EPA's most recently promulgated regulations implementing section 123 were published on July 8, 1985 (50 FR 27892). The preamble of EPA's notice promulgating these regulations help explain EPA's intent underlying its formulation of these regulations.

The stack height regulations define several terms used in evaluating whether or not a plan is consistent with the provisions in section 123 and 40 CFR 51.118 prohibiting reliance on dispersion techniques, as defined in 40 CFR (hh)(1)–(2). The pertinent terms relate to creditable stack heights. GEP stack height is defined as the greatest among three values, based on three defined approaches for determining GEP stack height. The first approach, defined in 40 CFR 51.100(ii)(1), uses a minimum GEP height of 65 meters. The second approach, defined in 40 CFR 51.100(ii)(2), defines GEP stack height by applying one of two formulae, as applicable based on the age of the stack, in which GEP stack height is calculated on the basis of building dimensions that influence how tall a stack is routinely warranted to avoid most of the downwash that the building creates. The first formula, defining GEP stack height based on an old equation developed for this purpose, is not germane to Wisconsin's plan. The second, pertinent equation (in 40 CFR 51.100(ii)(2)(ii)) is that the GEP stack height equals the height of the building plus 1.5 times the lesser of the height or the width of the building. The third approach, set forth in 40 CFR 51.100(ii)(3) and tied to the definitions of ''nearby'' and ''excessive concentration'' at 40 CFR 51.100(jj)(2) and (kk)(1), respectively, uses neither of the formulae and defines GEP height based on the results of a special study, typically a fluid modeling or wind tunnel study, with the provision in section 51.100(kk)(1) that additional requirements relating to emissions control must first be met, namely control to the new source performance standard (NSPS) level or an alternative rate established if the NSPS is demonstrated to be infeasible. For clarity, this notice will describe the first and second approach as relying on the formula GEP height and the third approach as relying on the height determined by fluid modeling or wind tunnel study. More detailed guidance on these analyses is provided in guidance that EPA issued in conjunction with the stack height regulations.[11]

In this third approach, the creditable stack height is defined in 40 CFR 51.100(ii)(3) as the height demonstrated by a fluid model . . . which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features. ''Nearby'' is defined in 40 CFR 51.100(jj)(2) as not greater than 0.8 km (½ mile) with a set of exceptions applying to terrain features (see 40 CFR 51.100(jj)(2)). ''Excessive concentrations'' is then defined in 40 CFR 51.100(kk)(1) for sources seeking credit for stack height exceeding [formula GEP height] as a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. The allowable emission rate to be used in making demonstrations under this part shall be prescribed by the new source performance standard that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the authority administering the SIP, an alternative emission rate shall be established in consultation with the source owner or operator.

Thus, in cases where a source seeks credit for a stack height greater than formula GEP stack height, the stack height regulations require that the state first determine whether the air quality standard can be attained by applying suitable emission controls with credit for no more than formula GEP stack height. If so, then the facility does not have ''excessive concentrations'' with the stack at formula GEP height and no additional stack height is creditable. This feature is discussed further in the preamble to the 1985 regulations, which indicates that the EPA's 1976 stack height guidelines[12] imposed special conditions (the installation of control technology) on stacks above formula height that were not imposed on lower stacks. The legislative history of the 1977 CAA Amendments cautioned that credit for stacks above formula height should be granted only in rare cases, and the Court of Appeals adopted this as one of the keystones of its opinion. The preamble to the 1985 regulations further indicated that for these reasons, EPA is requiring sources seeking credit for stacks above formula height to show by field studies or fluid modeling that this height is needed to avoid a 40 percent increase in concentrations due to downwash and that such an increase would result in exceedance of air quality standards. Finally, the preamble to the 1985 regulations indicated that this will restrict stack height credit in this context to cases where the downwash avoided is at levels specified by regulation or by act of Congress as possessing health or welfare significance.

That is, if fluid modeling showed that downwash with a formula GEP height stack increased concentrations by more than 40 percent but suitable controls would provide for attainment (or if no modeling was provided assessing whether suitable controls would provide for attainment or if the state did not adopt limits requiring suitable control), then the plan would not have justified a stack height above formula GEP height as being creditable. In that case, the attainment demonstration would be considered to rely on a prohibited dispersion technique, in contravention of CAA section 123.

A common phrase in the debate leading to the 1985 regulations was ''control first.'' Advocates for control first, notably Natural Resources Defense Council, Inc. (NRDC), urged that all candidates for taller stacks first be required to implement aggressive emissions control, and that sources only be granted credit for taller stacks if such control does not suffice to resolve air quality problems. The opposite

[11] Guidance on this and related topics is provided in ''Guidance for Determination of Good Engineering Practice Stack Height (Technical Support Document for the Stack Height Regulation),'' June 1985, EPA, Office of Air Quality Planning and Standards, EPA–450/4–80–023R, available at *https://www3.epa.gov/ttn/scram/guidance/guide/gep.pdf.*

[12] These guidelines are available at *https://nepis.epa.gov/Exe/ZyNET.exe/9100JWKU.txt?ZyActionD=ZyDocument&Client=EPA&Index=1976%20Thru%201980&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&UseQField=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5CZYFILES%5CINDEX%20DATA%5C76THRU80%5CTXT%5C00000016%5C9100JWKU.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=hpfr&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=3.*

preference was to focus solely on air quality, to argue that EPA should approve plans that resolve air quality problems with taller stacks (particularly those plans that involve more than a 40 percent impact of building downwash) without regard to the degree of control that the source implements. EPA's 1985 regulations reflect a compromise between these two positions, in which requirements for ''control first'' apply to sources seeking credit for stacks taller than formula GEP height and do not apply to sources with stacks at or below formula GEP height. The U.S. Court of Appeals for the D.C. Circuit affirmed this compromise in *Natural Resources Defense Council* v. *Thomas,* 838 F. 2d 1224 (D.C. Cir. 1988).

The preamble to the 1985 regulations provides further discussion of the level of control that is mandated as a prerequisite for finding any stack height greater than the formula GEP height to be creditable. As a general matter, the NSPS associated with the subject source's source category are presumed to be the level of control to be adopted and to be used in any assessment of whether such emission controls and a creditable stack height in excess of the formula height is needed to eliminate any excessive concentrations (in combination with an assessment of the percentage impact of downwash). However, the regulations also provide the possibility of demonstrating that the NSPS are infeasible at the source, in which case an alternate control requirement must be adopted and used in evaluating whether the source's controlled emissions and a stack height above formula GEP height may be credited to avoid an excessive concentration. Footnote 6 of the 1985 preamble (50 FR 27898) states that EPA will rely on its Best Available Retrofit Technology (BART) Guideline in reviewing any [demonstrations of NSPS infeasibility] and alternative emission limitations. That is, in cases where the NSPS is demonstrated to be infeasible, EPA will use the criteria in the BART Guideline to determine whether the plan adequately demonstrates the infeasibility of the NSPS and whether the limit that the state adopts qualifies as a suitable limit to use in evaluating whether excessive concentrations (*i.e.* violations of the air quality standard) remain that might warrant a creditable stack height that is higher than the formula GEP height. In either case, the analysis of whether credit for stack height above formula GEP height is warranted must be based on an assessment of whether the appropriately limited allowable emissions would nevertheless result in violation of the air quality standard. Since this demonstration must rely on allowable emissions, the SIP must include the appropriate limit, either the NSPS or a BART limit, as an adopted part of the plan. EPA's approach to implementing these provisions was affirmed by the U.S. Court of Appeals for the 9th Circuit, in *Montana Sulphur & Chemical Company* v. *USEPA,* 666 F. 3d 1174 (9th Cir. 2012).

IV. Review of Modeled Attainment Demonstration

The majority of Wisconsin's submittal includes an assessment of the air quality impacts Wisconsin expected to result from emissions limits governing the Ahlstrom-Munksjo paper mill (formerly Expera Specialty Solutions LLC (Expera)), which Wisconsin found to be the primary SO_2 source in the Oneida County nonattainment area based on its AERMOD dispersion model. This source is the only source in Oneida County listed in the 2017 National Emissions Inventory with more than 100 tons per year of SO_2 emissions. The plan accounts for two additional stationary sources, namely Red Arrow Products and the Packaging Corporation of America (PCA), but the emissions from these sources are subject to permanent, enforceable limits through existing title I construction permit requirements. These sources have minimal effect on area air quality, insofar as Red Arrow emits less than 10 tons per year, and PCA, which emits about 50 tons per year, is over 30 kilometers from the area of concern in Oneida County.

Wisconsin's Oneida County SO_2 plan includes a discussion of its modeling using AERMOD to determine the emissions that can be emitted from the Ahlstrom-Munksjo facility while still attaining the NAAQS (*i.e.* a modeled attainment demonstration). The model assumes maximum allowable emissions from Red Arrow and PCA, the other SO_2 sources in the nonattainment area or within 50 kilometers of the nonattainment area, as allowed by their Title I construction permits. This analysis used surface meteorological data from the Rhinelander-Oneida County Airport (KRHI) and upper air data from the Green Bay site. Although the Ahlstrom-Munksjo facility's boiler B26 formula GEP stack height according to the State's submittal is 75 meters, Wisconsin modeled the facility with a stack height of 90 meters, based on a series of wind tunnel studies conducted by consultants to the facility showing that a 90 meter stack would reduce downwash effects down to a 40 percent impact on concentrations. Subsequently, Ahlstrom-Munksjo (formerly Expera) raised the stack from 63.7 meters to 90 meters. However, as detailed above, emissions control requirements are a prerequisite to potentially receiving credit for a stack height that exceeds the height resulting from the 40 CFR 51.100(ii)(2) formulae. These emissions control requirements (NSPS or BART) would result in a more stringent limit than that which is proposed for the Ahlstrom-Munksjo facility in Wisconsin's Oneida County SO_2 plan.

While many aspects of Wisconsin's modeling are consistent with the recommendations of appendix W, the submittal relies on a stack height and corresponding emission limitation that is contrary to and exceeds what is creditable under EPA's stack height regulations. Wisconsin's proposed GEP stack height exceeds formula GEP height without satisfying the associated requirements for establishing suitable control requirements and without demonstrating the degree to which a height above formula GEP height (if any) is necessary to avoid violations with application of the control requirements. Since this portion of the submittal therefore cannot be approved, EPA is not providing a full review of the various features of Wisconsin's attainment demonstration for the Oneida County SO_2 nonattainment area (*e.g.* the methodology and parameters of the wind tunnel study with respect to relevant EPA guidance, the stack-specific downwash algorithm developed from the wind tunnel study and applied to Ahlstrom-Munksjo's boiler B26 stack in AERMOD in lieu of the traditional downwash algorithm utilized in AERMOD, etc.).

V. SIP Strengthening Emission Limits

As noted above, Wisconsin's Oneida County SO_2 plan proposed a more stringent emission limit for the Ahlstrom-Munksjo facility than that which previously applied. Historically, as part of Wisconsin's Oneida County SO_2 plan for the 1971 24-hour SO_2 NAAQS, Wisconsin issued Consent Order AM–94–38 with an SO_2 emission limit on Ahlstrom-Munksjo's (then Rhinelander Paper's) coal-fired boiler, boiler B26, and EPA approved this order into the Wisconsin SIP on December 7, 1994. *See* 59 FR 63046.[13] The existing SIP limit is 3.5 pounds (lbs) of SO_2 per Million British Thermal Units (MMBTU) averaged over 24 hours (1,050 lbs per hour at the maximum operating

[13] 59 FR 63046 references ''Rhinelander Paper'' the name and ownership of the facility have since changed to Ahlstrom-Munksjo.

rate of 300 MMBTU per hour). As part of Wisconsin's Oneida County SO_2 plan (for the 2010 SO_2 NAAQS), Wisconsin issued Consent Order AM–15–01. AM–15–01 contains a requirement to raise the flue gas stack S09 height for boiler B26 to a minimum of 296 feet (90 meters) above ground level and establishes a more stringent SO_2 emission limit for boiler B26 than that which is currently contained in the Wisconsin SIP under AM–94–38. The order limits boiler B26 SO_2 emissions to 3.00 lbs per MMBTU on a 24-hour basis (900 lbs per hour at the maximum operating rate) and limits the maximum boiler load to 300 MMBTU per hour. The order carries forward the SO_2 emission limit, including the compliance demonstration and recordkeeping requirements, from AM–94–38 on boiler B28, which is that the sulfur content of distillate fuel fired in boiler B28 shall not exceed 0.05 percent by weight. In its Oneida County SO_2 plan, Wisconsin requested that EPA approve Wisconsin's nonattainment plan and withdraw AM–94–38 from the Wisconsin SIP and replace it with AM–15–01. Given the stack height issue identified above, EPA cannot approve AM–15–01 into the SIP. Therefore, EPA is not proposing to approve AM–15–01 into the SIP, and EPA is not proposing to withdraw AM–94–38 from the SIP. Rather, EPA is proposing to approve only the following portions of AM–15–01, including the more stringent SO_2 emission limit on boiler B26, the maximum boiler load limit for boiler B26, and the associated applicable reporting, recordkeeping, and compliance demonstration requirements including fuel sample collection, analysis, and retention, and emissions monitoring, recordkeeping, reporting, and performance testing requirements. Approval into the SIP would make these provisions permanent and federally enforceable and strengthen the Wisconsin SIP. Since this is not a relaxation of emissions limitations, sections 110(l) and 193 of the CAA are satisfied and no backsliding is occurring as a result of this SIP revision.

The limit in Wisconsin's 2016 plan is 3.0 lbs per MMBTU on a 24-hour rolling average basis, which Wisconsin considers to be equivalent to a limit of 3.2 lbs per MMBTU on a 1-hour basis. As previously stated, the longer-term average limit should be set at an adjusted level that reflects a stringency comparable to the 1-hour average limit at the critical emission value shown to provide for attainment. Although EPA is not able to approve this limit as sufficient to provide for attainment (since the limit does not provide for attainment without credit for a taller stack than has been justified under EPA's stack height regulations), EPA is proposing to approve the limit as SIP strengthening, which is appropriate for limits that improve air quality whether or not these limits suffice to provide for attainment in accordance with CAA requirements.

EPA's 2014 SO_2 Guidance discusses the option, under specified circumstances, for emission limits with averaging times greater than one hour. Wisconsin's plan relies on a limit expressed as a 24-hour average. A critical criterion for such limits to be used for attainment planning purposes is that the longer-term average limit be comparably stringent to the 1-hour limit that the state has demonstrated would provide for attainment. In this case, Wisconsin has not properly demonstrated what 1-hour limit would provide for attainment without relying on a dispersion technique, *i.e.* without relying on credit for a taller stack than is creditable under the stack height regulations. Therefore, it is unnecessary to evaluate whether the State's 24-hour average limit is comparably stringent to the 1-hour average. In this action, EPA is not reviewing the validity of the adjustment factor that Wisconsin applied to determine the 24-hour average limit it adopted, other than to conclude that the 24-hour average limit of 3.0 lbs per MMBTU that the State adopted is more stringent than the 24-hour average limit of 3.5 lbs per MMBTU currently in the SIP.

VI. Review of Other Plan Requirements

A. Emissions Inventory

The emissions inventory and source emission rate data for an area serve as the foundation for air quality modeling and other analyses that enable states to estimate the degree to which different sources within a nonattainment area contribute to violations within the affected area and assess the expected improvement in air quality within the nonattainment area due to the adoption and implementation of control measures. The state must develop and submit to EPA a comprehensive, accurate, and current inventory of actual emissions from all sources of SO_2 emissions in each nonattainment area, as well as any sources located outside the nonattainment area that may affect attainment in the area.[14]

The base year inventory establishes a baseline that is used to evaluate emission reductions achieved by the control strategy and to assess RFP requirements. Wisconsin used 2011 as the base year for emissions inventory preparation. At the time of preparation of the plan, 2011 reflected the most recent emissions data available to the State through its annual emissions reporting requirements during periods with air quality violations. The emissions inventory includes SO_2 emissions from point sources, area sources, on-road mobile sources, and off-road mobile sources. The point source emissions were compiled from Wisconsin's Air Reporting System (ARS), and the mobile source emissions were calculated using the MOVES2014 model. The point source emissions are dominated by the emissions from the Ahlstrom-Munksjo facility but also include a small amount of emissions from the Red Arrow facility. Table 1 summarizes 2011 base year SO_2 emissions inventory data for the nonattainment area, categorized by emission source type (rounded to the nearest whole number).

TABLE 1—SUMMARY OF BASE YEAR (2011) SO_2 EMISSIONS INVENTORY FOR THE ONEIDA COUNTY SO_2 NONATTAINMENT AREA

Source	Emissions (tpy)
Point Sources	2,430
Area Sources	13
On-Road Mobile Sources	3
Off-Road Mobile Sources	5
Total	2,451

In addition to addressing its obligation to inventory emissions within the nonattainment area, Wisconsin also evaluated whether any point sources nearby but outside the nonattainment area might have significant impacts. Based on this evaluation, Wisconsin identified PCA, emitting about 50 tons per year and located over 30 kilometers from the area of concern (in neighboring Lincoln County) as warranting inclusion in the modeling. However, this source was not included in the nonattainment area inventory summarized above.

EPA has evaluated Wisconsin's 2011 base year inventory and finds this inventory and the methodologies used for its development to be consistent with EPA guidance. As a result, EPA is proposing to determine that the Oneida County SO_2 plan meets the requirements of CAA section 172(c)(3) and (4) for the Oneida County SO_2 nonattainment area.

[14] CAA section 172(c)(3).

B. RACM and RACT and Enforceable Emission Limitations and Control Measures

CAA section 172(c)(1) states that nonattainment plans shall provide for the implementation of all RACM as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of RACT) and shall provide for attainment of the national primary ambient air quality standards. CAA section 172(c)(6) requires plans to include enforceable emissions limitations, and such other control measures as may be necessary or appropriate to provide for attainment of the NAAQS. Because the emissions limits for the Ahlstrom-Munksjo facility provided in the Oneida County plan were not calculated in compliance with the stack height regulations, and because as a result the plan cannot be considered to provide an appropriate attainment demonstration, the area does not demonstrate RACM/RACT or meet the requirement for necessary emissions limitations or control measures. EPA is therefore proposing that the State has not satisfied the requirements in CAA sections 172(c)(1) and (6) to adopt and submit all RACM/RACT and emissions limitations or control measures as needed to attain the standard as expeditiously as practicable.

C. Nonattainment New Source Review

Wisconsin has a fully approved nonattainment new source review program. The State has implemented chapter NR 408 of the Wisconsin Administrative Code to satisfy the nonattainment new source review requirements. The program was approved by EPA into the SIP on January 18, 1995 (60 FR 3538), and the most recent update was approved on November 5, 2014 (79 FR 193). NR 408 addresses nonattainment permitting requirements for SO_2 and other pollutants. Therefore, EPA is proposing to affirm that the new source review requirements for the area have been met.

D. Reasonable Further Progress

EPA's policy, that RFP for SO_2 may be satisfied by adherence to an ambitious compliance schedule, is based on the fact that, ''for SO_2 there is usually a single 'step' between pre-control nonattainment and post-control attainment.'' [15] In this instance, however, Wisconsin has not demonstrated that implementation of the control measures required under the plan is sufficient to provide for attainment of the NAAQS in the Oneida County SO_2 nonattainment area consistent with EPA requirements (in particular consistent with EPA regulations governing creditable stack heights). Since the plan does not satisfy the prerequisites for a stack height above formula GEP height to be creditable, and in the absence of a demonstration that the limit in the plan provides for attainment at the creditable (formula GEP) stack height, a compliance schedule to implement these controls is not sufficient to provide for RFP. Therefore, EPA proposes to conclude that the State has not satisfied the requirement in section 172(c)(2) to provide for RFP toward attainment in the Oneida County SO_2 nonattainment area.

E. Contingency Measures

In the Oneida County SO_2 plan, Wisconsin explained its rationale for concluding that the plan meets the requirement for contingency measures. Specifically, Wisconsin relied on the 2014 SO_2 Guidance, which notes the special circumstances that apply to SO_2 and explains on that basis why the contingency requirement in CAA section 172(c)(9) is met for SO_2 by having a comprehensive program to identify sources of violations of the SO_2 NAAQS and to undertake an aggressive follow-up for compliance and enforcement of applicable emission limits. Wisconsin stated that if SO_2 attainment is not measured in the Oneida County SO_2 attainment area, it will reevaluate the stationary source SO_2 emission limit requirements.

However, EPA's policy that a comprehensive enforcement program can satisfy the contingency measures requirement for SO_2 plans is premised on the idea that full compliance with the controls and limits required in the plan will assure attainment. In this case, as explained above, Wisconsin's plan lacks necessary enforceable limits, calculated in compliance with stack height regulations, at the primary SO_2 source in the area and therefore cannot be credited as demonstrating attainment with the NAAQS. Consequently, vigorous enforcement of the currently insufficient limits cannot be assumed to constitute adequate contingency measures in the face of a NAAQS violation. Therefore, EPA proposes that the State has not satisfied the requirement in section 172(c)(9) to provide for contingency measures to be undertaken if the area fails to make RFP or to attain NAAQS by the attainment date.

F. Conformity

Generally, as set forth in section 176(c) of the CAA, conformity requires that actions by Federal agencies do not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant NAAQS. General conformity applies to Federal actions, other than certain highway and transportation projects, if the action takes place in a nonattainment area or maintenance area (*i.e.,* an area which submitted a maintenance plan that meets the requirements of section 175A of the CAA and has been redesignated to attainment) for ozone, particulate matter, nitrogen dioxide, carbon monoxide, lead, or SO_2. EPA's General Conformity Rule establishes the criteria and procedures for determining if a Federal action conforms to the SIP.[16] With respect to the 2010 SO_2 NAAQS, Federal agencies are expected to continue to estimate emissions for conformity analyses in the same manner as they estimated emissions for conformity analyses under the previous NAAQS for SO_2. EPA's General Conformity Rule includes the basic requirement that a Federal agency's general conformity analysis be based on the latest and most accurate emission estimation techniques available.[17] When updated and improved emission estimation techniques become available, EPA expects the Federal agency to use these techniques.

Transportation conformity determinations are not required in SO_2 nonattainment and maintenance areas. EPA concluded in its 1993 transportation conformity rule that highway and transit vehicles are not significant sources of SO_2. Therefore, transportation plans, transportation improvement programs, and projects are presumed to conform to applicable implementation plans for SO_2.[18]

VII. What action is EPA taking?

EPA is proposing to approve the base year emissions inventory and to affirm that the new source review requirements for the area have been met. EPA is also proposing to approve the Ahlstrom-Munksjo SO_2 emission limit as SIP strengthening. Specifically, EPA is proposing to approve the specific portions of Wisconsin's Administrative Order AM–15–01 identified above, including emission limits and associated compliance monitoring, recordkeeping, and reporting requirements. EPA is proposing to disapprove the attainment

[15] 2014 SO_2 Guidance, 40.

[16] 40 CFR 93.150 to 93.165.

[17] 40 CFR 93.159(b).

[18] 58 FR 3768, 3776 (January 11, 1993).

demonstration, as well as the requirement for meeting RFP toward attainment of the NAAQS, RACM/RACT, emission limitations as necessary to attain the NAAQS, and contingency measures. Finalizing the proposed disapproval will start sanctions clocks for this area under CAA section 179(a)–(b).

VIII. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference only the specific portions of Wisconsin Administrative Order AM–15–01, effective January 15, 2016, as described in section V. above. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IX. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

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

Dated: November 12, 2020.

Kurt Thiede,

Regional Administrator, Region 5.

[FR Doc. 2020–25827 Filed 11–24–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Chapter III

[Docket No. FMCSA–2020–0194]

Transportation Intermediaries Association Petition for Rulemaking Concerning Property Broker Transaction Records and Regulatory Guidance Concerning Dispatch Services

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Petition for rulemaking; request for public comments.

SUMMARY: FMCSA requests public comments on the Transportation Intermediaries Association (TIA) petition for rulemaking concerning the rights of parties to a brokered transaction to review the records of the transaction and its request that the Agency issue regulatory guidance concerning dispatch services. TIA believes transparency in broker transactions is provided through other means in today's market place and that the regulatory guidance would ensure that interested parties can distinguish between a dispatch service and an authorized broker.

DATES: Comments must be submitted by January 25, 2021.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2020–0194 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* 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. 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.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. La Tonya Mimms, Chief, Driver and Carrier Operations, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, by telephone at (202) 366–4001, or by email at *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

A. Submitting Comments

If you submit a comment, please include the docket number for this document (Docket No. FMCSA–2020–0194), indicate the specific section of this document to which each 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 telephone 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,* put the docket number, FMCSA–2020–0194, in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box 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 reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during 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 the notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the notice, 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 for this document. 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 FMCSA receives which are not specifically designated as CBI will be placed in the public docket for this document.

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.* Insert the docket number, FMCSA–2020–0194 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 Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, 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.

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 *www.transportation.gov/privacy.*

I. Background

A. Brokers' Records of Transactions; History of Current Requirements

Section 371.3(c) of title 49 of the CFR states that ''[e]ach party to a brokered transaction has the right to review the record of the transaction required to be kept by these rules.'' The current requirements under 49 CFR 371.3(c) were adopted by the Interstate Commerce Commission (ICC) on October 17, 1980 (45 FR 68941), at 49 CFR 1045.3(c). Prior to 1980, the broker records requirements under 49 CFR 1045.3 did not include a specific provision concerning the rights of parties to a brokered transaction to review the record of the transaction. In its May 12, 1980 (45 FR 31140) notice of proposed rulemaking concerning multiple broker regulations, the ICC explained that the proposed change to section 1045(c) would allow the agency to ''. . . eliminate more complex rules found at sections 1045.5, 1045.6, and 1045.10.'' Those requirements related to charges for brokerage services, charges for non-brokerage services, and duties and obligations of brokers, respectively.

With the termination of the ICC in 1995, the regulatory oversight of brokers was transferred to the Federal Highway Administration (FHWA) and the requirements under 49 CFR 1045.3 were redesignated, without change, under 49 CFR 371.3 (61 FR 54707; October 21, 1996). Subsequently, with the establishment of FMCSA in 2000, all motor carrier oversight responsibilities and regulations were transferred from FHWA to FMCSA.

B. Petition for Rulemaking

TIA requested that FMCSA rescind 49 CFR 371.3(c) concerning the rights of parties to a brokered transaction to review the records of the transaction. TIA wrote, ''The Interstate Commerce Commission's (ICC) commentary in the **Federal Register** notice published on May 12, 1980 offers an interesting perspective on the purpose of the broker transaction (emphasis added):

> The amount of the broker's fee is not regulated by the Commission. This means that a broker must engage in a bargaining process with its principals. The amount of commission that a principal agrees to pay will vary according to the benefits it perceives it will gain from the transaction. No party is obligated to deal with a broker or pays its commissions. A party may either choose to do without the brokers' services or to look for another broker who will offer the service at a lower price. In this regard, we note that the property broker industry is a highly competitive one. Our goal in regulating transactions between brokers, carriers, and shippers is to remove all unnecessary restrictions which might impede the free operation of the marketplace.''

TIA argues that 49 CFR 371.3(c) is in direct conflict with the original intent of the ICC to ensure that ''all unnecessary restrictions which might impede the free operation of the marketplace'' are removed. TIA stated, ''In today's marketplace brokers are not commissioned sales agents of motor carriers. As noted above brokers pay motor carriers regardless of the rate that the shipper pays the broker. The need to verify commissions no longer exists.''

TIA asserts that motor carrier transportation on the spot market is one of the most transparent market places in the world. Load boards, the internet, and rate quotes in person-to-person communications within the industry provide the rate transparency that was intended by 49 CFR 371.3 when commissions paid by carriers to brokers were common. Motor carriers have sufficient access to current market rates without inspecting brokers' shipment records to find out what the brokers' gross margins are on a load-by-load basis.

C. TIA Request for Regulatory Guidance Concerning Dispatch Services

TIA believes that some ''dispatch services'' are essentially unlicensed brokers that handle financial

transactions for freight transportation services but do not meet the statutory licensing or financial security requirements applicable to brokers registered with FMCSA. TIA describes dispatch services as entities that provide a service on behalf of a motor carrier, where they assist on booking loads and other services.

TIA believes the Agency should publish regulatory guidance explaining that the legal duties of a dispatch service allow them to be an agent for one motor carrier, and that anything further requires a brokerage license and compliance with the financial responsibility requirements applicable to brokers. TIA believes this is especially necessary when the dispatch service is handling payment from the shipper and then making payment to the motor carrier. According to TIA, this guidance would ultimately enable private legal action to be taken for violations, which would allow the public and the Agency both to enforce the provisions of this regulation. A copy of TIA's letter petitioning the Agency to initiate rulemaking and to issue regulatory guidance is included in the docket for this document.

D. Request for Public Comments

Petitions for rulemaking are governed by DOT regulations codified at 49 CFR 5.13 and FMCSA regulations at 49 CFR 389.31 and 389.33. While these regulations do not require FMCSA to publish a notice in the **Federal Register** seeking public comments, FMCSA believes that taking this action would provide a means of engaging stakeholders in the process for assessing the need for a rulemaking. FMCSA therefore requests public comment on TIA's petition for rulemaking to rescind 49 CFR 371.3 and the association's request that the Agency issue regulatory guidance concerning ''dispatch services.'' Commenters are encouraged to provide responses to the following questions:

1. To what extent would brokers' disclosure of the records of individual transactions to individual motor carriers under 49 CFR 371.3(c) place brokers and their shipper clients at risk of having proprietary information concerning freight descriptions, transportation rates and routes disclosed to their competitors?

2. For authorized brokers, how often do motor carriers exercise their right under 49 CFR 371.3(c) to review the record of the transaction, and are there motor carriers who make requests on such a frequent basis that they could, if working with other motor carriers, learn certain proprietary information concerning shippers' rates and routes?

3. In the absence of 49 CFR 371.3(c), what information concerning brokered transactions would authorized brokers share with the shippers and for-hire carriers?

4. To what extent do shippers engage in discussions with brokers about the rates the authorized motor carriers will be paid?

5. How often do shippers enter into negotiations about interstate transportation services with an entity that is neither an interstate motor carrier registered with FMCSA nor a broker registered with FMCSA?

6. Would the issuance of regulatory guidance concerning ''dispatch services'' provide an effective deterrent to unauthorized brokerage services, or would additional actions by FMCSA be required to address the challenges described by TIA?

7. Is there sufficient clarity in the current definitions of ''broker,'' ''bona fide agents,'' and ''brokerage or brokerage service'' under 49 CFR 371.2 to enable interested parties to identify dispatch services that are actually carrying out the functions of a registered broker and to file a complaint with FMCSA for subsequent investigation?

Issued under authority delegated in 49 CFR 1.87.

James W. Deck,

Deputy Administrator.

[FR Doc. 2020–25307 Filed 11–24–20; 8:45 am]

BILLING CODE 4910–EX–P

Notices

Federal Register

Vol. 85, No. 228

Wednesday, November 25, 2020

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of Request for Extension or Renewal of a Currently Approved Information Collection

AGENCY: Office of Assistant Secretary for Civil Rights.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Office of the Assistant Secretary for Civil Rights (OASCR) to request a renewal to an approved information collection. OASCR will use the information collected to process Respondents' program discrimination complaints conducted or assisted by USDA.

DATES: Comments on this notice must be received by January 25, 2021 to be assured of consideration.

ADDRESSES: The Office of the Assistant Secretary for Civil Rights invites interested persons to submit comments on this notice. Comments may be submitted by one of the following methods:

Federal eRulemaking Portal: This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.

Mail, including CD–ROMs, etc.: Send to U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Mailstop 9407, Washington, DC 20250.

Hand or Courier-Delivered Submittals: Deliver to 355 E Street SW, Room 7–205, Washington, DC 20024.

Instructions: All items submitted by mail or electronic mail must include the Agency name, Office of the Assistant Secretary for Civil Rights. 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.*

Docket: For access to background documents or comments received, go to the Office of the Assistant Secretary for Civil Rights at 1400 Independence Avenue SW, 507–A, Washington, DC 20250 between 8:00 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Denise A. Banks, Office of the Assistant Secretary for Civil Rights, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250, (202) 401–7654 and fax number (202) 690–1782.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the intention of the Office of the Assistant Secretary for Civil Rights to request approval for an existing collection in use with an OMB control number.

Title: USDA Program Discrimination Complaint Form.

OMB Number: OMB No. 0508–0002.

Expiration Date of Approval: December 31, 2020.

Type of Request: Extension and renewal of a currently approved information collection.

Abstract: Under 7 CFR 15.6, ''Any person who believes himself/herself or any specific class of individuals to be subjected to discrimination [in any USDA assisted program or activity] * * * may by himself/herself or by an authorized representative file * * * a written complaint.'' Under 7 CFR 15d.5, ''Any person who believes that he or she (or any specific class of individuals) has been, or is being, subjected to [discrimination in any USDA conducted program or activity] * * * may file on his or her own, or through an authorized representative, a written complaint alleging such discrimination.'' The collection of this information is an avenue by which the individual or his representative may file such a program discrimination complaint.

The requested information, which can be submitted by filling out a form or by submitting a letter, is necessary for USDA OASCR to address the alleged discriminatory action. The Respondent is asked to state his/her name, mailing address, property address (if different from mailing address), telephone number, email address (if any) and to provide a name and contact information for the Respondent's representative (if any). A brief description of who was involved with the alleged discriminatory action, what occurred and when, is requested. If the Respondent is filing the program discrimination complaint more than 180 days after the alleged discrimination occurred, the Respondent is asked to provide the reason for the delay.

Finally, the Respondent is asked to identify which bases are alleged to have motivated the discriminatory action. The form explains that laws and regulations prohibit on the bases of race, color, national origin, age, sex, gender identity (including gender expression), disability, religion, sexual orientation, marital or familial status, or because all or part of the individual's income is derived from any public assistance program, but that not all bases apply to all programs. The program discrimination complaint filing information, which is voluntarily provided by the Respondent, will be used by the staff of USDA OASCR to intake, investigate, resolve, and/or adjudicate the Respondent's complaint. The program discrimination complaint form will enable OASCR to better collect information from complainants in a timely manner, therefore, reducing delays and errors in determining USDA jurisdiction.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average one hour per response.

Respondents: Producers, applicants, and USDA customers.

Estimated Number of Respondents: 278.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 278.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3)

ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record.

Devon Westhill,

Deputy Assistant Secretary for Civil Rights.

[FR Doc. 2020–26088 Filed 11–24–20; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Forest Service

South Central Idaho Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of virtual meeting.

SUMMARY: The South Central Idaho Resource Advisory Committee (RAC) will hold a virtual meeting. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following website: *https://www.fs.usda.gov/main/sawtooth/workingtogether.*

DATES: The meeting will begin at 9:00 a.m. on Thursday, December 10, 2020.

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 with virtual 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 Jerome Office for the Sawtooth National Forest. Please call ahead at to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Julie Thomas, RAC Coordinator, by phone at 208–423–7500 or via email at *julie.thomas@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. Present project proposals; and
2. Discuss, recommend, and approve new Title II projects.

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 December 1, 2020, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Julie Thomas, RAC Coordinator, 370 American Avenue, Jerome, Idaho 83338; by email to *julie.thomas@usda.gov,* or via facsimile to 208–423–7510.

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 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 20, 2020.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2020–26069 Filed 11–24–20; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

[Docket No. RBS–20–BUSINESS–0037]

Inviting Applications for the Rural Energy for America Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of solicitation of applications.

SUMMARY: The Rural Business-Cooperative Service (the Agency) Notice of Solicitation of Applications (NOSA) is being issued prior to passage of a final appropriations act to allow potential applicants time to submit applications for financial assistance under Rural Energy for America Program (REAP) for Federal Fiscal Year (FY) 2021 and give the Agency time to process applications within the current FY. This NOSA is being issued prior to enactment of full year appropriation for FY 2021. The Agency anticipates publishing a final rule for REAP later this year which will conform in part to the OneRD Guaranteed loan provisions published in the **Federal Register** on July 14, 2020 and will outline provisions as prescribed by the Agricultural Improvement Act of 2018 (Pub. L. 115–334), (2018 Farm Bill). It is the Agency's intention that the final REAP rule will codify REAP scoring criteria as outlined in this NOSA. All REAP applications competing for FY 2021 funding will be scored according to the scoring criteria listed in this NOSA. Applicants who have already filed REAP applications for FY 2021 will be allowed to provide additional information necessary for application scoring, and the modification will not be treated as a new application nor will it alter the submission date of record as noted in 4280.110(e). The Agency will publish the amount of funding received in any continuing resolution or the final appropriations act on its website at *https://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas.* Expenses incurred in developing applications will be at the applicant's risk.

The REAP program has two types of funding assistance: (1) Renewable Energy Systems, Energy Efficiency Improvements and Energy Efficient Equipment and Systems Assistance and (2) Energy Audit and Renewable Energy Development Assistance Grants.

The Renewable Energy Systems and Energy Efficiency Improvement Assistance provides grants and guaranteed loans to agricultural producers and rural small businesses to purchase and install renewable energy systems and make energy efficiency improvements to their operations. The Energy Efficient Equipment and Systems Assistance provisions were prescribed by the 2018 Farm Bill and provide guaranteed loans only to agricultural producers to purchase and install energy efficient equipment and systems for agricultural production and

processing. Eligible renewable energy systems for REAP provide energy from: Wind, solar, renewable biomass (including anaerobic digesters and biogas), small hydro-electric, ocean, geothermal, or hydrogen derived from these renewable resources. Components and ancillary infrastructure of such renewable energy systems, such as a storage system, are also eligible.

The Energy Audit and Renewable Energy Development Assistance Grant is available to a unit of State, Tribal, or local government; instrumentality of a State, Tribal, or local government; institution of higher education; rural electric cooperative; a public power entity; or a council, as defined in 16 U.S.C. 3451. The recipient of grant funds (grantee) will establish a program to assist agricultural producers and rural small businesses with evaluating the energy efficiency and the potential to incorporate renewable energy technologies into their operations.

DATES: See under **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: The applicable USDA Rural Development Energy Coordinator for your respective State, as identified via the following link: *https://www.rd.usda.gov/files/RBS_StateEnergyCoordinators.pdf.*

For information about this Notice, please contact Deb Yocum, Business Loan and Grant Analyst, USDA Rural Development, Program Management Division. Telephone: (402) 499–1198. Email: *debra.yocum@usda.gov.*

SUPPLEMENTARY INFORMATION:

Preface

The Agency encourages applications that will support recommendations made in the Rural Prosperity Task Force report to help improve life in rural America (*www.usda.gov/ruralprosperity*). Applicants are encouraged to consider projects that provide measurable results in helping rural communities build robust and sustainable economies through strategic investments in infrastructure, partnerships, and innovation. Key strategies include:

- Achieving e-Connectivity for Rural America
- Developing the Rural Economy
- Harnessing Technological Innovation
- Supporting a Rural Workforce
- Improving Quality of Life

I. Program Description

The Rural Energy for America Program (REAP) helps agricultural producers and rural small businesses reduce energy costs and consumption and helps meet the Nation's critical energy needs. REAP has two types of funding assistance: (1) Renewable Energy Systems, Energy Efficiency Improvements and Energy Efficient Equipment and Systems Assistance and (2) Energy Audit and Renewable Energy Development Assistance Grants.

The Renewable Energy Systems and Energy Efficiency Improvements Assistance provides grants and guaranteed loans to agricultural producers and rural small businesses for renewable energy systems (including storage systems as prescribed by the 2018 Farm Bill) and energy efficiency improvements. The Energy Efficient Equipment and Systems provides guaranteed loans to agricultural producers to purchase and install energy efficient equipment and systems for agricultural production and processing. Eligible renewable energy systems for REAP provide energy from: Wind, solar, renewable biomass (including anaerobic digesters and biogas), small hydro-electric, ocean, geothermal, or hydrogen derived from these renewable resources.

The Energy Audit and Renewable Energy Development Assistance Grant is available to a unit of State, Tribal, or local government; instrumentality of a State, Tribal, or local government; institution of higher education; rural electric cooperative; a public power entity; or a council, as defined in 16 U.S.C. 3451. The grantee will establish a program to assist agricultural producers and rural small businesses with evaluating the energy efficiency and the potential to incorporate renewable energy technologies into their operations.

Applications for REAP can be submitted any time throughout the year. This Notice announces the deadlines, dates and times that applications must be received in order to be considered for REAP funds provided by the 2018 Farm Bill, and any appropriated funds that REAP may receive from the appropriation for FY 2021 for grants, guaranteed loans, and combined grants and guaranteed loans to purchase and install renewable energy systems, make energy efficiency improvements, and install energy efficient equipment and systems for agricultural production and processing; and for grants to conduct energy audits and renewable energy development assistance.

The NOSA announces the acceptance of applications under REAP for FY 2021 for grants, guaranteed loans, and combined grants and guaranteed loans for the development of renewable energy systems, energy efficiency projects, and energy efficient equipment and systems for agricultural production and processing as provided by the 2018 Farm Bill. The Notice also announces the acceptance of applications under REAP for FY 2021 for energy audit and renewable energy development assistance grants as provided by the 2018 Farm Bill.

The administrative requirements in effect at the time the application window closes for a competition will be applicable to each type of funding available under REAP and are described in 7 CFR part 4280, subpart B for grant requests and combination grant and guaranteed loan, and in 7 CFR part 5001 for guaranteed loan only requests. In addition to the other provisions of this Notice:

(1) The provisions specified in 7 CFR 4280.101 through 4280.111 apply to each funding type described in this Notice.

(2) The requirements specified in 7 CFR 4280.112 through 4280.124 apply to renewable energy system and energy efficiency improvements project grants.

(3) The requirements for guaranteed loans for renewable energy systems, energy efficiency improvements, and energy efficient equipment and system projects are specified in 7 CFR part 5001. For FY 2021, the guarantee fee rates, the annual renewal fee, the maximum percentage of guarantee and the maximum portion of guarantee authority available for a reduced guarantee fee will be published in a separate notice.

(4) The requirements specified in 7 CFR 4280.165 apply to a combined grant and guaranteed loan for renewable energy system and energy efficiency improvements projects.

(5) The requirements specified in 7 CFR 4280.186 through 4280.196 apply to energy audit and renewable energy development assistance grants.

II. Federal Award Information

A. *Federal Agency.* Rural Business-Cooperative Service.

B. *Funding Opportunity Title:* Rural Energy for America Program.

C. *Announcement Type:* Initial Notice.

D. *Catalog of Federal Domestic Assistance (CFDA) Number.* 10.868.

E. *Funds Available.* This Notice is announcing deadline times and dates for applications to be submitted for REAP funds provided by the 2018 Farm Bill and any appropriated funds that REAP may receive from the congressional enactment of a full-year appropriation for FY 2021. This Notice is being published prior to the congressional enactment of a full-year appropriation for FY 2021. The Agency

will continue to process applications received under this announcement and should REAP receive appropriated funds, these funds will be announced on the following website: *https://www.rd.usda.gov/programs-services/rural-energy-america-program-renewable-energy-systems-energy-efficiency,* and are subject to the same provisions in this Notice.

To ensure that small projects have a fair opportunity to compete for the funding and are consistent with the priorities set forth in the statute, the Agency will set-aside not less than 20 percent of the FY 2021 funds until June 30, 2021, to fund grants of $20,000 or less.

(1) *Renewable energy system and energy efficiency improvements grant funds.* There will be allocations of grant funds to each Rural Development State Office for renewable energy system and energy efficiency improvements applications. The State allocations will include an allocation for grants of $20,000 or less, which includes combination grant and guaranteed loan requests where the grant amount requested is $20,000 or less, and an allocation of grant funds that can be used to fund renewable energy system and energy efficiency improvements applications for either grants of $20,000 or less or grants of more than $20,000, as well as the grant portion of a combination grant and guaranteed loan. These funds are commonly referred to as unrestricted grant funds. The funds set-aside for grants of $20,000 or less can only be used to fund grants requesting $20,000 or less, which includes the grant portion of combination requests when applicable.

(2) *Renewable energy system, energy efficiency improvements, and energy efficient equipment and systems loan guarantee funds.* Rural Development's National Office will maintain a reserve of guaranteed loan funds. Energy efficient equipment and systems for agricultural production and processing guaranteed loans shall not exceed 15 percent of the funds available to the program.

(3) *Renewable energy system and energy efficiency improvements combined grant and guaranteed loan funds.* Funding availability for combined grant and guaranteed loan applications is outlined in paragraphs II.(C)(1) and II.(C)(2) of this Notice.

(4) *Energy audit and renewable energy development assistance grant funds.* The amount of funds available for energy audits and renewable energy development assistance in FY 2021 will be 4 percent of FY 2021 mandatory funds and will be maintained in a National Office reserve. Obligations of these funds will take place through March 30, 2021. After that date, any unobligated balances will be moved to the renewable energy budget authority account and may be utilized in any of the renewable energy system and energy efficiency improvements national competitions.

F. *Approximate Number of Awards.* The estimated number of awards is 1,000 based on the historical average grant size and the anticipated mandatory funding of $50 million for FY 2021. However, it will depend on the actual amount of funds made available and on the number of eligible applicants participating in this program.

G. *Type of Instrument.* Grant, guaranteed loan, and grant/guaranteed loan combinations.

III. Eligibility Information

The eligibility requirements for the applicant, borrower, lender, and project (as applicable) are clarified in 7 CFR part 4280 subpart B and in 7 CFR part 5001 and are summarized in this Notice. Failure to meet the eligibility criteria by the time of the competition window will preclude the application from competing until all eligibility criteria have been met.

The Agriculture Improvement Act of 2018, Public Law 115–334, (the 2018 Farm Bill) required USDA to promulgate regulations and guidelines to establish and administer a program for the production of hemp in the United States. Prior to the 2018 Farm Bill, state departments of agriculture and institutions of higher learning were permitted to produce hemp as part of a pilot program for research purposes pursuant to the Agricultural Act of 2014, Public Law 113–79, (the 2014 Farm Bill). The 2018 Farm Bill extended this 2014 Farm Bill pilot program authority until October 31, 2020.

In determining eligibility for the applicant, project or use of funds, any project applying for funding under the REAP Program and proposing to produce, procure, supply or market any component of the hemp plant or hemp related by-products, or provide technical assistance related to such products, must have a valid license from an approved State, Tribal or Federal plan pursuant to Section 10113 of the 2018 Farm Bill, be in compliance with regulations published by the Agricultural Marketing Service at 7 CFR part 990, and meet any applicable FDA and DEA regulatory requirements. Verification of valid Hemp licenses will occur prior to award. In addition, all projects proposing to use biomass feedstock from any part of the hemp plant must demonstrate assurance of an adequate supply of the feedstock.

Given the upcoming expiration of the 2014 Farm Bill authority as well as the absence of Federal oversight or regulations governing the 2014 Farm Bill pilot program, Rural Development will not award funds to any project proposing to produce, procure, supply or market any component of the hemp plant or hemp related by-products, or provide technical assistance related to such products, produced under 2014 Farm Bill authority.

A. *Eligible Applicants.* This solicitation is for applications from agricultural producers and rural small businesses for grants or guaranteed loans, or a combination grant and guaranteed loan, for the purpose of purchasing and installing renewable energy systems and energy efficiency improvements, and for guaranteed loans for the purchase and installation of energy efficient equipment and systems for agricultural production and processing.

This solicitation is also for applications for Energy Audit or Renewable Energy Development Assistance grants from units of State, Tribal, or local government; instrumentalities of a State, Tribal, or local government; institutions of higher education; rural electric cooperatives; public power entities; and councils, as defined in 16 U.S.C. 3451, which serve agricultural producers and rural small businesses.

To be eligible for the grant portion of the program, an applicant must meet the requirements specified in 7 CFR 4280.110 and 7 CFR 4280.112, or 7 CFR 4280.186, as applicable.

To be eligible for the guaranteed loan portion of the program, a borrower must meet the requirements specified in 7 CFR 5001.126.

B. *Eligible Lenders and Borrowers.* To be eligible for the guaranteed loan portion of the program, lenders and borrowers must meet the eligibility requirements in 7 CFR 5001.126 and 5001.130, as applicable.

C. *Eligible Projects.* To be eligible for this program, a project must meet the eligibility requirements specified in 7 CFR 4280.113, 7 CFR 4280.128, and 7 CFR 4280.187, as applicable or 7 CFR 5001.102 and 7 CFR 5001.106 through 5001.108, as applicable.

D. *Cost Sharing or Matching.* The 2018 Farm Bill mandates the maximum percentages of funding that REAP can provide. Additional clarification is provided in paragraphs IV.E. (1) through (3) of this Notice.

(1) *Renewable energy systems, energy efficiency improvements, and energy*

efficient equipment and systems for agricultural production and processing funding. Requests for guaranteed loan and combined grant and guaranteed loan will not exceed 75 percent of total eligible project costs, with any Federal grant portion not to exceed 25 percent of total eligible project costs, whether the grant is part of a combination request or is a grant-only. Energy efficient equipment and systems for agricultural production and processing is limited to only guaranteed loan funding.

(2) *Energy audit and renewable energy development funds.* Recipients of energy audit grants must require the agricultural producer or rural small business being audited to pay at least 25 percent of the cost of the energy audit. These funds should be accounted for in the project budget submitted with the application. The Agency recommended practice for on farm energy audits, audits for agricultural producers, ranchers, and farmers is the American Society of Agricultural and Biological Engineers S612 Level II audit. This audit conforms to program standards used by the Natural Resource Conservation Service. As per 7 CFR 4280.110(a), an applicant who has received one or more grants under this program must have made satisfactory progress towards completion of any previously funded projects before being considered for subsequent funding. The Agency interprets satisfactory progress as at least 50 percent of previous awards being expended by January 31, 2021. Those who cannot meet this requirement will be determined to be a ''risk'' pursuant to 2 CFR 200.205 and may be determined in-eligible for a subsequent grant or have special conditions imposed.

E. *Other.* Ineligible project costs are defined at 7 CFR 4280.114 (d), 7 CFR 4280.129(f), and 7 CFR 4280.188(c), as applicable and 7 CFR 5001.115 and 7 CFR 5001.119, as applicable.

The U.S. Department of Agriculture Departmental Regulations and Laws that contain other compliance requirements are referenced in paragraphs IV.F and VI.B.(1) through (3) of this Notice. Applicants who have been found to be in violation of applicable Federal statutes will be ineligible.

IV. Application and Submission Information

A. *Address to Request Application Package.* Application materials may be obtained by contacting one of Rural Development's Energy Coordinators, as identified via the following link: *https://www.rd.usda.gov/files/RBS_StateEnergyCoordinators.pdf.* In addition, for grant applications, applicants may obtain electronic grant applications for REAP from *www.grants.gov.*

B. *Content and Form of Application Submission.* Applicants seeking to participate in this program must submit applications in accordance with this Notice, 7 CFR part 4280, subpart B and 7 CFR part 5001, as applicable. Applicants must submit complete applications by the dates identified in Section IV.C., of this Notice, containing all parts necessary for the Agency to determine applicant and project eligibility, to score the application, and to conduct the technical evaluation, as applicable, in order to be considered.

(1) *Renewable energy system and energy efficiency improvements grant application.*

(a) Information for the required content of a grant application to be considered complete is found in 7 CFR part 4280, subpart B.

(i) Grant applications for renewable energy systems and energy efficiency improvements projects with total project costs of $80,000 or less must provide information required by 7 CFR 4280.119.

(ii) Grant applications for renewable energy systems and energy efficiency improvements projects with total project costs of $200,000 or less, but more than $80,000, must provide information required by 7 CFR 4280.118.

(iii) Grant applications for renewable energy systems and energy efficiency improvements projects with total project costs of greater than $200,000 must provide information required by 7 CFR 4280.117.

(iv) Grant applications for energy audits or renewable energy development assistance grant applications must provide information required by 7 CFR 4280.190.

(b) All grant applications must be submitted as (i) hard copy (ii) electronically to the appropriate Rural Development ''Energy Coordinator in the State in which the applicant's proposed project is located, or (iii) via the Government-wide *www.grants.gov* website.

(i) Applicants must submit one original, hardcopy or electronic, to the appropriate Rural Development Energy Coordinator in the State in which the applicant's proposed project is located. A list of USDA Rural Development Energy Coordinators is available via the following link: *https://www.rd.usda.gov/files/RBS_StateEnergyCoordinators.pdf.*

(ii) Applicants submitting a grant application to the Agency via the *www.grants.gov* website will find information about submitting an application electronically through the website, and may download a copy of the application package to complete it off line, upload and submit the completed application, via *www.grants.gov.* After electronically submitting an application through the website, the applicant will receive an automated acknowledgement from *www.grants.gov* that contains a *www.grants.gov* tracking number. USDA Rural Development strongly recommends that applicants do not wait until the application deadline date to begin the application process through *www.grants.gov.*

(c) After successful applicants are notified of the intent to make a Federal award, applicants must meet the requirements of 7 CFR 4280.122 (a) through (h) for the financial assistance agreement to be executed.

(2) *Renewable energy system and energy efficiency improvements guaranteed loan application.*

(a) Information for the content required for a guaranteed loan application to be considered complete is found at 7 CFR 5001.303 and 5001.307.

(b) All guaranteed loan applications must be submitted either as hard copy or electronically to the appropriate Rural Development Energy Coordinator in the State in which the applicant's proposed project is located. A list of USDA Rural Development Energy Coordinators is available via the following link: *https://www.rd.usda.gov/files/RBS_StateEnergyCoordinators.pdf.*

(c) After successful applicants are notified of the intent to make a Federal award, borrowers must meet the conditions prior to issuance of loan note guarantee as outlined in 7 CFR 5001.452.

(3) *Renewable energy system and energy efficiency improvements combined guaranteed loan and grant application.*

(a) Information for the content required for a combined guaranteed loan and grant application to be considered complete is found at 7 CFR 4280.165(c), 7 CFR 5001.301 through 5001.303, and 7 CFR 5001.307.

(b) All combined guaranteed loan and grant applications must be submitted either as hard copy or electronically to the appropriate Rural Development Energy Coordinator in the State in which the applicant's proposed project is located. A list of USDA Rural Development Energy Coordinators is available via the following link: *www.rd.usda.gov/files/RBS_StateEnergyCoordinators.pdf.*

(c) After successful applicants are notified of the intent to make a Federal award, applicants must meet the requirements, including the requisite forms, specified in 7 CFR 4280.117, 4280.118, 4280.119, 4280.137, and 7 CFR 5001.451 through 5001.452, as applicable, for the issuance of a financial assistance agreement and loan note guarantee.

(4) *Energy audits or renewable development assistance grant applications.*

(a) Grant applications for energy audits or renewable energy development assistance must provide the information required by 7 CFR 4280.190 to be considered a complete application.

(b) All energy audits or renewable development assistance grant applications must be submitted either as hard copy or electronically to the appropriate Rural Development Energy Coordinator in the State in which the applicant's proposed project is located, or via the Government-wide *www.grants.gov* website.

(c) After successful applicants are notified of the intent to make a Federal award, applicants must meet the requirements of 7 CFR 4280.195 for the financial assistance agreement to be executed.

5. *Dun and Bradstreet Universal Numbering System (DUNS) Number and System for Award Management (SAM).*

To be eligible (unless you are excepted under 2 CFR 25.110(b), or (d)), you are required to:

(a) Provide a valid DUNS number in your application, which can be obtained at no cost via a toll-free request line at (866) 705–5711;

(b) Register in SAM before submitting your application. You may register in SAM at no cost at *https://www.sam.gov/SAM.* You must provide your SAM CAGE Code and expiration date. When registering in SAM, you must indicate you are applying for a Federal financial assistance project or program or are currently the recipient of funding under any Federal financial assistance project or program, and

(c) The SAM registration must remain active with current information at all times while RBCS is considering an application or while a Federal grant award is active. To maintain the registration in the SAM database the applicant must review and update the information in the SAM database annually from date of initial registration or from the date of the last update. The applicant must ensure that the information in the database is current, accurate, and complete. Applicants must ensure they complete the Financial Assistance General Certifications and Representations in SAM.

If you have not fully complied with all applicable DUNS and SAM requirements, the Agency may determine that the applicant is not qualified to receive a Federal award and the Agency may use that determination as a basis for making an award to another applicant. The Agency can accept an application, hardcopy or electronic, without a DUNS number or an active SAM registration. However, the DUNS number and active SAM registration must be completed before an award is made.

C. *Submission Dates and Times.* Grant applications, guaranteed loan-only applications, and combined grant and guaranteed loan applications for financial assistance provided by the 2018 Farm Bill, and for appropriated funds that REAP may receive from the appropriation for FY 2021, may be submitted at any time on an ongoing basis. When an application window closes, the next application window opens on the following day. This Notice establishes the deadline dates for the applications to be received in order to be considered for funding. If an application window falls on a Saturday, Sunday, or Federal holiday, the application package is due the next business day. An application received after these dates will be considered with other applications received in the next application window. Unsuccessful applications are addressed in section V, Application Review Information. In order to be considered for funds under this Notice, complete applications must be received by the appropriate USDA Rural Development State Office or via *www.grants.gov.* The deadline for applications to be received to be considered for funding in FY 2021 are outlined in the following paragraphs and also summarized in a table at the end of this section:

(1) *Renewable energy system and energy efficiency improvements grant applications and combination grant and guaranteed loan applications.* As per RD Instruction 4280–B, applications are accepted year-round. Application deadlines for FY 2021 grant funds are:

(a) For applicants requesting a grant only of $20,000 or less or a combination grant and guaranteed loan where the grant request is $20,000 or less, that wish to have their grant application compete for the ''Grants of $20,000 or less set aside,'' complete applications must be received no later than

(i) 4:30 p.m. local time on October 31, 2020, or

(ii) 4:30 p.m. local time on March 31, 2021.

(b) For applicants requesting a grant only of over $20,000 (unrestricted) or a combination grant and guaranteed loan where the grant request is greater than $20,000, complete applications must be received no later than 4:30 p.m. local time on March 31, 2021.

(2) *Renewable energy system and energy efficiency improvements guaranteed loan-only applications.* Eligible applications will be reviewed and processed when received for periodic competitions.

(3) *Energy audits and renewable energy development assistance grant applications.* Applications must be received no later than 4:30 p.m. local time on January 31, 2021.

Application	Application window opening dates	Application window closing dates
Renewable Energy Systems and Energy Efficiency Improvements Grants ($20,000 or less grant only request or a combination grant and guaranteed loan where the grant request is $20,000 or less competing for up to approximately 50 percent of the set aside funds).	April 16, 2020	October 31, 2020
Renewable Energy Systems and Energy Efficiency Improvements Grants ($20,000 or less grant only request or a combination grant and guaranteed loan where the grant request is $20,000 or less competing for the remaining set aside funds).	November 1, 2020	March 31, 2021 *
Renewable Energy Systems and Energy Efficiency Improvements Grants (Unrestricted grants, including combination grant and guaranteed loan where the grant request is greater than $20,000).	April 16, 2020	March 31, 2021 *

Application	Application window opening dates	Application window closing dates
Renewable Energy Systems, Energy Efficiency Improvements, and Energy Efficient Equipment and Systems Guaranteed Loans.	Continuous application cycle	Continuous application cycle.
Energy Audit and Renewable Energy Development Assistance Grants.	February 1, 2020	January 31, 2021

* Applications received after this date will be considered for the next funding cycle in the subsequent FY.

D. *Intergovernmental Review.* REAP is not subject to Executive Order 12372, Intergovernmental Review of Federal Programs.

E. *Funding Restrictions.* The following funding limitations apply to applications submitted under this Notice.

(1) *Renewable energy system and energy efficiency improvements projects.*

(a) Applicants can be awarded only one renewable energy system grant and one energy efficiency improvement grant in FY 2021. For the purposes of this Notice, the maximum amount of grant assistance to an entity will not exceed $750,000 for FY 2021 based on the total amount of the renewable energy system, and energy efficiency improvements grants awarded to an entity under REAP.

(b) For renewable energy system grants, the minimum grant is $2,500 and the maximum is $500,000. For energy efficiency improvements grants, the minimum grant is $1,500 and the maximum grant is $250,000.

(c) For renewable energy system and energy efficiency improvements loan guarantees, the minimum REAP guaranteed loan amount is $5,000 and the maximum amount of a guaranteed loan to be provided to a borrower is $25 million.

(d) Renewable energy system and energy efficiency improvements guaranteed loan and grant combination applications. Paragraphs IV.E.(1)(b) and (c) of this Notice contain the applicable maximum amounts and minimum amounts for grants and guaranteed loans. Requests for guaranteed loan and combined grant and guaranteed loan will not exceed 75 percent of total eligible project costs, with any Federal grant portion not to exceed 25 percent of the total eligible project costs, whether the grant is part of a combination request or is a grant-only.

(2) *Energy audit and renewable energy development assistance grants.*

(a) Applicants may submit only one energy audit grant application and one renewable energy development assistance grant application for FY 2021 funds. Separate applications must be submitted for energy audit and renewable energy development assistance per 7 CFR 4280.190(a).

(b) The maximum aggregate amount of energy audit and renewable energy development assistance grants awarded to any one recipient under this Notice cannot exceed $100,000 for FY 2021.

(c) The 2018 Farm Bill mandates that the recipient of a grant that conducts an energy audit for an agricultural producer or a rural small business must require the agricultural producer or rural small business to pay at least 25 percent of the cost of the energy audit, which shall be retained by the eligible entity for the cost of the audit.

F. *Other Submission Requirements.*

(1) *Environmental information.* For the Agency to consider an application, the application must include all environmental review documents with supporting documentation in accordance with 7 CFR part 1970. Any required environmental review must be completed prior to obligation of funds or the approval of the application. Applicants are advised to contact the Agency to determine environmental requirements as soon as practicable to ensure adequate review time.

(2) *Transparency Act Reporting.* All recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive compensation in accordance with 2 CFR part 170. If an applicant does not have an exception under 2 CFR 170.110(b), the applicant must then ensure that they have the necessary processes and systems in place to comply with the reporting requirements to receive funding.

(3) *Race, ethnicity, and gender.* The Agency is requesting that each applicant provide race, ethnicity, and gender information about the applicant. The information will allow the Agency to evaluate its outreach efforts to under-served and under-represented populations. Applicants are encouraged to furnish this information with their application but are not required to do so. An applicant's eligibility or the likelihood of receiving an award will not be impacted by furnishing or not furnishing this information.

(4) *Transfer of obligations.* REAP grant obligations will be serviced in accordance with 7 CFR 4280.123 and 7 CFR 4280.196 as applicable. Transfer of obligations will no longer be considered by the Agency.

V. Application Review Information

A. *Criteria.* In accordance with 7 CFR part 4280 subpart B, the application dates published in Section IV.C. of this Notice identify the times and dates by which complete applications must be received to compete for the funds available.

(1) *Renewable energy systems and energy efficiency improvements grant applications.* Complete renewable energy systems and energy efficiency improvements grant applications are eligible to compete in competitions as described in 7 CFR 4280.121.

(a) Complete renewable energy systems and energy efficiency improvements grant applications requesting $20,000 or less are eligible to compete in up to five competitions within the FY as described in 7 CFR 4280.121.

(b) If the application remains unfunded after the final National Office competition for the FY it must be withdrawn. Pursuant to the publication of this announcement, all complete and eligible applications will be limited to competing in the FY that the application was received, versus rolling into the following FY, which may result in less than five total competitions.

(c) Complete renewable energy systems and energy efficiency improvements grant applications, regardless of the amount of funding requested, are eligible to compete in two competitions during a FY—a State competition and a National competition as described in 7 CFR 4280.121 (a).

(2) *Renewable energy systems and energy efficiency improvements guaranteed loan applications.* Complete guaranteed loan applications are eligible for periodic competitions as described in 7 CFR 5001.315.

(3) *Renewable energy systems and energy efficiency improvements combined guaranteed loan and grant applications.* Complete combined guaranteed loan and grant applications with requests of $20,000 or less are eligible to compete in up to five competitions within the FY as described in 7 CFR 4280.121(b). Combination

applications where the grant request is greater than $20,000, are eligible to compete in two competitions during a FY—a State competition and a National competition as described in 7 CFR 4280.121(a).

(4) *Energy audit and renewable energy development assistance grant applications.* Complete energy audit and renewable energy development assistance grants applications are eligible to compete in one national competition per FY as described in 7 CFR 4280.193.

B. *Review and Selection Process.* All complete applications will be scored in accordance with 7 CFR part 4280 subpart B and this section of the Notice. Specifically, it is the intent of the Agency that sections C through K below replace scoring criteria text found in 7 CFR 4280.120, and that the final REAP rule will codify REAP scoring criteria as outlined in this NOSA.

(1) *Renewable energy systems and energy efficiency improvements grant applications.* Renewable energy system and energy efficiency grant applications will be scored in accordance with 7 CFR 4280.120 (renumbered as 4280.121 in the final REAP rule) and sections C through K of this Notice and selections will be made in accordance with 7 CFR 4280.121. For grant applications requesting greater than $250,000 for renewable energy systems, and/or greater than $125,000 for energy efficiency improvements a maximum score of 90 points is possible. For grant applications requesting $250,000 or less for renewable energy systems and/or $125,000 or less for energy efficiency improvements, an additional 10 points may be awarded such that a maximum score of 100 points is possible. Due to the competitive nature of this program, applications are competed based on submittal date. The submittal date is the date the Agency receives a complete application. The complete application date is the date the Agency receives the last piece of information that allows the Agency to determine eligibility and to score, rank, and compete the application for funding. If a complete application is on file as of the date of this publication, the applicant will be allowed to provide additional information necessary to address new application scoring criteria requirements without creating a new complete application date.

(a) Funds for renewable energy system and energy efficiency improvements grants of $20,000 or less will be allocated to the States. Eligible applications must be submitted by March 31, 2021, in order to be considered for these set-aside funds. Approximately 50 percent of these funds will be made available for those complete applications that the Agency receives by October 31, 2020, and approximately 50 percent of the funds for those complete applications that the Agency receives by March 31, 2021. All unused State allocated funds for grants of $20,000 or less will be pooled to the National Office.

(b) Eligible applications received by March 31, 2021, for renewable energy system and energy efficiency improvements grants of $20,000 or less, that are not funded by State allocations can be submitted to the National Office to compete against grant applications of $20,000 or less from other States at a national competition. Obligations of these funds will take place prior to June 30, 2021.

(c) Eligible applications for renewable energy system and energy efficiency improvements, regardless of the amount of the funding request, received by March 31, 2021, can compete for unrestricted grant funds. Unrestricted grant funds will be allocated to the States. All unused State allocated unrestricted grant funds will be pooled to the National Office.

(d) Eligible renewable energy system and energy efficiency improvements unrestricted grant applications received by March 31, 2021 that are not funded by State allocations can be submitted to the National Office to compete against unrestricted grant applications from other States at a national competition. Unfunded grants of $20,000 or less may also compete in this national competition.

(2) *Renewable energy systems, energy efficiency improvements, and energy efficient equipment and systems for agricultural production and processing guaranteed loan applications.* Renewable energy systems, energy efficiency improvements, and energy efficient equipment and systems for agricultural production and processing guaranteed loan applications will be scored in accordance with 7 CFR 5001.319, and selections will be made in accordance with 7 CFR 5001.315. The National Office will maintain a reserve for renewable energy system, energy efficiency improvements, and energy efficient equipment and systems for agricultural production and processing guaranteed loan funds. Applications will be reviewed and processed when received. Those applications that meet the Agency's underwriting requirements and are credit worthy will compete in national competitions for guaranteed loan funds periodically. If funds remain after the final guaranteed loan-only national competition, the Agency may elect to utilize budget authority to fund additional grant-only applications.

(3) *Renewable energy systems and energy efficiency improvements combined grant and guaranteed loan applications.* Renewable energy systems and energy efficiency improvements combined grant and guaranteed loan applications will be scored in accordance with 7 CFR 4280.120 and selections will be made in accordance with 7 CFR 4280.121. For combined grant and guaranteed loan applications requesting grant funds of $250,000 or less for renewable energy systems, or $125,000 or less for energy efficiency improvements, a maximum score of 100 points is possible. For combined grant and guaranteed loan applications requesting grant funds of more than $250,000 for renewable energy systems, or more than $125,000 for energy efficiency improvements, a maximum score of 90 points is possible.

Renewable energy system and energy efficiency improvements combined grant and guaranteed loan applications will compete with grant-only applications for grant funds allocated to their State. If the application is ranked high enough to receive State allocated grant funds, the State will request funding for the guaranteed loan portion of any combined grant and guaranteed loan applications from the National Office guaranteed loan reserve, and no further competition will be required. All unfunded eligible applications for combined grant and guaranteed loan applications that are received by March 31, 2021, and that are not funded by State allocations can be submitted to the National Office to compete against other grant and combined grant and guaranteed loan applications from other States at a final national competition.

(4) *Energy audit and renewable energy development assistance grant applications.* Energy audit and renewable energy development assistance grants will be scored in accordance with 7 CFR 4280.192 and selections will be made in accordance with 7 CFR 4280.193. Energy audit and renewable energy development assistance grant funds will be maintained in a reserve at the National Office. Applications received by January 31, 2021, will compete for funding at a national competition, based on the scoring criteria established under 7 CFR 4280.192. If funds remain after the energy audit and renewable energy development assistance national competition, the Agency may elect to transfer budget authority to fund additional renewable energy system and energy efficiency improvements grants

from the National Office reserve after pooling.

C. *Scoring Criteria.*

(1) *Environmental Benefits.* A maximum of 5 points will be awarded for this criterion based on whether the applicant has documented in the application that the proposed project will have a positive effect on resource conservation (*e.g.,* water, soil, forest), public health (*e.g.,* potable water, air quality), and the environment (*e.g.,* compliance with EPA's renewable fuel standard(s), greenhouse gases, emissions, particulate matter). If the project will have a positive impact on:

(a) Any one of the three impact areas, 1 point will be awarded.

(b) Any two of the three impact areas, 3 points will be awarded.

(c) All three impact areas, 5 points will be awarded.

(2) *Energy generated, replaced, or saved.* A maximum of 25 points will be awarded for this criterion. Applications for RES and EEI projects are eligible for points under both paragraphs (a) and (b) below.

(a) *Quantity of energy generated or saved per REAP grant dollar requested.* A maximum of 10 points will be awarded for this sub-criterion. For RES and EEI projects, points will be awarded for either the amount of renewable energy generation per grant dollar requested, which includes those projects that are replacing energy usage with a renewable source; or the actual annual average energy savings over the most recent 12, 24, 36, 48, or 60 consecutive months of operation per grant dollar requested. Points will not be awarded for more than one category.

(i) *RES.* The quantity of energy generated or replaced per grant dollar requested will be determined by dividing the projected total annual energy generated or replaced by the RES or RES retrofit (minus energy for residential use), which will be converted to BTUs, by the grant dollars requested. Points will be awarded based on the annual amount of energy generated or replaced (minus energy for residential use) per grant dollar requested for the proposed RES project. The Agency will award up to 10 points as determined using paragraphs (2)(a)(i)(A) and (B) of this section. If the annual amount of energy generated or replaced per grant dollar requested is:

(A) 50,000 BTUs average annual energy generated or replaced per grant dollar requested or higher, 10 points will be awarded; or

(B) Less than 50,000 BTUs annual energy generated or replaced per grant dollar requested, points will be awarded according to the results of taking the energy generated or replaced per grant dollar requested/50,000 × 10 points. The points awarded are rounded to the nearest hundredth of a point.

(ii) *EEI.* The Agency will award up to 10 points under this sub-criterion based on the average annual energy saved per grant dollar requested for the EEI project. The Agency will award up to 10 points as determined under paragraph (2)(a)(ii)(A) and (B) of this section. If the average annual energy saved per grant dollar requested is:

(A) 50,000 BTUs average annual energy saved per grant dollar requested or higher, 10 points will be awarded; or

(B) Less than 50,000 BTUs average annual energy saved per grant dollar requested, points will be awarded according to the result of taking the energy saved per grant dollar requested/ 50,000 × 10 points. The points awarded are rounded to the nearest hundredth of a point.

(b) *Scoring Criteria Quantity of energy replaced, generated, or saved.* A maximum of 15 points will be awarded for this sub-criterion. Points will be awarded on the basis of whether the project is for energy replacement, energy savings, or energy generation; points will not be awarded for more than one category.

(i) *Energy replacement.* The Agency will award points under this sub-criterion for a RES project based on the amount of energy replaced by the project compared to the amount of energy used by the applicable process(es) over a 12-month period. If the estimated energy produced is more than 150 percent of the energy used by the applicable process(es), the project will be scored as an energy generation project under paragraph (2)(b)(ii) of this section.

(A) Documentation for energy replacement. For a RES project to qualify as energy replacement, the applicant must provide documentation in its application on prior energy use incurred by the applicant. Proposed energy use, such as that attributed to an expansion, is not considered in the replacement calculation. For a RES project involving new construction and being installed to serve the new facility, the project can be classified as energy replacement only if the applicant can document prior energy use from a facility that is within plus or minus 10 percent of the size of the facility it is replacing. The estimated quantities of energy must be converted to either BTUs, watts, or similar energy equivalents to facilitate scoring.

(B) Calculation. Energy replacement is determined by dividing the quantity of renewable energy that the RES project is estimated would have been generated if it were in place over the most recent 12-month period by the quantity of energy actually consumed over the same period by the applicable energy process(es) that is(are) consuming energy.

(C) *Awarding of points.* Using the results from paragraph (2)(b)(i)(B) of this section, if the percentage of energy replacement is:

(1) Greater than 50 percent, 15 points will be awarded;

(2) Greater than 25 percent, but equal to or less than 50 percent, 10 points will be awarded; or

(3) Equal to or less than 25 percent, 5 points will be awarded.

(ii) *Energy generation.* If the proposed RES is intended for production of energy or is a proposed retrofitting of an existing RES which increases the amount of energy generated, the Agency will award 10 points.

(iii) *Energy saved.* The Agency will award up to 15 points under this sub-criterion for an EEI project based on the percentage of estimated energy saved by the installation of the project as determined by the projections in the applicable energy assessment or energy audit. If the estimated energy expected to be saved over the same period used in the energy assessment or energy audit, as applicable, will be:

(A) 50 percent or greater, 15 points will be awarded;

(B) 35 percent up to, but not including 50 percent, 10 points will be awarded;

(C) 20 percent up to, but not including 35 percent, 5 points will be awarded; or

(D) Less than 20 percent, no points will be awarded.

(c) *Scoring Criteria Commitment of funds.* A maximum of 15 points will be awarded for this criterion based on the percentage of written commitment an applicant has from its fund sources that are documented with a complete application.

(i) *Calculation.* The percentage of written commitment is calculated as follows: Percentage of written commitment = total amount of funds for which written commitments have been submitted with the application/total amount of matching funds and other funds required.

(ii) *Awarding of points.* Using the result from paragraph (E)(1) of this section, the Agency will award points as shown in paragraphs (E)(2)(i) through (iii) of this section.

(A) If the percentage of written commitments is 100 percent of the matching funds, 15 points will be awarded.

(B) If the percentage of written commitments is less than 100 percent, but more than 50 percent, points will be

awarded as follows: ((Percentage of written commitments − 50 percent)/(50 percent)) × 15 points, where points awarded are rounded to the nearest hundredth of a point.

(C) If the percentage of written commitments is 50 percent or less, no points will be awarded.

(d) *Scoring Criteria Previous grantees and borrowers.* A maximum of 15 points will be awarded for this criterion based on whether the applicant has received and accepted a REAP grant award or guaranteed loan commitment under 7 CFR part 4280 of this title or a guaranteed loan commitment under either this part or 7 CFR part 5001 of this title.

(i) If the applicant has never received and accepted a grant award or a guaranteed loan commitment under either this part or 7 CFR part 5001 of this title, 15 points will be awarded.

(ii) If the applicant has not received and accepted a grant award or guaranteed loan commitment under this subpart, or a guaranteed loan commitment under 7 CFR part 5001 of this title within the 2 previous Federal fiscal years, 10 points will be awarded.

(iii) If the applicant has received a grant award or guaranteed loan commitment under this subpart, or a guaranteed loan commitment under 7 CFR part 5001 of this title within the 2 previous Federal fiscal years, no points will be awarded.

(e) *Scoring Criteria Existing business.* A maximum of 5 points will be awarded for an existing agricultural producer business or rural small business that meets the definition of existing business in 7 CFR 5001.3 and noted below.

Existing business means a business that has been in operation for at least 1 full year. The following will be treated as existing businesses provided there is not a significant change in operations of the existing business: Mergers by an existing business with a new or existing business, a change in the business name, or a new business and an existing business applying as co-applicants.

(f) *Scoring Criteria Simple payback.* A maximum of 15 points will be awarded for this criterion based on the simple payback of the project as defined in 7 CFR 5001.3 and as described below. Points will be awarded for either RES or EEI; points will not be awarded for more than one category.

The estimated simple payback of a project funded under this part as calculated using paragraphs (i) or (ii), as applicable, of this definition.

(i) EEI projects simple payback = (total project costs) ÷ (dollar value of energy saved).

(A) Energy saved will be determined by subtracting the projected energy (determined by the method in paragraph (i)(*A*)(2) of this definition) to be consumed from the historical energy consumed (determined by the method in paragraph (i)(*A*)(1) of this definition), and converting the result to a monetary value using a constant value or price of energy (determined by the method in paragraph (i)(*A*)(3) of this definition).

(1) Actual energy used in the original building and/or equipment, as applicable, prior to the EEI project, must be based on the actual average annual total energy used in British thermal units (BTU) over the most recent 12, 24, 36, 48, or 60 consecutive months of operation. Attach utility bills to document applicant entity's historical energy consumption quantity.

(*2*) Projected energy use if the proposed EEI project had been in place for the original building and/or equipment, as applicable, for the same time period used to determine that actual energy use under paragraph (i)(*A*)(1) of this definition.

(*3*) Value or price of energy must be the actual average price paid over the same time period used to calculate the actual energy used under paragraph (i)(*A*)(1) of this definition. When calculating the actual average price of energy, only include energy charges directly reduced by the unit of energy being replaced or saved. Attach utility bills to document applicant entity's average price of energy.

(*B*) The EEI projects simple payback calculation does not allow applicants to monetize EEI benefits other than the dollar amount of the energy savings the agricultural producer or rural small business realizes as a result of the improvement.

(ii) RES projects simple payback = (total project costs) ÷ (dollar value of energy units replaced, credited, sold, or used and fair market value of byproducts as applicable in a typical year).

(*A*) Value of energy replaced will be calculated based on the applicant entity's historical energy consumption with actual average price paid for the energy replaced, following the methodology outlined in paragraph (i)(*A*) of this definition.

Attach utility bills to document applicant entity's historical energy consumption quantity and actual average price of energy.

(*B*) Value of energy credited or sold will be calculated based on the amount of energy units to be credited or sold at the proposed rate per unit, as documented in utility net metering or crediting policies and/or a power purchase agreement. Attach utility net metering or crediting policies and/or a power purchase agreement to document energy quantity and proposed rate for energy credited or sold.

(*C*) If proposed energy will be used in a new facility, value of energy used will be calculated based on the amount of energy units to be used at the documented price per unit of conventional fuel alternative. Attach documentation of market price per unit of conventional fuel alternative.

(*D*) Value of byproducts produced by and used in the project or related enterprises should be documented at the fair market value to be received for the byproducts in a typical year. Attach documentation of market value price to be received for byproducts and documentation to support byproduct sales or direct use.

(*E*) The RES projects simple payback calculation does not include any one-time benefits such as but not limited to construction and investment-related benefits, nor credits which do not provide annual income to the project, such as tax credits.

(iii) *RES.* If the simple payback of the proposed project is:

(*A*) Less than 10 years, 15 points will be awarded;

(*B*) 10 years up to but not including 15 years, 10 points will be awarded;

(*C*) 15 years up to and including 25 years, 5 points will be awarded; or

(*D*) Longer than 25 years, no points will be awarded.

(iv) *EEI.* If the simple payback of the proposed project is:

(*A*) Less than 4 years, 15 points will be awarded;

(*B*) 4 years up to but not including 8 years, 10 points will be awarded;

(*C*) 8 years up to and including 12 years, 5 points will be awarded; or

(*D*) Longer than 12 years, no points will be awarded.

(g) *Scoring Criteria Size of request.* For grant applications requesting less than $250,000 for RES, or less than $125,000 for EEI, an additional 10 points may be awarded such that a maximum score of 100 points is possible. All other applications will have a maximum possible score of 90 points.

(h) *Scoring Criteria Size of Agricultural Producer or Rural Small Business.* In alignment with the October 21, 2017 Report to the President of the United States from the Task Force on Agriculture and Rural Prosperity, it is RBCS's intent that the criterion noted in 7 CFR 4280.120 (d) which allows for a maximum of 10 points to be awarded based on the size of the Applicant's agricultural operation or business

concern, as applicable, compared to the SBA Small Business size standards categorized by NAICS found in 13 CFR 121.201, be removed for applications for renewable energy systems or energy efficiency improvements as part of the forthcoming REAP rule, that should be in effect at the time funding decisions will be made.

(i) *Scoring Criteria State Director and Administrator Points.* The criterion noted in 7 CFR 4280.120(g) allows for the State Director and the Administrator to take into consideration paragraphs (i) through (vi) below in the awarding of up to 10 points for eligible renewable energy systems and energy efficiency improvement grant applications submitted in FY 2021:

(i) May allow for applications for an under-represented technology to receive additional points.

(ii) May allow for applications that help achieve geographic diversity to receive additional points. This may include priority points for smaller grant requests which enhances geographic diversity.

(iii) May allow for applicants who are members of unserved or under-served populations to receive additional points if one of the following criteria are met:

(*A*) Owned by a veteran, including but not limited to individuals as sole proprietors, members, partners, stockholders, etc., of not less than 20 percent. In order to receive points, applicants must provide a statement in their applications to indicate that owners of the project have veteran status; or

(*B*) Owned by a member of a socially-disadvantaged group, which are groups whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. In order to receive points, the application must include a statement to indicate that the owners of the project are members of a socially-disadvantaged group.

(iv) May allow for applications that further a Presidential initiative, or a Secretary of Agriculture priority.

(v) The proposed project is located in a Federally declared disaster area. Declarations must be within the last 2 calendar years.

(vi) The proposed project is located in an area where 20 percent or more of its population is living in poverty, as defined by the United States Census Bureau, is an underserved community(ies) or has experienced long-term population decline, or loss of employment.

D. *Other Submission Requirements.* Grant-only applications, guaranteed loan-only applications, and combined grant and guaranteed loan applications for financial assistance may be submitted at any time. In order to be considered for funds, complete applications must be received by the appropriate USDA Rural Development State Office in which the applicant's proposed project is located, or via the *www.grants.gov* website as identified in Section IV.C., of this Notice.

(1) *Insufficient funds.* If funds are not sufficient to fund the total amount of an application:

(a) For State allocated funds:

(i) The applicant must be notified that they may accept the remaining funds or submit the total request for National Office reserve funds available after pooling. If the applicant agrees to lower its grant request, the applicant must certify that the purposes of the project will be met and provide the remaining total funds needed to complete the project.

(ii) If two or more grant or combination applications have the same score and remaining funds in the State allocation are insufficient to fully award them, the Agency will notify the applicants that they may either accept the proportional amount of funds or submit their total request for National Office reserve funds available after pooling. If the applicant agrees to lower its grant request, the applicant must certify that the purposes of the project will be met and provide the remaining total funds needed to complete the project.

(b) The applicant notification for national funds will depend on the competition as follows:

(i) For an application requesting a grant of $20,000 or less or a combination application where the grant amount is $20,000 or less from set-aside pooled funds, the applicant must be notified that they may accept the remaining funds, or submit the total request to compete in the unrestricted State competition. If the applicant agrees to lower the grant request, the applicant must certify that the purposes of the project will be met and provide the remaining total funds needed to complete the project. A declined partial award counts as a competition.

(ii) For any application competing in the final national office unrestricted pooling, the applicant must be notified that they may accept the remaining funds or their grant application will be withdrawn. If the applicant agrees to lower the grant request, the applicant must certify that the purposes of the project will be met and provide the remaining total funds needed to complete the project.

(iii) If two or more grant or combination applications have the same score and remaining funds are insufficient to fully award them, the Agency will notify the applicants that they may either accept the proportional amount of funds or submit their total request in the next available competition. If not awarded in the final fiscal year competition their application will be withdrawn.

(iv) At its discretion, the Agency may instead allow the remaining funds to be carried over to the next FY rather than selecting a lower scoring application(s) or distributing funds on a pro-rata basis.

(2) *Award considerations.* All award considerations will be on a discretionary basis. In determining the amount of a renewable energy system or energy efficiency improvements grant or loan guarantee, the Agency will consider the six criteria specified in 7 CFR 4280.114(e) or 7 CFR 4280.129(g), as applicable.

(3) *Notification of funding determination.* As per 7 CFR 4280.111(c) and 5001.315 (b)(2), all applicants will be informed in writing by the Agency as to the funding determination of the application.

VI. Federal Award Administration Information

A. *Federal Award Notices.* The Agency will award and administer renewable energy system and energy efficiency improvements grants, and combined grant and guaranteed loan requests in accordance with 7 CFR 4280.122 and 7 CFR 4280.165, as applicable. The Agency will award and administer the renewable energy system, energy efficiency improvements, and energy efficiency equipment and system guaranteed loan requests in accordance with 7 CFR 5001.315. The Agency will award and administer the energy audit and renewable energy development assistance grants in accordance with 7 CFR 4280.195. Notification requirements of 7 CFR 4280.111 apply to this Notice.

B. *Administrative and National Policy Requirements.*

(1) *Equal Opportunity and Nondiscrimination.* The Agency will ensure that equal opportunity and nondiscrimination requirements are met in accordance with the Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.* and 7 CFR part 15d, Nondiscrimination in Programs and Activities Conducted by the U.S. Department of Agriculture. The Agency will not discriminate against applicants on the basis of race, color, religion, national origin, sex, marital status, or age (provided that the

applicant has the capacity to contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act, 15 U.S.C. 1601 *et seq.*

(2) *Civil Rights Compliance.* Recipients of grants must comply with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.,* Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.,* and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794. This may include collection and maintenance of data on the race, sex, and national origin of the recipient's membership/ownership and employees. This data must be available to conduct compliance reviews in accordance with 7 CFR 1901.204.

(3) *Environmental Analysis.* Environmental procedures and requirements for this subpart are specified in 7 CFR part 1970. Prospective applicants are advised to contact the Agency to determine environmental requirements as soon as practicable after they decide to pursue any form of financial assistance directly or indirectly available through the Agency.

(4) *Appeals.* A person may seek a review of an Agency decision or appeal to the National Appeals Division in accordance with 7 CFR 4280.105 and 7 CFR 5001.5, as applicable.

(5) *Reporting.* Grants, guaranteed loans, combination guaranteed loans and grants, and energy audit and energy audit and renewable energy development assistance grants that are awarded are required to fulfill the reporting requirements as specified in Departmental Regulations, the Financial Assistance Agreement, and in 7 CFR part 4280 subpart B.

(a) Renewable energy system and energy efficiency improvements grants that are awarded are required to fulfill the reporting requirements as specified in 7 CFR 4280.123.

(b) Guaranteed loan applications that are awarded are required to fulfill the reporting requirements as specified in 7 CFR 5001.501 through 5001.524

(c) Combined guaranteed loan and grant applications that are awarded are required to fulfill the reporting requirements as specified in 7 CFR 4280.165(f).

(d) Energy audit and renewable energy development assistance grants grant applications that are awarded are required to fulfill the reporting requirements as specified in 7 CFR 4280.196.

VII. Federal Awarding Agency Contacts

For further information contact the applicable USDA Rural Development Energy Coordinator for your respective State, as identified via the following link: *http://www.rd.usda.gov/files/RBS_StateEnergyCoordinators.pdf.*

For information about this Notice, please contact Deb Yocum, Business Loan and Grant Analyst, USDA Rural Development, Program Management Division. Telephone: (402) 499–1198. Email: *debra.yocum@usda.gov.*

VIII. Other Information

A. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements associated with renewable energy system and energy efficiency improvements grants and guaranteed loans, as covered in this Notice, have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0570–0067. The information collection requirements associated with energy audit and renewable energy development assistance grants have also been approved by OMB under OMB Control Number 0570–0067.

B. Nondiscrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at How to File a Program Discrimination Complaint and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) Mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

(2) Email: program.intake@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

Rebeckah Adcock,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2020–26086 Filed 11–24–20; 8:45 am]

BILLING CODE 3410–XY–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Mississippi 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 Mississippi Advisory Committee (Committee) will hold a series of meetings via Webex on Tuesday, December 15, 2020; Wednesday, February 10, 2021, and Friday, February 12, 2021 at 12:00 p.m. Central Time for the purpose of gathering testimony on Civil Rights and Qualified Immunity in Mississippi.

DATES: The meetings will be held on:

- Tuesday, December 15, 2020, at 12:00 p.m. Central Time (PANEL I)
- Wednesday, February 10, 2021 at 12:00 p.m. Central Time (PANEL II)
- Friday, February 12, 2021, at 12:00 p.m. Central Time (PANEL III)

ADDRESSES:

For Panel I: Register online: *https://civilrights.webex.com/civilrights/j.php?MTID=m9a4cf04c90b1e74b7f6f7fb1f02ca5fb.*

Join by phone: 800–360–9505 USA Toll Free; Access code: 199 748 1310.

For Panel II: Register online: *https://civilrights.webex.com/civilrights/j.php?MTID=ma400ed1aa76e1792f8f8a00b376df733.*

Join by phone: 800–360–9505 USA Toll Free; Access code: 199 458 2688.

For Panel III: Register online: *https://civilrights.webex.com/civilrights/j.php?MTID=m87f0e9ea9065ffddbf441ca499131579.*

Join by phone: 800–360–9505 USA Toll Free; Access code: 199 383 0420.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or (202) 618–4158.

SUPPLEMENTARY INFORMATION: Members of the public may join these meetings online or 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, Mississippi 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: Qualified Immunity in Mississippi
III. Committee Q & A
IV. Public Comment
VI. Adjournment

Dated: November 19, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–26034 Filed 11–24–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Nevada 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 (FACA) that a teleconference meeting of the Nevada Advisory Committee (Committee) to the Commission will be held at 1:00 p.m. (Pacific Time) Thursday, December 10, 2020. The purpose will be to begin planning for their hearing on distance learning and equity in education.

DATES: The meeting will be held on Thursday, December 10, 2020 at 1:00 p.m. PT.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes (DFO) at *afortes@usccr.gov* or by phone at (202) 681–0857.

SUPPLEMENTARY INFORMATION:

Public Call Information:

Dial: 800–353–6461.

Conference ID: 5422761.

This meeting is available to the public through the following toll-free call-in number: 800–353–6461, conference ID number: 5422761. 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. Persons with hearing impairments 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 Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012 or email Ana Victoria Fortes at *afortes@usccr.gov.*

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlJAAQ.*

Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. 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
II. Approval of Minutes
III. Discussion on planning web hearings
IV. Public Comment
V. Adjournment

Dated: November 19, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–26035 Filed 11–24–20; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Dakota Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of briefing.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a briefing of the South Dakota Advisory Committee to the Commission will convene by conference call and/or video conference on Wednesday, December 16, 2020 at 3:00 p.m. (CST), via teleconference and web platform. The purpose of the meeting is to hear testimony on the topic of maternal health disparities of Native American women.

DATES: Wednesday, December 16, 2020 from 3:00 p.m.–4:30 p.m. (CST)

ADDRESSES:

Public Call-In Information: For audio, dial: 1–800–367–2403; conference ID: 9800799. Video conference is also available by registering here: *https://bit.ly/3nIV2a9.* Please use an alias while registering for the video conference if you wish to remain anonymous.

Note: Although video conference is available, it is not required in order to listen to the conference call at the public call-in numbers listed above.

TDD: Dial Federal Relay Service 1–800–877–8339 and give the operator the

above conference call number and conference ID.

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg, *mtrachtenberg@usccr.gov,* (202) 809–9618.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion by dialing the following Conference Call Toll-Free Number: 1–800–367–2403; conference ID: 9800799. Please be advised that before being placed into the conference call, the operator will ask callers to provide their names, their organizational affiliations (if any), and an email address (if available) prior to placing callers into the conference room. 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 phone 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 Federal Relay Service operator with the conference call-in numbers: 1–800–437–2398; Conference ID: 5226726. Members of the public are invited to submit written comments; the comments must be received within 30 days of the meeting date. Written comments may be emailed to Mallory Trachtenberg at *mtrachtenberg@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618.

Records and documents discussed during the meeting will be available for public viewing as they become available at the *www.facadatabase.gov.* Records generated from this meeting may also be inspected and reproduced at the Regional Programs Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Office at (202) 809–9618 or *mtrachtenberg@usccr.gov.*

Agenda: Wednesday, December 16, 2020 at 3:00 p.m. (CDT)

I. Welcome and Roll Call

II. Announcements and Updates

III. Approval of Minutes From the Last Meeting

IV. Briefing: Maternal Health Disparities of Native American Women

V. Next Steps

VI. Public Comment

VII. Adjournment

Dated: November 20, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–26111 Filed 11–24–20; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee will meet December 8, 2020, at 10:00 a.m., Eastern Standard Time, via remote teleconference. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Public Session

1. Opening remarks by the Chairman.
2. Opening remarks by the Bureau of Industry and Security.
3. Presentation of papers or comments by the Public.
4. Regulations Update.
5. Working Group Reports.
6. Automated Export System Update.

Closed Session

7. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than December 1, 2020.

To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on August 17, 2020, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 § § 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2020–25993 Filed 11–24–20; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Emerging Technology Technical Advisory Committee; Notice of Partially Closed Meeting

The Emerging Technology Technical Advisory Committee (ETTAC) will meet on December 10, 2020, at 1:00 p.m., Eastern Standard Time. The meeting will be available via teleconference. The Committee advises the Office of the Assistant Secretary for Export Administration on the identification of emerging and foundational technologies with potential dual-use applications as early as possible in their developmental stages both within the United States and abroad.

Agenda

Open Session

1. Welcome and Introductions.
2. Introduction by the Bureau of Industry and Security Leadership.
3. *Presentation:* Wassenaar Arrangement Export Control Regime.
4. *Presentation:* Missile Technology Export Control Regime.
5. *Presentation:* Nuclear Suppliers Group.
6. *Presentation:* Australia Group.
7. Open Discussion.
8. Conclusion.

Closed Session

9. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than December 2, 2020.

A limited number of slots will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to

the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on November 13, 2020, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 § § 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2020–25991 Filed 11–24–20; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–027]

Corrosion-Resistant Steel Products From the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the countervailing duty (CVD) order on certain corrosion-resistant steel products (CORE) from the People's Republic of China (China), covering the period January 1, 2018, through December 31, 2018.

DATES: Applicable November 25, 2020.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley, 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) 482–3148.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2019, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the CVD order on CORE from China.[1] On July 31, 2019, the petitioners timely requested that Commerce conduct an administrative review.[2] In addition, on the same day, three domestic importers of CORE timely requested an administrative review.[3] On September 9, 2019, Commerce published in the **Federal Register** a notice of initiation of an administrative review of the CVD order on CORE from China, covering the period January 1, 2018 through December 31, 2018 (period of review or POR), with respect to eleven companies.[4] On September 12, 2019, Commerce placed on the record the results of a CBP data query conducted for imports from all eleven companies subject to the review.[5] Because Commerce previously determined that CORE produced in Vietnam using hot-rolled or cold-rolled carbon steel substrate is subject to the order on CORE from China,[6] Commerce conducted the query for imports under the case number for subject merchandise coming directly from China (C–570–027) as well as under the third-country case number for subject merchandise coming from Vietnam (C–552–995).[7] The third-country case number was created in CBP's Automated Commercial Environment (ACE) as a result of our affirmative determination in the *Circumvention Inquiry* and captures entries of CORE produced in Vietnam using hot-rolled or cold-rolled carbon steel substrate from China. The query resulted in ''no entries found.'' [8]

On September 19, 2019, one of the petitioners, U.S. Steel, submitted comments on the CBP Query, noting that certain companies subject to the review had shipped CORE products to the United States during the POR according to third-party manifest data submitted by the petitioners.[9] The petitioners suggested that Commerce collect exporter certifications from the companies under review averring that such CORE products were not produced using Chinese substrate.[10] Commerce subsequently requested exporter certifications as part of a wider questionnaire issued to certain producers, as discussed below.

On December 4, 2019, the petitioners timely withdrew their request for a review in full.[11] Likewise, on December 6, 2019, Mitsui timely withdrew its request for a review in full.[12] Consequently, only the Metal One Request and the Stemcor Request remain unwithdrawn. The Metal One Request and the Stemcor Request cover three companies: Nippon Steel and Sumikin Sales Vietnam Co., Ltd. (NSSVC); Hoa Sen Group (HSG); and Ton Dong A Corporation (TDA).[13] All three companies are Vietnamese exporters of CORE.[14]

On February 11, 2020, Commerce issued questionnaires to all three companies.[15] HSG responded to the questionnaire on March 11, 2020;[16] and NSSVC and TDA responded on March

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 84 FR 31295 (July 1, 2019).

[2] *See* Petitioners' Letter, ''Corrosion-Resistant Steel Products from the People's Republic of China: Request for Administrative Review of Countervailing Duty Order,'' dated July 31, 2019. The petitioners are ArcelorMittal USA LLC, California Steel Industries, Inc., Nucor Corporation, Steel Dynamics, Inc., and United States Steel Corporation (U.S. Steel).

[3] *See* Letter from Metal One America, Inc., ''Corrosion-Resistant Steel Products from China: Metal One America, Inc.'s Request for Administrative Review,'' dated July 31, 2019 (Metal One Request), Letter from Mitsui & Co. (U.S.A.) Inc., ''Corrosion-Resistant Steel Products from China: *Request for Administrative Review,*'' dated July 31, 2019, and Letter from Stemcor USA Inc., ''Corrosion-Resistant Steel Products from China—Stemcor's Request for Administrative Review,'' dated July 31, 2019 (Stemcor Request). Metal One America, Inc. (Metal One), Mitsui & Co. (U.S.A.) Inc. (Mitsui), and Stemcor USA Inc. (Stemcor) stated that they are U.S. importers of CORE from Vietnam that is potentially subject to the order on CORE from China.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 47242 (September 9, 2019) (*Initiation Notice*).

[5] *See* Memorandum, ''Release of U.S. Customs and Border Protection (CBP) Data for Respondent Selection,'' dated September 12, 2019 (CBP Query).

[6] *See Certain Corrosion-Resistant Steel Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty and Countervailing Duty Orders,* 83 FR 23895 (May 23, 2018) and accompanying Issues and Decision Memorandum (*Circumvention Inquiry*).

[7] *See* CBP Query at 3.

[8] *Id.*

[9] *See* U.S. Steel's Letter, ''Corrosion-Resistant Steel Products from the People's Republic of China: Comments on U.S. Customs and Border Protection Entry Data Results,'' dated September 19, 2020.

[10] *Id.*

[11] *See* Petitioners' Letter, ''Corrosion-Resistant Steel Products from the People's Republic of China: Withdrawal of Request for Administrative Review of Countervailing Duty Order,'' dated December 4, 2019.

[12] *See* Letter from Mitsui, ''Certain Corrosion-Resistant Steel Products from the People's Republic of China: Withdrawal of Review Request of Countervailing Duty Order,'' dated December 6, 2019.

[13] *See* Metal One Request and Stemcor Request.

[14] *Id.*

[15] *See* Letters from Commerce to NSSVC, HSG, and TDA, ''Corrosion-Resistant Steel from the People's Republic of China: Administrative Review Questionnaire,'' dated February 11, 2020 (No Shipment Questionnaires).

[16] *See* Letter from HSG, ''Corrosion-Resistant Steel Products from the People's Republic of China-Response to Questionnaire,'' dated March 11, 2020.

23, 2020.[17] Commerce received no comments on the three questionnaire responses.

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.[18] On July 22, 2020, Commerce tolled statutory deadlines for all preliminary and final results in administrative reviews by an additional 60 days.[19] As such, the current deadline for the preliminary results in this administrative review is November 17, 2020.

On November 6, 2020, Commerce issued a memorandum notifying all parties of its intent to rescind the 2018 CVD administrative review of CORE from China.[20] In the memorandum, Commerce concluded, based on the results of the CBP Query and our examination of the questionnaire responses submitted by NSSVC, HSG, and TDA, that the record does not contain evidence of any reviewable entries of subject merchandise during the POR for which liquidation is suspended.[21] Commerce also provided parties with an opportunity to comment. No party submitted comments in response to the memorandum.

Scope of the Order

The products covered by this order are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.,* in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.,* products which have been ''worked after rolling'' (*e.g.,* products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this order are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as Start Printed Page 48391interstitial-free (IF)) steels and high strength low alloy (HSLA) steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels (AHSS) and Ultra High Strength Steels (UHSS), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this order unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this order:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin free steel''), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;
- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and
- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%–60%–20% ratio.

The products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

[17] *See* Letter from NSSVC, ''Corrosion-Resistant Steel Products from the People's Republic of China: NSSVC's Response to the Department's Administrative Review Questionnaire,'' dated March 20, 2020; *see also* Letter from TDA, ''Certain Corrosion-Resistant Steel Products from the People's Republic of China, Case No. C–570–027: TDA Initial Questionnaire Response,'' dated March 20, 2020.

[18] *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.

[19] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

[20] *See* Memorandum, ''Certain Corrosion-Resistant Steel Products from the People's Republic of China: Intent to Rescind 2018 Administrative Review,'' dated November 6, 2020.

[21] *Id.* at 3–4.

The products subject to the order may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if all parties that requested the review withdraw their request within 90 days of the publication date of the notice of initiation of the requested review. All review requests were withdrawn for the following eight companies included in the initiation notice: China Steel Sumikin Vietnam, Dai Thien Loc Corp., Hoa Phat Steel Pipe, Maruichi Sun Steel, Nam Kim Steel, NS Bluescope, Southern Steel Sheet Co., and Vina One. Therefore, we are rescinding the administrative review for these eight companies in accordance with 19 CFR 351.213(d)(1).

Pursuant to 19 CFR 351.213(d)(3), Commerce will rescind an administrative review, in whole or only with respect to a particular exporter or producer, if Commerce concludes that there were no reviewable entries of the subject merchandise during the POR. Based on an examination of the record, Commerce has concluded there were no reviewable entries, exports or sales of subject merchandise during the POR of merchandise imported from NSSVC, HSG, and TDA. Therefore, we are rescinding the administrative review for these three companies in accordance with 19 CFR 351.213(d)(3).

Assessment Rates

Commerce will instruct CBP to assess countervailing duties on all appropriate entries. Because Commerce is rescinding this review in its entirety, the entries to which this administrative review pertained shall be assessed at rates equal to the cash deposit of estimated countervailing 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 publication of this notice.

Administrative Protective Orders

This notice serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of the APO materials, or conversion to judicial protective order is hereby requested. Failure to comply with regulations and terms of an APO is a violation, which is subject to sanction.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(l) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: November 16, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–26087 Filed 11–24–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–026]

Corrosion-Resistant Steel Products From the People's Republic of China: Preliminary Determination of No Shipments in the Antidumping Duty Administrative Review and Rescission, in Part; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily finds that Nippon Steel and Sumikin Sales Vietnam Co., Ltd. (NSSVC), Hoa Sen Group (HSG), and Ton Dong A Corporation (TDA) made no shipments of corrosion-resistant steel products (CORE) from the People's Republic of China (China) during the period of review (POR) from July 1, 2018 through June 30, 2019. We invite interested parties to comment on these preliminary results. In addition, Commerce is rescinding the administrative review, in part, for eight companies for which review requests were withdrawn.

DATES: Applicable November 25, 2020.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley, 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) 482–3148.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2019, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty (AD) order on CORE from China.[1] On July 31, 2019, the petitioners timely requested that Commerce conduct an administrative review.[2] In addition, on the same day, three domestic importers of CORE timely requested an administrative review.[3] On September 9, 2019, Commerce published in the **Federal Register** a notice of initiation of an administrative review of the AD order on CORE from China, covering the POR July 1, 2018 through June 3, 2019, with respect to 11 companies.[4] On September 26, 2019, Commerce placed the results of a CBP data query on the record conducted for imports from all eleven companies subject to the review.[5] Because Commerce previously determined that CORE produced in Vietnam using hot-rolled or cold-rolled carbon steel substrate is subject to the order on CORE from China,[6] Commerce

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 84 FR 31295 (July 1, 2019).

[2] *See* Petitioners' Letter, ''Corrosion-Resistant Steel Products from the People's Republic of China: Request for Administrative Review of Antidumping Duty Order,'' dated July 31, 2019. The petitioners are ArcelorMittal USA LLC, California Steel Industries, Inc., Nucor Corporation, Steel Dynamics, Inc., and United States Steel Corporation (U.S. Steel).

[3] *See* Metal One America, Inc.'s Letter, ''Corrosion-Resistant Steel Products from China: Metal One America, Inc.'s Request for Administrative Review,'' dated July 31, 2019 (Metal One Request), Mitsui & Co. (U.S.A.) Inc.'s Letter, ''Corrosion-Resistant Steel Products from China: *Request for Administrative Review,*'' dated July 31, 2019, and Stemcor USA Inc.'s Letter, ''Corrosion-Resistant Steel Products from China—Stemcor's Request for Administrative Review,'' dated July 31, 2019 (Stemcor Request). Metal One America, Inc. (Metal One), Mitsui & Co. (U.S.A.) Inc. (Mitsui), and Stemcor USA Inc. (Stemcor) stated that they are U.S. importers of CORE from Vietnam that is potentially subject to the order on CORE from China.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 47242 (September 9, 2019) (*Initiation Notice*).

[5] *See* Memorandum, ''Release of U.S. Customs and Border Protection (CBP) Data for Respondent Selection,'' dated September 26, 2019 (CBP Query).

[6] *See Certain Corrosion-Resistant Steel Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty and Countervailing Duty Orders,* 83 FR 23895 (May 23, 2018), and accompanying

Continued

conducted the query for imports under the case number for subject merchandise coming directly from China (A–570–026) as well as under the third-country case number for subject merchandise coming from Vietnam (A–552–994).[7] The third-country case number was created in CBP's Automated Commercial Environment (ACE) as a result of our affirmative determination in the *Circumvention Inquiry* and captures entries of CORE produced in Vietnam using hot-rolled or cold-rolled carbon steel substrate from China. The query resulted in ''no entries found.''[8]

On October 3, 2019, one of the petitioners, U.S. Steel, submitted comments on the CBP query, noting that certain companies subject to the review had shipped CORE products to the United States during the POR according to third-party manifest data submitted by the petitioners.[9] The petitioners suggested that Commerce collect exporter certifications from the companies under review averring that such CORE products were not produced using Chinese substrate.[10] Commerce subsequently requested exporter certifications as part of a wider questionnaire issued to certain producers, as discussed below.

On December 4, 2019, the petitioners timely withdrew their request for a review in full.[11] Likewise, on December 6, 2019, Mitsui timely withdrew its request for a review in full.[12] Consequently, only the Metal One Request and the Stemcor Request remain unwithdrawn. The Metal One Request and the Stemcor request cover three companies: Nippon Steel and Sumikin Sales Vietnam Co., Ltd. (NSSVC); Hoa Sen Group (HSG); and Ton Dong A Corporation (TDA).[13] All three companies are Vietnamese exporters of CORE.[14]

On February 11, 2020, Commerce issued questionnaires to all three companies.[15] HSG responded to the questionnaire on March 11, 2020;[16] and NSSVC and TDA responded on March 23, 2020.[17] Commerce received no comments on the three questionnaire responses.

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.[18] On July 22, 2020, Commerce tolled statutory deadlines for all preliminary and final results in administrative reviews by an additional 60 days.[19] As such, the current deadline for the preliminary results in this administrative review is November 17, 2020.

Scope of the Order

The products covered by this order are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.,* in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.,* products which have been ''worked after rolling'' (*e.g.,* products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this order are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels and high strength low alloy (HSLA) steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels (AHSS) and Ultra High Strength Steels (UHSS), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been

Issues and Decision Memorandum (*Circumvention Inquiry*).

[7] *See* CBP Query at 3.

[8] *Id.*

[9] *See* U.S. Steel's Letter, ''Corrosion-Resistant Steel Products from the People's Republic of China: Comments on U.S. Customs and Border Protection Entry Data Results,'' dated October 3, 2019.

[10] *Id.*

[11] *See* Petitioners' Letter, ''Corrosion-Resistant Steel Products from the People's Republic of China: Withdrawal of Request for Administrative Review of Countervailing Duty Order,'' dated December 4, 2019.

[12] *See* Mitsui's Letter, ''Certain Corrosion-Resistant Steel Products from the People's Republic of China: Withdrawal of Review Request of Countervailing Duty Order,'' dated December 6, 2019.

[13] *See* Metal One Request and Stemcor Request.

[14] *Id.*

[15] *See* Commerce's Letters, ''Corrosion-Resistant Steel from the People's Republic of China: Administrative Review Questionnaire,'' dated February 11, 2020 (No Shipment Questionnaires).

[16] *See* HSG 's Letter, ''Corrosion-Resistant Steel Products from the People's Republic of China—Response to Questionnaire,'' dated March 11, 2020.

[17] *See* NSSVC's Letter, ''Corrosion-Resistant Steel Products from the People's Republic of China: NSSVC's Response to the Department's Administrative Review Questionnaire,'' dated March 20, 2020; *see also* TDA's Letter, ''Certain Corrosion-Resistant Steel Products from the People's Republic of China, Case No. C–570–027: TDA Initial Questionnaire Response,'' dated March 20, 2020.

[18] *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.

[19] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this order unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this order:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin free steel''), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;
- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and
- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%–60%–20% ratio.

The products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the order may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

Rescission of Review, in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if all parties that requested the review withdraw their request within 90 days of the publication date of the notice of initiation of the requested review. All review requests were withdrawn for the following eight companies included in the *Initiation Notice:* China Steel Sumikin Vietnam, Dai Thien Loc Corp., Hoa Phat Steel Pipe, Maruichi Sun Steel, Nam Kim Steel, NS Bluescope, Southern Steel Sheet Co., and Vina One. Therefore, we are rescinding the administrative review for these eight companies in accordance with 19 CFR 351.213(d)(1).

Preliminary Determination of No Shipments

The remaining three companies included in the *Initiation Notice,* NSSVC, HSG, and TDA, reported no shipments during the POR.[20] None of the three respondents reported sourcing any substrate from China, and thus none reported shipping subject merchandise to the United States during the POR—consistent with the CBP data. In the No Shipment Questionnaires issued to NSSVC, HSG, and TDA (identical for all three companies), Commerce requested information concerning corporate structure and affiliation, the total quantity and value of CORE shipments to the United States and all other markets during the POR, a database containing details of each shipment of CORE to the United States during the POR, such as the source of the substrate, a detailed reconciliation of the database to the company's financial statements, and complete sales documentation for the five largest invoices by sales quantity of the POR.[21] We specifically asked that the exporter certifications be included as part of the sales documentation along with mill certificates for both the CORE and the substrate. Because a single invoice sometimes includes dozens of sales, the requests resulted in hundreds of pages of mill certificates and sales and shipping documentation. Commerce's review of the sales documentation confirms the respondents' reporting (*e.g.,* the mill certificates for the substrate indicate the name and location of the factory that produced the substrate).

Therefore, we preliminarily determine that NSSVC, HSG, and TDA had no shipments of subject merchandise during the POR. Consistent with Commerce's practice, we are not preliminarily rescinding the review with respect to NSSVC, HSG, and TDA. Rather, we will complete the review and issue appropriate instructions to CBP based on the final results.[22]

Public Comment

Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.[23] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the date for filing case briefs.[24] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Case and rebuttal briefs must be filed electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) and must also be served on interested parties.[25] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[26] ACCESS is available to registered users at *http://access.trade.gov.* An electronically filed document must be received successfully in its entirety by 5:00 p.m. Eastern Time on the date that the document is due.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement

[20] *See* No Shipment Questionnaires; *see also* HSG's Letter, ''Administrative Review of Antidumping and Countervailing Duty Orders on Corrosion Resistant Steel Products from the People's Republic of China—No Shipment Letter,'' dated October 9, 2019, and TDA's Letter, ''Certain Corrosion-Resistant Steel Products from the People's Republic of China, Case No. A–570–026: No Shipment Letter,'' dated October 9, 2019.

[21] *See* No Shipment Questionnaires.

[22] *See, e.g., Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013,* 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013,* 79 FR 51306 (August 28, 2014).

[23] *See* 19 CFR 351.309(c)(1)(ii).

[24] *See* 19 CFR 351.309(d).

[25] *See* 19 CFR 351.303.

[26] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

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.[27] Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.[28] Parties should confirm the date, time, and location of the hearing two days before the scheduled date.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any case or rebuttal briefs, no later than 120 days after the date of publication of this notice, unless extended.[29]

Assessment Rates

For companies for which this review is rescinded, Commerce will instruct CBP to assess AD duties on all appropriate entries at a rate equal to the cash deposit of estimated AD duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period July 1, 2018 through June 30, 2019, in accordance with 19 CFR 351.212(c)(l)(i). Commerce intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

If Commerce continues to determine for the final results of this administrative review that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's cash deposit rate) will be liquidated at the rate for the China-wide entity.[30] Commerce intends to issue appropriate assessment instructions for NSSVC, HSG, and TDA to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the finals results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for NSSVC, HSG, and TDA will remain unchanged from the rates assigned to them in the most recently completed segment for each company; (2) for previously investigated or reviewed Chinese and non-Chinese exporters not covered by this review that have received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific cash deposit rate published for the most recently completed period; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity; and (4) for all non-Chinese exporters of subject merchandise which have not received their own separate 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 Regarding the Reimbursement of Duties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/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

This notice is issued and published in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(4).

Dated: November 16, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–26091 Filed 11–24–20; 8:45 am]

BILLING CODE 3510–DS–P

[27] *See* 19 CFR 351.310(c).

[28] *See* 19 CFR 351.310(d).

[29] *See* section 751(a)(3)(A) of the Act; and 19 CFR 351.213(h).

[30] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65695 (October 24, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before December 15, 2020. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Please also email an electronic copy of any written comments to *Dianne.Hanshaw@trade.gov.* Arrangements to review any applications can also be made with correspondence through that email address.

Docket Number: 20–008. Applicant: Rice University, 6100 Main Street, Houston, TX 77005. Instrument: Signal Acquisition ASCI. Manufacturer: LiMicro, China. Intended Use: According to the applicant, the instrument will be used to study and investigate in-vivo large-scale, high density, long-term neutral recording to integrate the signal acquisition instrument that it plans to purchase with its custom developed ultra-flexible nano electronic thread (NET) microelectrodes as a neural recording system to monitor chronic neural signals in freely behaving animals. The applicant also plans to investigate the formation of connections between various brain regions and the evolution of the neural connections over extended periods. This large-scale, high-density, long-term neural recording study has the potential to help understand the fundamental mechanisms of neural

circuitry and explore treatments for neurological conditions. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: August 12, 2020.

Docket Number: 20–009. Applicant: University of Chicago, Chemistry E005A, 929 E 57th Street (loading docket behind 5741 S Drexel Avenue), Chicago, IL 60637. Instrument: White Dwarf Optimal Parametric Amplifier System (OPCPA). Manufacturer: Class 5 Photonics, GmbH, Germany. Intended Use: According to the applicant, the instrument will be used to study and determine how the local electronic structure of nanostructured materials is related to their morphology, and directly measure the electronic transitions at buried interfaces in materials, controlling anisotropic charge transport via photoinduced strain effects, manipulating energy transfer in polaritonic systems. The OPCPA is a work-horse laser system for simultaneous use with multiple experiments. The experiments to be conducted involve time-resolved photoemission microscopy of both occupied and unoccupied electronic structure of materials, heterodyned electronic sum-frequency-generation spectroscopy, transient absorption spectroscopy. Justification for Duty-Free Entry: According to the applicant, there are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: October 9, 2020.

Dated: November 19, 2020.

Richard Herring,

Acting Director, Subsidies Enforcement, Enforcement and Compliance.

[FR Doc. 2020–26020 Filed 11–24–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA615]

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meetings

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

ACTION: Notice of SEDAR 66 Assessment Webinar I for South Atlantic Tilefish.

SUMMARY: The SEDAR 66 stock assessment of the South Atlantic stock of Tilefish will consist of a data scoping webinar, a workshop, and a series of assessment webinars. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 66 South Atlantic Tilefish Assessment Webinar I will be held via webinar on December 15, 2020, from 10 a.m. until 1 p.m. EST.

ADDRESSES:

Meeting Address: The SEDAR 66 South Atlantic Tilefish Assessment Webinar I will be held via webinar. The webinar is open to members of the public. Registration is available online at: *https://attendee.gotowebinar.com/register/6504780469645861648.*

SEDAR Address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Kathleen Howington, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366; email: *Kathleen.howington@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the SEDAR 66 South Atlantic Tilefish Assessment Webinar I are as follows:

- Finalize any data discussions if needed
- Continue discussion on base model configuration
- Discuss proposed changes to model, sensitivity runs, and projections

The established meeting times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice. Additional SEDAR 66 webinar dates and times will publish in a subsequent issue in the **Federal Register**.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC office (see **ADDRESSES**) at least 10 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 20, 2020.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–26117 Filed 11–24–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA674]

Meeting of the Marine Fisheries Advisory Committee

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

ACTION: Notice of open public meeting.

SUMMARY: This notice sets forth the proposed schedule and agenda of a forthcoming meeting of the Marine Fisheries Advisory Committee (MAFAC). The members will discuss and consider priorities and recommendations for the next four years and other organizational matters.

DATES: The meeting will be December 15, from 1–3 p.m., Eastern Time.

ADDRESSES: Meeting is by webinar and teleconference.

FOR FURTHER INFORMATION CONTACT: Heidi Lovett; NOAA Fisheries Office of Policy; (301) 427–8034; email: *Heidi.Lovett@noaa.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given of a meeting of MAFAC. The MAFAC was established by the Secretary of Commerce (Secretary), and, since 1971, advises the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. The MAFAC charter and summaries of prior MAFAC meetings are located online at *https://www.fisheries.noaa.gov/national/partners/marine-fisheries-advisory-committee-charter.*

Matters To Be Considered

This meeting time and agenda are subject to change. The meeting is convened to discuss and consider priorities and recommendations to consider for the next four years, hear updates on current activities on seafood and aquaculture, and may also discuss future work for its subcommittees and other organizational matters.

Time and Date

The meeting is scheduled for December 15, 2020 from 1–3 p.m., Eastern Time by webinar and conference call. Access information for the public will be posted at *https://www.fisheries.noaa.gov/national/partners/marine-fisheries-advisory-committee-meeting-materials-and-summaries* by December 8, 2020.

Dated: November 20, 2020.

Jennifer L. Lukens,

Federal Program Officer, Marine Fisheries Advisory Committee, National Marine Fisheries Service.

[FR Doc. 2020–26124 Filed 11–24–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket DARS–2017–0008; OMB Control Number 0704–0497]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Part 215 Negotiation; Submission for OMB Review; Comment Request

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposed revision and extension of a collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by December 28, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Heather Kitchens, 571–372–6104.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 215 Negotiation; OMB Control Number 0704–0497.

Type of Collection: Revision of a currently approved collection.

Obligation to Respond: Required to obtain or retain benefits.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Number of Respondents: 263.

Responses per Respondent: 1.

Annual Responses: 263.

Average Burden Per Response: 4 hours.

Annual Burden Hours: 1,052.

Frequency: On Occasion.

Needs and Uses: DFARS 215.403–5 provides contractors with guidance for the submittal of forward pricing rate proposals, and includes a checklist for contractors to use in preparing their proposals. The checklist is submitted to DoD with the forward pricing rate proposal. The purpose of this information collection is to improve the efficiency of the negotiation process by ensuring the submission of thorough, accurate, and complete forward pricing rate proposals. If the contracting officer determines that a forward pricing rate proposal should be obtained pursuant to Federal Acquisition Regulation 42.1701, then contractors following the contract cost principles for commercial organizations in FAR subpart 31.2 will be required to submit a forward pricing rate proposal that complies with Federal Acquisition Regulation 15.408, Table 15–2, and DFARS 215.403–5 and 215.407–5–70. The forward pricing rate proposal adequacy checklist at Table 215.403–1 is used by the contracting officer and the contractor to ensure the proposal is complete. The completed forward pricing rate proposal adequacy checklist will be submitted to DoD with the forward pricing rate proposal.

Comments and recommendations on the proposed information collection should be sent to Ms. Susan Minson, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments, identified by docket number and title, by the following method: *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

DoD Clearance Officer: Ms. Angela James. Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Jennifer D. Johnson,

Regulatory Control Officer, Defense Acquisition Regulations System.

[FR Doc. 2020–26134 Filed 11–24–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket DARS–2020–0019; OMB Control Number 0704–0245]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Transportation; Comment Request

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposed revision and extension of a

collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by December 28, 2020.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Transportation, and related clauses—DoD FAR Supplement Part 247, OMB Control Number 0704–0245.

Type of Request: Revision.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Respondents: 18,298.

Responses per Respondent: 6.47, approximately.

Annual Responses: 118,326.

Hours per Response: .57, approximately.

Estimated Hours: 67,101.

Reporting Frequency: On occasion.

Needs and Uses: DoD contracting officers use this information to verify that prospective contractors have adequate insurance prior to award of stevedoring contracts; to provide appropriate price adjustments to stevedoring contracts; to assist the Maritime Administration in monitoring compliance with requirements for use of U.S.-flag vessels in accordance with the Cargo Preference Act of 1904 (10 U.S.C. 2631); and to provide appropriate and timely shipping documentation and instructions to contractors.

The clause at DFARS 252.247–7000, Hardship Conditions, is prescribed at DFARS 247.270–4(a) for use in all solicitations and contracts for the acquisition of stevedoring services. Paragraph (a) of the clause requires the contractor to notify the contracting officer of unusual conditions associated with loading or unloading a particular cargo, for potential adjustment of contract labor rates; and to submit any associated request for price adjustment to the contracting officer within 10 working days of the vessel sailing time.

The clause at DFARS 252.247–7002, Revision of Prices, is prescribed at DFARS 247.270–4(b) for use in solicitations and contracts when using negotiation to acquire stevedoring services. Paragraph (c) of the clause provides that, at any time, either the contracting officer or the contractor may deliver to the other a written demand that the parties negotiate to revise the prices under the contract. Paragraph (d) of the clause requires that, if either party makes such a demand, the contractor must submit relevant data upon which to base negotiations.

The clause at DFARS 252.247–7007, Liability and Insurance, is prescribed at DFARS 247.270–4(c) for use in all solicitations and contracts for the acquisition of stevedoring services. Paragraph (f) of the clause requires the contractor to furnish the contracting officer with satisfactory evidence of insurance.

The provision at DFARS 252.247–7022, Representation of Extent of Transportation by Sea, is prescribed at DFARS 247.574(a) for use in all solicitations except those for direct purchase of ocean transportation services or those with an anticipated value at or below the simplified acquisition threshold. Paragraph (b) of the provision requires the offeror to represent whether or not it anticipates that supplies will be transported by sea in the performance of any contract or subcontract resulting from the solicitation.

The clause at DFARS 252.247–7023, Transportation of Supplies by Sea, is prescribed at DFARS 247.574(b) for use in all solicitations and contracts except those for direct purchase of ocean transportation services. Paragraph (d) of the clause requires the contractor to submit any requests for use of other than U.S.-flag vessels in writing to the contracting officer. Paragraph (e) of the clause requires the contractor to submit one copy of the rated on board vessel operating carrier's ocean bill of landing. Paragraph (f) of the clause, if the contract exceeds the simplified acquisition threshold, requires the contractor to represent, with its final invoice, that: (1) No ocean transportation was used in the performance of the contract; (2) only U.S.-flag vessels were used for all ocean shipments under the contract; (3) the contractor had the written consent of the contracting officer for all non-U.S.-flag ocean transportation; or (4) shipments were made on non-U.S.-flag vessels without the written consent of the contracting officer. Contractors must flow down these requirements to noncommercial subcontracts and certain types of commercial subcontracts. Subcontracts at or below the simplified acquisition threshold are excluded from the requirements of paragraph (f) stated above. Paragraph (h) of the clause requires the contractor, after award, to notify the contracting officer if the contractor learns that supplies will be transported by sea and the contractor indicated, in the solicitation, that the contractor did not anticipate transporting any supplies by sea.

The provision at DFARS 252.247–7026, Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade, is prescribed at DFARS 247.574(d) in solicitations that require a covered vessel for carriage of cargo for DoD. Paragraph (c) of the provision requires the offeror to provide information with its offer, addressing all covered vessels for which overhaul, repair, and maintenance work has been performed during the period covering the current calendar year, up to the date of proposal submission, and the preceding four calendar years.

The clause at DFARS 252.247.7028, Application for U.S. Government Shipping Documentation/Instructions, is prescribed at DFARS 247.207(2) for inclusion in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when shipping under Bills of Lading and Domestic Route Order under FOB origin contracts, Export Traffic Release regardless of FOB terms, or foreign military sales shipments. Paragraph (a) of the clause requires contractors to complete DD Form 1659, Application for U.S. Government Shipping Documentation/Instructions, to request shipping instructions, unless an automated system is available (paragraph (b) of the clause).

Comments and recommendations on the proposed information collection should be sent to Ms. Susan Minson, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments, identified by docket number and title, by the following method: *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

DoD Clearance Officer: Ms. Angela James. Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Jennifer D. Johnson,

Regulatory Control Officer, Defense Acquisition Regulations System.

[FR Doc. 2020–26135 Filed 11–24–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

[Transmittal No. 20–51]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 20–51 with attached Policy Justification and Sensitivity of Technology.

Dated: November 19, 2020.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

August 26, 2020

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 20-51 concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of the United Kingdom for defense articles and services estimated to cost $46 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Heidi H. Grant
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 20–51

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended

(i) *Prospective Purchaser:* Government of the United Kingdom.

(ii) *Total Estimated Value:*

Major Defense Equipment *	$42 million
Other	$ 4 million
Total	$46 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE): Three hundred ninety-five (395) AGM–114R2 Hellfire Missiles

Non-MDE: Also included is technical assistance, publications, integration support, and other related elements of logistics and program support.

(iv) *Military Department:* Army (UK–B–WUG).

(v) *Prior Related Cases, if any:* UK–B–WSD, UK–B–WSA, UK–B–WQU.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex.

(viii) *Date Report Delivered to Congress:* August 26, 2020.

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Kingdom—Hellfire Missiles

The Government of the United Kingdom has requested to buy three hundred ninety-five (395) AGM–114R2 Hellfire missiles. Also included is technical assistance, publications, integration support, and other related elements of logistics and program support. The estimated total cost is $46 million.

This proposed sale will support the foreign policy and national security objectives of the United States by improving the security of a NATO Ally which is an important force for political stability and economic progress in Europe.

The proposed sale will improve the United Kingdom's ability to meet current and future threats by replacing expiring and unserviceable missiles and maintaining capability to execute missions across a full range of military operations. The United Kingdom will have no difficulty absorbing these missiles into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be Lockheed Martin Corporation, Orlando, Florida. The purchaser typically requests offsets. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

Implementation of this proposed will not require the assignment of any additional U.S. Government or contractor representatives to the United Kingdom.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 20–51

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The AGM–114R2 Hellfire missile is used against heavy and light armored targets, thin skinned vehicles, urban structures, bunkers, caves and personnel. The missile is Inertial Measurement Unit (IMU) based, with a variable delay fuse and improved safety and reliability. The Hellfire II multipurpose warhead variant (AGM–114R) allows selection of warhead effects corresponding to a specific target type. The AGM–114R is capable of being launched from Army rotary-wing and UAS platforms and provides the pilot increased operational flexibility.

2. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that United Kingdom can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to the United Kingdom.

[FR Doc. 2020–26013 Filed 11–24–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 20–57]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 20–57 with attached Policy Justification and Sensitivity of Technology.

Dated: November 19, 2020.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

September 2, 2020

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 20-57 concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of Spain for defense articles and services estimated to cost $248.5 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Heidi H. Grant
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 20–57

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended

(i) *Prospective Purchaser:* Government of Spain.

(ii) *Total Estimated Value:*

Major Defense Equipment *	$237.0 million
Other	$ 11.5 million
Total	$248.5 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

One hundred (100) AIM–120C–7/8 Advanced Medium Range Air-to-Air Missiles (AMRAAM)

One (1) AMRAAM Guidance Section (spare)

Non-MDE: Also included are KGV–135A encryption devices; containers; weapon support and support equipment; spare and repair parts; publications and technical documentation; U.S. Government and contractor engineering, technical, and logistics support services; and other related elements of logistical and program support.

(iv) *Military Department:* Air Force (SP–D–YAI).

(v) *Prior Related Cases, if any:* None.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex.

(viii) *Date Report Delivered to Congress:* September 2, 2020.

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Spain—AIM–120C Advanced Medium Range Air-to-Air Missile (AMRAAM)

The Government of Spain has requested to buy one hundred (100) AIM–120C–7/8 Advanced Medium Range Air-to-Air Missiles (AMRAAM) and one (1) AMRAAM Guidance Section (spare). Also included are KGV–135A encryption devices; containers; weapon support and support equipment; spare and repair parts; publications and technical documentation; U.S. Government and contractor engineering, technical, and logistics support services; and other related elements of logistical and program support. The estimated total cost is $248.5 million.

This proposed sale will support the foreign policy and national security of the United States by improving the security of a NATO ally which is an important force for political stability and economic progress in Europe. It is vital to the U.S. national interest to assist Spain in developing and maintaining a strong and ready self-defense capability.

This proposed sale will improve Spain's capability to meet current and future threats by increasing its stocks of AMRAAMs for its fighter aircraft fleets in support of national defense. The potential sale will further strengthen the interoperability between the United States and Spain. Spain will have no difficulty absorbing these additional missiles into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be Raytheon Missiles and Defense, Tucson, AZ. There are no known offset arrangements proposed in connection with this potential sale.

Implementation of this sale will not require the assignment of U.S. Government or contractor representatives in Spain.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 20–57

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The AIM–120C–7/C–8 AMRAAM is a supersonic, air launched, aerial intercept, guided missile featuring digital technology and micro-miniature solid-state electronics. Purchase will include AMRAAM Guidance Section spares. AMRAAM capabilities include look-down/shootdown, multiple launches against multiple targets, resistance to electronic countermeasures, and interception of high- and low-flying and maneuvering targets. The AIM–120C–8 is a form, fit, function refresh of the AIM–120C–7 and is the next generation to be produced.

2. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Spain can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furthering U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to Spain.

[FR Doc. 2020–26010 Filed 11–24–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors; Corrections

AGENCY: Department of the Navy, U.S. Department of Defense (DoD).

ACTION: Notice of Partially Closed Meeting; corrections.

SUMMARY: The Department of the Navy published a document in the **Federal Register** of November 12, 2020, to announce that the Federal Advisory Committee meeting of the U.S. Naval Academy Board of Visitors will take place. Due to expected health directives in light of COVID–19, the public can no longer be accommodated to attend the meeting in person. The meeting will be held virtually. The document contained incorrect times and venues.

FOR FURTHER INFORMATION CONTACT: Major Raphael Thalakottur, USMC, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, 410–293–1503, *thalakot@usna.edu,* or visit *https://www.usna.edu/PAO/Superintendent/bov.php.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** notice of November 12, 2020, in FR Vol. 85, No 219, on page 71889, the following corrections are made:

1. On page 71889, in the second column, correct the **DATES** caption to read:

DATES: Open virtually to the public, December 7, 2020, from 10 a.m. to 11:30 a.m. Closed to the public, December 7, 2020, from 11:30 a.m. to 12 p.m.

2. On page 71889, in the second column, correct the **ADDRESSES** caption to read:

ADDRESSES: This a virtual meeting that will be broadcasted live from the United States Naval Academy in Annapolis, Maryland. Escort is not required.

3. On page 71889, in the second column, correct the **SUPPLEMENTARY INFORMATION** caption to read:

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), the General Services Administration's (GSA) Federal Advisory Committee Management Final Rule (41 CFR part 102–3).

Purpose of Meeting: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board deems necessary, into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy.

Agenda: Proposed meeting agenda for December 7, 2020.

0930–1000 Members log on (Broadcasted to Public)

1000 Call to Order (Broadcasted to Public)

1000–1130 Business Session (Broadcasted to Public)

1130–1200 Executive Session (Closed to Public)

Current details on the board of visitors may be found at *https://www.usna.edu/PAO/Superintendent/bov.php.*

The executive session of the meeting from 11:30 a.m. to 12 p.m. on December 7, 2020, will consist of discussions of new and pending administrative or minor disciplinary infractions and non-judicial punishments involving midshipmen attending the Naval Academy, to include but not limited to, individual honor or conduct violations within the Brigade, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. For this reason, the executive session of this meeting will be closed to the public, as the discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. Accordingly, the Secretary of the Navy, in consultation with the Department of the Navy General Counsel, has determined in writing that the meeting shall be partially closed to the public because the discussions during the executive session from 11:30 a.m. to 12 p.m. will be concerned with matters protected under sections 552b(c) (5), (6), and (7) of title 5, United States Code.

Authority: 5 U.S.C. 552b.

Meeting Accessibility: Pursuant to FACA and 41 CFR 102–3.140, this meeting is virtually open to the public. This meeting will be broadcasted live from the United States Naval Academy to include audio and video. The broadcast will be close captioned for the duration of the public portion of the meeting. The link to view the meeting will be posted at *https://www.usna.edu/PAO/Superintendent/bov.php* forty-eight hours prior to the meeting. Due to expected health directives in light of COVID–19, the public cannot be accommodated to attend the meeting in person.

Written Statements: Per Section 10(a)(3) of the FACA and 41 CFR 102–3.105(j) and 102–3.140, interested persons may submit a written statement for consideration at any time, but should be received by the Designated Federal Officer at least 10 business days prior to the meeting date so that the comments may be made available to the Board for their consideration prior to the meeting. Written statements should be submitted via mail to 121 Blake Rd, Annapolis, MD 21402. Please note that since the Board operates under the provisions of the FACA, as amended, 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 board website.

Dated: November 19, 2020.

K.R. Callan,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2020–26007 Filed 11–24–20; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Reporting Process

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education publishes information on how institutions of higher education may submit to the Secretary of Education a copy of certain final, non-default judgments as required under newly promulgated regulations in the Department's Religious Liberty and Free Inquiry Final Rule, (''Religious Liberty and Free Inquiry Final Rule'' or ''Final Rule''). The Department also publishes information about how a person may report a violation of newly promulgated regulations in the Final Rule that ensure equal treatment of religious student organizations at public institutions of higher education.

FOR FURTHER INFORMATION CONTACT: Gregory Martin, U.S. Department of Education, 400 Maryland Avenue SW, Room 281–15, Washington, DC 20202. Telephone: (202) 453–7535. Email: *Gregory.Martin@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Department publishes this notice to inform public institutions of higher education how to submit to the Secretary a copy of a final, non-default judgment by a State or Federal court that the public institution or an employee of the public institution, acting in his or her official capacity, violated the First Amendment to the U.S. Constitution, as required under 34 CFR 75.500(b) and 34 CFR 76.500(b) of the Final Rule, 85 FR 59,916 (Sept. 23, 2020). The Department also publishes this notice to inform private institutions of higher education how to submit to the Secretary a copy of a final, non-default judgment by a State or Federal court to the effect that the private institution or an employee of the private institution, acting on behalf of the private institution, violated its stated institutional policy regarding freedom of speech or academic freedom, as required under 34 CFR 75.500(c) and 34 CFR 76.500(c) of the Final Rule. Finally, the Department publishes this notice to inform the public how a person may report a violation of newly promulgated regulations in the Final Rule, 34 CFR 75.500(d) and 34 CFR 76.500(d), that ensure equal treatment of religious student organizations at public institutions of higher education.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: November 20, 2020.

Robert L. King,

Assistant Secretary for Postsecondary Education.

Submission of a Final, Non-Default Judgment to the Secretary Pursuant to 34 CFR 75.500(b)–(c) and 34 CFR 76.500(b)–(c)

Under 34 CFR 75.500(b) and 34 CFR 76.500(b) of the Final Rule, which becomes effective on November 23, 2020, a public institution of higher education must submit to the Secretary a copy of a final, non-default judgment by a State or Federal court that the public institution or an employee of the public institution, acting in his or her official capacity, violated the First Amendment no later than 45 calendar days after such final, non-default judgment is entered. Under 34 CFR 75.500(c) and 34 CFR 76.500(c) of the Final Rule, a private institution of higher education must submit to the Secretary a copy of a final, non-default judgment by a State or Federal court to the effect that the private institution or

an employee of the private institution, acting on behalf of the private institution, violated its stated institutional policy regarding freedom of speech or academic freedom no later than 45 calendar days after such final, non-default judgment is entered. A final judgment is a judgment that the institution chooses not to appeal or that is not subject to further appeal.[1] Public and private institutions of higher education should submit to the Secretary a copy of any such final, non-default judgment by a State or Federal court by email to *freespeechjudgment@ed.gov* no later than 45 calendar days after such final, non-default judgment is entered.

As previously noted, the Final Rule becomes effective November 23, 2020, and the Department will not enforce the Final Rule retroactively.[2] Accordingly, under 34 CFR 75.500(b) and 34 CFR 76.500(b) of the Final Rule, a public institution does not need to submit a copy of a final, non-default judgment by a State or Federal court concerning conduct that violated the First Amendment if such conduct occurred before November 23, 2020. Similarly, under 34 CFR 75.500(c) and 34 CFR 76.500(c) of the Final Rule, a private institution does not need to submit a copy of a final, non-default judgment by a State or Federal court concerning conduct that violated a stated institutional policy regarding freedom of speech or academic freedom if such conduct occurred before November 23, 2020. A public institution must submit to the Secretary a copy of a final, non-default judgment by a State or Federal court concerning conduct that violated the First Amendment if such conduct occurred on or after November 23, 2020. Similarly, a private institution must submit to the Secretary a copy of a final, non-default judgment by a State or Federal court concerning conduct that violated a stated institutional policy regarding freedom of speech or academic freedom if such conduct occurred on or after November 23, 2020.

Reporting Alleged Violations of 34 CFR 75.500(d) and 34 CFR 76.500(d)—Equal Treatment of Religious Student Organizations at Public Institutions of Higher Education

Under 34 CFR 75.500(d) and 34 CFR 76.500(d) of the Final Rule, a public institution as a material condition of the Department's grant ''shall not deny to any student organization whose stated mission is religious in nature and that is at the public institution any right, benefit, or privilege that is otherwise afforded to other student organizations at the public institution (including but not limited to full access to the facilities of the public institution, distribution of student fee funds, and official recognition of the student organization by the public institution) because of the religious student organization's beliefs, practices, policies, speech, membership standards, or leadership standards, which are informed by sincerely held religious beliefs.'' Anyone may report an alleged violation of 34 CFR 75.500(d) and 34 CFR 76.500(d) to the Department by email at *religiousliberty@ed.gov.*

As explained in the preamble to the Final Rule, an ''all-comers'' policy as described in *Christian Legal Society* v. *Martinez,* 561 U.S. 661 (2010), does not violate the Final Rule's requirement regarding equal treatment of religious student organizations at public institutions in 34 CFR 75.500(d) and 34 CFR 76.500(d). A true all-comers policy ''mandate[s] acceptance of all comers'' meaning that ''[s]chool-approved groups must 'allow any student to participate, become a member, or seek leadership positions in the organization, regardless of [the student's] status or beliefs,' '' and without any exceptions.[3] A non-discrimination policy with enumerated protected classes is not an all-comers policy and, therefore, cannot be applied to prohibit religious student organizations from having faith-based membership or leadership criteria.[4] Under the stipulated facts of *Martinez,* the all-comers policy applied to all 60 groups on campus, including ''political groups (*e.g.,* the . . . Democratic Caucus and the . . . Republicans), religious groups (*e.g.,* the . . . Jewish Law Students Association and the . . . Association of Muslim Law Students), groups that promote[d] social causes (*e.g.,* both pro-choice and pro-life groups), groups organized around racial or ethnic identity (*e.g.,* the Black Law Students Association, the Korean American Law Society, La Raza Law Students Association, and the Middle Eastern Law Students Association), and groups that focus[ed] on gender or sexuality (*e.g.,* the Clara Foltz Feminist Association and Students Raising Consciousness at Hastings).''[5] The implications of such an all-comers policy were that ''the . . . Democratic Caucus cannot bar students holding Republican political beliefs from becoming members or seeking leadership positions in the organization.''[6] With respect to a true all-comers policy, pro-choice groups could not bar membership or leadership positions from pro-life individuals; Muslim groups could not bar membership or leadership positions from non-Muslims; the feminist group could not bar membership or leadership positions from misogynists; sororities could not bar membership or leadership positions from males; fraternities could not bar membership or leadership positions from females; and so on. Such an all-comers policy is constitutional under *Martinez* and permissible under the Final Rule, but is not required by the U.S. Constitution, the holding in *Martinez,* or the Final Rule. Indeed, many public institutions of higher education elect not to implement a true all-comers policy due to these obvious practical difficulties. Absent a true all-comers policy that is uniformly applied, §§ 75.500(d) and 76.500(d) of the Final Rule prevent public institutions from failing to recognize religious student organizations because of their faith-based membership or leadership criteria. Whether a policy is a true ''all-comers'' policy may be challenged if the policy or the application of the policy results in a violation of 34 CFR 75.500(d) or 34 CFR 76.500(d). Other policies also may be challenged if the policy or the application of the policy results in a violation of 34 CFR 75.500(d) and 34 CFR 76.500(d).

[FR Doc. 2020–26108 Filed 11–24–20; 8:45 am]

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[1] 34 CFR 75.500(b)(1), (c)(1); 34 CFR 76.500(b)(1), (c)(1).

[2] Federal agencies authorized by statute to promulgate rules may only create rules with retroactive effect where the authorizing statute has expressly granted such authority. *See* 5 U.S.C. 551 (referring to a ''rule'' as agency action with ''future effects'' in the Administrative Procedure Act); *Bowen* v. *Georgetown Univ. Hosp.,* 488 U.S. 204, 208 (1988) (''Retroactivity is not favored in the law. Thus, congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result.'').

[3] *Id.* at 671 (citations omitted).

[4] *Id.* at 678 n.10.

[5] *Id.* at 709.

[6] *Id.* at 675.

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: EC21–24–000.

Applicants: Crossing Trails Wind Power Project LLC, Headwaters Wind Farm II LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Crossing Trails Wind Power Project LLC, et al.
Filed Date: 11/18/20.
Accession Number: 20201118–5199.
Comments Due: 5 p.m. ET 12/9/20.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG21–37–000.
Applicants: Luna Storage, LLC.
Description: Self-Certification of Exempt Wholesale Generator of Luna Storage, LLC.
Filed Date: 11/18/20.
Accession Number: 20201118–5185.
Comments Due: 5 p.m. ET 12/9/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–2508–025; ER11–2863–012; ER19–1411–001; ER19–1412–001; ER19–1414–001; ER19–1417–002; ER19–1865–001; ER19–1866–001; ER19–1867–001; ER19–1868–001; ER19–1869–001; ER19–1870–001; ER19–1871–001; ER19–1872–001; ER19–2140–002; ER19–2141–002; ER19–2142–002; ER19–2143–002; ER19–2144–002; ER19–2145–002; ER19–2146–002; ER19–2147–002; ER19–2148–002; ER20–1887–001.
Applicants: GenOn Energy Management, LLC, Blossburg Power, LLC, Brunot Island Power, LLC, Chalk Point Steam, LLC, GenOn Bowline, LLC, GenOn Canal, LLC, GenOn Mid-Atlantic, LLC, GenOn Power Midwest, LP, GenOn REMA, LLC, Gilbert Power, LLC, Hamilton Power, LLC, Heritage Power Marketing, LLC, Hunterstown Power, LLC, Niles Power, LLC, Orrtanna Power, LLC, New Castle Power, LLC, Mountain Power, LLC, Portland Power, LLC, Sayreville Power, LLC, Shawnee Power, LLC, Shawville Power, LLC, Titus Power, LLC, Tolna Power, LLC, Warren Generation, LLC.
Description: Supplement to June 26, 2020 Updated Market Power Analysis for the Northeast Region of the GenOn Holdings, Inc. subsidiaries.
Filed Date: 11/18/20.
Accession Number: 20201118–5186.
Comments Due: 5 p.m. ET 12/9/20.

Docket Numbers: ER20–1800–002; ER20–1799–002; ER20–1801–003.
Applicants: Techren Solar III LLC, Techren Solar IV LLC, Techren Solar V LLC.
Description: Notice of Non-Material Change in Status of Techren Solar III LLC, et al.
Filed Date: 11/18/20.
Accession Number: 20201118–5195.
Comments Due: 5 p.m. ET 12/9/20.

Docket Numbers: ER21–121–001.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Errata to WMPA SA No. 5825, Queue No. AF2–401 in Docket No. ER21–121 to be effective 9/16/2020.
Filed Date: 11/18/20.
Accession Number: 20201118–5080.
Comments Due: 5 p.m. ET 12/9/20.

Docket Numbers: ER21–434–000.
Applicants: Nevada Power Company.
Description: Compliance filing: Market-Based Rate Tariff, Volume No. 11; WECC Price Cap to be effective 12/31/9998.
Filed Date: 11/18/20.
Accession Number: 20201118–5052.
Comments Due: 5 p.m. ET 12/9/20.

Docket Numbers: ER21–435–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: 2020–11–18_PSC–SWF-Info-2020–09-Intercon Study-614–0.0.0 to be effective 11/19/2020.
Filed Date: 11/18/20.
Accession Number: 20201118–5064.
Comments Due: 5 p.m. ET 12/9/20.

Docket Numbers: ER21–436–000.
Applicants: San Diego Gas & Electric.
Description: Annual Filing of Revised Costs and Accruals for Post-Employment Benefits Other than Pensions of San Diego Gas & Electric Company.
Filed Date: 11/18/20.
Accession Number: 20201118–5174.
Comments Due: 5 p.m. ET 12/9/20.

Docket Numbers: ER21–437–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX–LCRA TSC Asphalt Mines Facilities Development Agreement to be effective 11/11/2020.
Filed Date: 11/19/20.
Accession Number: 20201119–5011.
Comments Due: 5 p.m. ET 12/10/20.

Docket Numbers: ER21–438–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Third Revised ISA No. 4415; Queue No. AF2–044 to be effective 10/20/2020.
Filed Date: 11/19/20.
Accession Number: 20201119–5045.
Comments Due: 5 p.m. ET 12/10/20.

Docket Numbers: ER21–439–000.
Applicants: Moss Landing Energy Storage 1, LLC.
Description: Baseline eTariff Filing: SFA new baseline to be effective 11/20/2020.
Filed Date: 11/19/20.
Accession Number: 20201119–5057.
Comments Due: 5 p.m. ET 12/10/20.

Docket Numbers: ER21–440–000.
Applicants: Moss Landing Energy Storage 2, LLC.
Description: Baseline eTariff Filing: SFA COC new baseline to be effective 11/20/2020.
Filed Date: 11/19/20.
Accession Number: 20201119–5058.
Comments Due: 5 p.m. ET 12/10/20.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified 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 19, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–26083 Filed 11–24–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2413–132]

Georgia Power Company; 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:* Recreation and Land Use Plan.
b. *Project No:* 2413–132.
c. *Date Filed:* October 16, 2020.
d. *Applicant:* Georgia Power Company.
e. *Name of Project:* Wallace Dam Pumped Storage Project.
f. *Location:* Oconee River in Hancock, Putnam, Green, and Morgan counties, Georgia.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.
h. *Applicant Contact:* Joseph Charles, Hydro Compliance Coordinator, Georgia

Power, 241 Ralph McGill Blvd., NE, BIN 10151, Atlanta, Georgia 30308, (404) 506–2337, *jcharles@southernco.com.*

i. *FERC Contact:* Mark Carter, (678) 245–3083, *mark.carter@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* December 21, 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 docket number P–2413–132. Comments emailed to Commission staff are not considered part of the Commission record.

k. *Description of Request:* As required by Article 410 of the June 28, 2020, license, Georgia Power Company filed a revised Recreation and Land Use Plan for the project. In addition to the provisions of the plan filed during relicensing, the revised Recreation and Land Use Plan includes the provisions required by Article 410 (*i.e.,* a ten-year plan review process, incorporating U.S. Forest Service 4(e) Condition 24, consulting the Georgia Department of Natural Resources on boating access, documenting the number of parking spaces at each boat ramp, and specifying public access available on future recreation lands).

l. *Locations of the Application:* 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 document 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) 208–3673 or TYY, (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 19, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–26080 Filed 11–24–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–1–000]

Golden Pass Pipeline LLC; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Compression Relocation and Modification Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document, that will discuss the environmental impacts of the *Compression Relocation and Modification Project* involving construction and operation of facilities by Golden Pass Pipeline LLC (Golden Pass) in Calcasieu Parish, Louisiana. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers amending a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on December 19, 2020. Comments may be submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission

staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on October 2, 2020 you will need to file those comments in Docket No. CP21–1–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

Golden Pass provided landowners with a fact sheet prepared by the FERC entitled An Interstate Natural Gas Facility On My Land? What Do I Need To Know? which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas Questions or Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on *eRegister.* You will be asked to select the type of filing you are making; a comment on a particular project is considered a Comment on a Filing; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP21–1–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Summary of the Proposed Project

Specifically, Golden Pass seeks to modify previously authorized facilities, including:

- Relocate the approved compressor Station at Milepost (MP) 66 approximately three miles, to MP 69, and increase the amount of compression at the relocated facility;
- Add a meter station near MP 69 to support a new interconnection with a proposed interstate pipeline to be constructed an operated by Enable Gulf Run Transmission, LLC;
- Remove any bi-directional piping modification to the interconnect;
- Minor modifications to existing interconnects at MP 66 and MP 68.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Land requirements for the proposed modifications total approximately 44 acres, with construction and operation of the MP 69 compressor station requiring 35 acres.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed project under the relevant general resource areas:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- air quality and noise; and
- reliability and safety.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/*

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called eLibrary. For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

Notice of Schedule will be issued, which will open up an additional comment period. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary [2] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please return the attached ''Mailing List Update Form'' (appendix 2).

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on General Search and enter the docket number in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: November 19, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–26077 Filed 11–24–20; 8:45 am]

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[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Section 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

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: CP21–11–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: Application for Partial Abandonment of Service of Transcontinental Gas Pipe Line Company, LLC.
Filed Date: 11/16/20.
Accession Number: 20201116–5234.
Comments Due: 5 p.m. ET 12/7/20.

Docket Numbers: RP21–223–000.
Applicants: Tres Palacios Gas Storage LLC.
Description: § 4(d) Rate Filing: Tres Palacios Gas Storage LLC—Filing of Tariff Modifications to be effective 12/19/2020.
Filed Date: 11/18/20.
Accession Number: 20201118–5009.
Comments Due: 5 p.m. ET 11/30/20.

Docket Numbers: RP21–224–000.
Applicants: Trunkline Gas Company, LLC.
Description: § 4(d) Rate Filing: Quality Provision for Renewable Gas to be effective 12/19/2020.
Filed Date: 11/18/20.
Accession Number: 20201118–5025.
Comments Due: 5 p.m. ET 11/30/20.

Docket Numbers: RP21–225–000.
Applicants: Central Kentucky Transmission Company.
Description: Tariff Cancellation: CKY Request for Cancellation of its Tariff to be effective 12/1/2020.
Filed Date: 11/18/20.
Accession Number: 20201118–5042.
Comments Due: 5 p.m. ET 11/30/20.

Docket Numbers: RP21–226–000.
Applicants: Dominion Energy Overthrust Pipeline, LLC.
Description: § 4(d) Rate Filing: Non-conforming TSAs, Citadel K5613 Amendment No. 37 to be effective 11/14/2020.
Filed Date: 11/18/20.
Accession Number: 20201118–5068.
Comments Due: 5 p.m. ET 11/30/20.

Docket Numbers: RP21–227–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate—Yankee Gas 510802 Release eff 11–19–2020 to be effective 11/19/2020.
Filed Date: 11/18/20.
Accession Number: 20201118–5069.
Comments Due: 5 p.m. ET 11/30/20.

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 19, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–26076 Filed 11–24–20; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2696–052]

Town of Stuyvesant, New York and Albany Engineering Corporation; 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. *Type of Application:* Non-Capacity Amendment of License.

b. *Project No.:* 2696–052.

c. *Date Filed:* October 30, 2020.

d. *Applicant:* Town of Stuyvesant, New York and Albany Engineering Corporation.

e. *Name of Project:* Stuyvesant Falls Hydroelectric Project.

f. *Location:* The project is located on Kinderhook Creek in Columbia County, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Ms. Wendy Jo Carey, P.E., Albany Engineering Corporation, 5 Washington Square, Albany, NY 12205; telephone (518) 456–7712 ext 401 and email *wendy@albanyengineering.com.*

i. *FERC Contact:* Linda Stewart, (202) 502–8184, *linda.stewart@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance date of this notice by the Commission.

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 docket number P–2696–052. 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, it must also serve a copy of the document on that resource agency.

k. *Description of Request:* The Town of Stuyvesant, New York and Albany Engineering Corporation (licensees) propose to remove from the project license the unconstructed 120-kilowatt minimum flow turbine-generator unit and associated transmission line as authorized in the April 5, 2013 Order Issuing New License. Article 403 of the license requires the licensees to provide a continuous minimum flow of 65 cubic feet per second (cfs) into the bypassed reach, composed of 15 cfs over the project dam in the form of spill and 50 cfs through the minimum flow turbine to be installed at the project intake. Until the authorized minimum flow turbine is installed, the licensees must release all required minimum flows over the project dam. Because of ongoing property rights issues at the project, the licensees have not been able to construct the authorized minimum flow turbine. Therefore, instead of installing the minimum flow turbine, the licensees propose to continue to release the required 65-cfs minimum flow over the project dam as they currently do.

l. 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. 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, and .214. 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 deadline date for the particular application.

o. *Filing and Service of Responsive 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 19, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–26081 Filed 11–24–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–352–000]

Flat Ridge Interconnection LLC; Supplemental Notice That Common Facilities Agreement Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Flat Ridge Interconnection LLC's filing of an Amended and Restated Common Facilities Agreement, noting that such filing includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 27, 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 19, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–26078 Filed 11–24–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No, IC21–7–000]

Commission Information Collection Activities (FERC–598); Comment Request; Revision

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection FERC–598 (Self-Certification for Entities Seeking Exempt Wholesale Generator or Foreign Utility Company Status).

DATES: Comments on the collection of information are due January 25, 2021.

ADDRESSES: You may submit comments (identified by Docket No. IC21–7–000) by any of the following methods:

- *eFiling at Commission's website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *U.S. Postal Service Mail:* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.
- Effective July 1, 2020, delivery of filings other than by eFiling or the U.S. Postal Service should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov.* For user assistance, contact FERC Online Support by email at: *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at: *http://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–598, Self-Certification for Entities Seeking Exempt Wholesale Generator or Foreign Utility Company Status.

OMB Control No.: 1902–0166.

Type of Request: Three-year renewal of FERC–598.

Abstract: Under 42 U.S.C. 16452(a), public utility holding companies and their associates must maintain, and make available to the Commission, certain books, accounts, memoranda, and other records. The pertinent records are those that the Commission has determined: (1) Are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company; and (2) are necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

Public utility holding companies and their associates may seek exemption from this requirement. The pertinent statutory and regulatory provisions, 42 U.S.C. 16454 and 18 CFR 366.7, authorize such entities to file with the Commission a notice of self-certification demonstrating that they are exempt wholesale generators (EWGs) or foreign utility companies (FUCOs). If the Commission takes no action on a good-faith self-certification filing within 60 days after the date of filing, the applicant is exempt from the requirements of 42 U.S.C. 16452(a).

An EWG is defined as any person engaged directly, or indirectly through one or more affiliates . . . and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale.[1] A FUCO is

[1] 18 CFR 366.1.

defined as ''any company that owns or operates facilities that are not located in any state and that are used for the generation, transmission, or distribution of electric energy for sale or the distribution at retail of natural or manufactured gas for heat, light, or power, if such company: (1) Derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale or the distribution at retail of natural or manufactured gas for heat, light, or power, within the United States; and (2) [n]either the company nor any of its subsidiary companies is a public-utility company operating in the United States.'' [2]

In the case of EWGs, the person filing a notice of self-certification must also file a copy of the notice of self-certification with the state regulatory authority of the state in which the facility is located. In addition, that person must represent to the Commission in its submission that it has filed a copy of the notice with the appropriate state regulatory authority.[3]

Type of Respondents: EWGs and FUCOs.

Estimate of Annual Burden: [4] The Commission estimates the total annual burden and cost [5] for this information collection as follows.

FERC–598 (Self-Certification for Entities Seeking Exempt Wholesale Generator Status or Foreign Utility Company Status)

Number of respondents (EWGs and FUCOs) A.	Annual number of responses per respondent B.	Total number of responses C. (Column A × Column B)	Average burden hrs. & cost ($) per response D.	Total annual burden hours & total annual cost E. (Column C × Column D)	Average cost per respondent ($) F. (Column E ÷ Column 1)
250	1	250	6 hrs.; $498	1,500 hrs.; $124,500	$498

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: November 19, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–26079 Filed 11–24–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14635–001]

Village of Gouverneur, New York; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Minor License.

b. *Project No.:* 14635–001.

c. *Date filed:* September 20, 2019.

d. *Applicant:* Village of Gouverneur, New York (Village of Gouverneur).

e. *Name of Project:* Gouverneur Hydroelectric Project.

f. *Location:* On the Oswegatchie River, in the Village of Gouverneur in St. Lawrence County, New York. The project does not occupy federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ronald P. McDougall, Mayor, Village of Gouverneur, 33 Clinton Street, Gouverneur, NY 13642; (315) 287–1720.

i. *FERC Contact:* Jody Callihan, (202) 502–8278 or *jody.callihan@ferc.gov.*

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions 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).

k. This application has been accepted and is now ready for environmental analysis.

The Council on Environmental Quality (CEQ) issued a final rule on July 15, 2020, revising the regulations under 40 CFR parts 1500—1518 that federal agencies use to implement NEPA (see Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 FR 43,304). The Final Rule became effective on and applies to any NEPA process begun after September 14, 2020. An agency may also apply the regulations to ongoing activities and environmental documents begun before September 14, 2020, which includes the proposed Gouverneur Project. Commission staff intends to conduct its NEPA review in accordance with CEQ's new regulations.

l. *The Gouverneur Project consists of the following existing facilities:* (1) A 250-foot-long concrete gravity dam that includes two bridge piers and three separate spillways that range in crest elevation from 403.4 to 403.7 feet North American Vertical Datum of 1988 (NAVD88); (2) an impoundment with a surface area of 109 acres at the normal pool elevation of 403.8 feet NAVD88; (3) a concrete intake structure containing two trash rack bays separated by a 2-

[2] *Id.*

[3] 18 CFR 366.7(a).

[4] Burden is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3.

[5] The Commission staff thinks that the average respondent for this collection is similarly situated to the Commission, in terms of salary plus benefits. Based upon FERC's FY 2020 annual full-time equivalent average of $172,329 (for salary plus benefits), the average hourly cost is $83 per hour.

foot-wide center pier, each containing a 14-foot-wide trash rack; (4) a 20-foot by 36-foot powerhouse integral to the dam and containing two vertical axial flow propeller type turbines rated at 100 kilowatts each and two 100-kilovolt-ampere Westinghouse generators with a power factor of 0.8; (5) two generator leads from the turbine-generator units to a switchgear at the powerhouse interconnecting with the local grid; and (6) appurtenant facilities.

The Village of Gouverneur proposes to continue operating the project in a run-of-river mode and release a minimum flow of 110 cubic feet per second over the project's spillways. In addition, the applicant proposes to enhance the existing boat launch located on River Street. The project generated an annual average of 1,195 megawatt-hours between 2014 and 2017.

m. A copy of the application can 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. For assistance, contact FERC Online Support.

All filings must (1) bear in all capital letters the title COMMENTS, REPLY COMMENTS, RECOMMENDATIONS, TERMS AND CONDITIONS, or PRESCRIPTIONS; (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 submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

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. *The license applicant must file no later than 60 days following the date of issuance of this notice:* (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification. Please note that the certification request must be sent to the certifying authority and to the Commission concurrently.

o. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Deadline for Filing Comments, Recommendations, and Agency Terms and Conditions/Prescriptions.	January 2021.
Deadline for Filing Reply Comments.	February 2021.

Dated: November 19, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–26082 Filed 11–24–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Change in Meeting

Upon the affirmative votes of Chairman Danly and Commissioners Chatterjee, and Glick, the following Company name Entergy Mississippi, Inc., is hereby added to Item No. E–15 on the Commission's open meeting scheduled for November 19, 2020.[1]

Item No.	Docket No.	Company
E–15	EL10–65–007	Louisiana Public Service Commission v. Entergy Corporation, Entergy Services, Inc., Entergy Louisiana, LLC, Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Gulf States, Louisiana, L.L.C., Entergy Texas, Inc.
	ER14–2085–003, ER11–3658–003, ER12–1920–003, ER13–1595–003, (consolidated).	Entergy Services, Inc.

Dated: November 17, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–26019 Filed 11–24–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2019–0188; FRL–10016–47]

Research Triangle Institute; Transfer of Data (October 2020)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to Research Triangle Institute in accordance with the CBI regulations. Research Triangle Institute has been awarded a contract to perform work for OPP, and access to this information will enable Research Triangle Institute to fulfill the obligations of the contract.

DATES: Research Triangle Institute will be given access to this information on or before November 30, 2020.

FOR FURTHER INFORMATION CONTACT: William Northern, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 305–6478 email address: *northern.william@epa.gov.*

SUPPLEMENTARY INFORMATION:

[1] This Notice of Change in Meeting is published pursuant to the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b.

I. General Information

A. Does this action apply to me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2019–0188, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805.

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

II. Contractor Requirements

EPA requires technical and program support for the Agency's Endocrine Disruptor Screening Program (EDSP). This procurement entails services in the following areas: (1) Comprehensive toxicological and ecotoxicological testing and analysis; (2) toxicokinetics and dosimetry testing and analysis; (3) systematic literature reviews; (4) workshops/meeting support; (5) information/records management support; and (6) special studies/projects. Skills needed include, but are not limited to, technical experience and/or capability with performing Tier 1 and Tier 2 EDSP studies, *in vitro* toxicokinetics and dosimetry, risk assessment, development and evaluation of computational toxicity or exposure models, analytical chemical analysis, biochemical analyses, statistical analyses, information/records management, report-writing, meeting support and quality assurance/quality control support.

OPP has determined that the contracts described in this document involve work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under FIFRA sections 3, 4, 6, and 7 and under FFDCA sections 408 and 409.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contracts with Research Triangle Institute, prohibits use of the information for any purpose not specified in these contracts; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual.* In addition, Research Triangle Institute is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Research Triangle Institute until the requirements in this document have been fully satisfied. Records of information provided to Research Triangle Institute will be maintained by EPA Project Officers for these contracts. All information supplied to Research Triangle Institute by EPA for use in connection with these contracts will be returned to EPA when Research Triangle Institute has completed its work.

Authority: 7 U.S.C. 136 *et seq.;* 21 U.S.C. 301 *et seq.*

Dated: November 2, 2020.

Hamaad Syed,

Acting Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2020–26009 Filed 11–24–20; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice: EIB–2020–0011]

Proposal To Consider Changes to EXIM's Content Policy With Respect to the Program on China and Transformational Exports

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: This Notice is to inform the public that the Export-Import Bank of the United States (EXIM), in implementation of its historic seven-year reauthorization and directive to establish a new ''Program on China and Transformational Exports'' (''directive'') is considering changes to its U.S. medium- and long-term content policy (''content policy''). Any changes to the content policy would be specifically with respect to the new directive.

EXIM is considering whether changes to its content policy would improve the competitiveness of American exporters, and, by definition, their workers, as they face intense competition in transformational export sectors from China.

DATES: Comments must be received on or before December 14, 2020, to be assured of consideration before final consideration by the Board of Directors of EXIM.

ADDRESSES: Comments may be submitted through *Regulations.gov* at *WWW.REGULATIONS.GOV.* To submit a comment, enter Public Notice: EIB–2020–0011 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and Public Notice: EIB–2020–0011 on any attached document.

SUPPLEMENTARY INFORMATION: U.S. stakeholders and financial institutions regularly identify EXIM's content policy as the greatest challenge to EXIM support of their exports. This concern has been further validated through extensive discussions with exporters across numerous sectors, including during EXIM's 2020 ''Strengthening American Competitiveness'' initiative—where more than 1,000 stakeholders participated—specifically when it comes to neutralizing China and supporting transformational exports.

EXIM's historic seven-year reauthorization (Pub. L. 116–94), signed into law December 20, 2019, directed EXIM to establish a new ''Program on China and Transformational Exports'' (Sec. 402). The Program's purpose is to support the extension of loans, guarantees, and insurance, at rates and on terms and other conditions, to the extent practicable, that are fully competitive with rates, terms, and other conditions established by the People's Republic of China or by other covered countries (as designated by the Secretary of the Treasury). The law charges EXIM with a goal of reserving not less than 20 percent of the agency's total financing authority (*i.e.,* $27 billion out of a total of $135 billion) for support made pursuant to the program.

Pursuant to EXIM's reauthorization, the China Program has two aims: (1) To directly neutralize export subsidies for

competing goods and services financed by official export credit, tied aid, or blended financing provided by China or by other covered countries; and (2) To advance the comparative leadership of the United States with respect to China, or support United States innovation, employment, and technological standards, through direct exports in certain transformational industries. These transformational industries include:

- Artificial intelligence.
- Biotechnology.
- Biomedical sciences.
- Wireless communications equipment (including 5G or subsequent wireless technologies).
- Quantum computing.
- Renewable energy, energy efficiency, and energy storage.
- Semiconductor and semiconductor machinery manufacturing.
- Emerging financial technologies (including technologies that facilitate financial inclusion through increased access to capital and financial services; data security and privacy; payments, the transfer of funds, and associated messaging services; and efforts to combat money laundering and the financing of terrorism).
- Water treatment and sanitation (including technologies and infrastructure to reduce contaminants and improve water quality).
- High-performance computing;
- Associated services necessary for use of any of the foregoing exports.

Information on Decision: Information on the final decision for this matter will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://exim.gov/newsandevents/boardmeetings/board/.*

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2020–26040 Filed 11–24–20; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice 2020–3004]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

DATES: Comments should be received on or before December 28, 2020 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *www.regulations.gov* (EIB 00–02).

SUPPLEMENTARY INFORMATION: EXIM plans to invite approximately 150 U.S. exporters and commercial lending institutions that have used EXIM's short-, medium-, and long-term programs over the previous calendar year with an electronic invitation to participate in the online survey. The proposed survey will ask participants to evaluate the competitiveness of EXIM's programs and how the programs compare to those of foreign credit agencies. EXIM will use the responses to develop an analysis of the Bank's competitiveness.

The survey can be reviewed at: *https://www.exim.gov/sites/default/files/pub/pending/EXIM_Competitiveness_Report_Survey.pdf.*

Titles and Form Number: EIB 00–02 Annual Competitiveness Report Survey of Exporters and Bankers.

OMB Number: 3048–0004.

Type of Review: Renewal.

Need and Use: The information requested enables EXIM to evaluate and assess its competitiveness with the programs and activities of the major official entities and to report on the Bank's status in this regard.

Affected Public

The number of respondents: 150.

Estimated time per respondents: 90 minutes.

The frequency of response: Annually.

Annual hour burden: 225 total hours.

Government Expenses

Reviewing time per response: 45 minutes.

Responses per year: 150.

Reviewing time per year: 112.5 hours.

Average wages per hour: $42.50.

Average cost per year: $4,781.25 (time * wages).

Benefits and overhead: 20%.

Total government cost: $5737.5.

Bassam Doughman,

IT Specialist.

[FR Doc. 2020–26001 Filed 11–24–20; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1166; FRS 17255]

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: 3060–1166.

Title: Section 1.21001, Participation in Competitive Bidding for Support;

Section 1.21002, Prohibition of Certain Communications During the Competitive Bidding Process.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, and state, local or tribal governments.

Number of Respondents and Responses: 750 respondents and 750 responses.

Estimated Time per Response: 1.5 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection 47 U.S.C. 154, 254 and 303(r).

Total Annual Burden: 1,125 hours.

Total Annual Cost: No cost.

Nature and Extent of Confidentiality: Information collected in each application to participate in an auction for universal service support will be made available for public inspection, and the Commission is not requesting that respondents submit confidential information to the Commission as part of the pre-auction application process. However, to the extent that a respondent seeks to have certain information collected in an application to participate in an auction for universal service support or in a report of a prohibited communication withheld from public inspection, the respondent may request confidential treatment of such information pursuant to section 0.459 of the Commission's rules, 47 CFR Section 0.459.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: The information required by section 1.21001 of the Commission's rules that is collected under this information collection is used by the Commission to determine whether applicants are eligible to participate in auctions for Universal Service Fund support. The reports of prohibited communications made or received by an auction applicant required by section 1.21002 of the Commission's rules that are collected under this information collection enable the Commission to ensure that no bidder gains an unfair advantage over other bidders in its auctions for universal service support and thus enhance the competitiveness and fairness of Commission's auctions for universal service support.

On November 18, 2011, the Commission released an order comprehensively reforming and modernizing the universal service and intercarrier compensation systems to ensure that robust, affordable voice and broadband service, both fixed and mobile, are available to Americans throughout the nation. Connect America Fund et al., Order and Further Notice of Proposed Rulemaking, FCC 11–161 (USF/ICC Transformation Order). In the USF/ICC Transformation Order, the Commission, among other things, created (1) the Connect America Fund (CAF), to help make broadband available to homes, businesses, and community anchor institutions in areas that do not, or would not otherwise, have broadband, (2) the Mobility Fund, to ensure the availability of mobile broadband networks in areas where a private-sector business case, (3) the Remote Areas Fund (RAF), to ensure that Americans living in the most remote areas in the nation, where the cost of deploying traditional terrestrial broadband networks is extremely high, can obtain affordable access through alternative technology platforms, including satellite and unlicensed wireless services. The USF/ICC Transformation Order directed that support under CAF Phase II, the Mobility Fund, and the RAF be awarded by competitive bidding. The Commission adopted rules to implement the reforms it adopted in the USF/ICC Transformation Order, including rules in Part 1, Subpart AA of the Commission's rules governing competitive bidding for universal service support generally. See 47 CFR 1.21001–1.21004.

On October 27, 2020, the Commission adopted a Report and Order in which it, among other things, amended its existing Part 1, Subpart AA general universal service competitive bidding rules to codify policies and procedures applicable to the universal service auction application process that have been adopted in its recent universal service auctions, better align provisions in the universal service competitive bidding rules with like provisions in the Commission's spectrum auction rules, and make other updates for consistency, clarification, and other purposes that would apply in all universal service auctions. Establishing a 5G Fund for Rural America, Report and Order, FCC 20–150 (5G Fund Report and Order). The amended Part 1, Subpart AA rules adopted in the 5G Fund Report and Order apply to applicants seeking to participate in future Commission auctions for universal service support.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–26095 Filed 11–24–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX; FRS 17252]

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 No.: 3060–XXXX.

Title: Telemetry, Tracking and Command Earth Station Operators.

Form No: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 4 respondents; 4 responses.

Estimated Time per Response: 12 hours.

Frequency of Response: On occasion reporting requirement and Third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The Commission has statutory authority for the information collection requirements under 47 U.S.C. 151, 152, 154(i), 154(j), 155(c), 201, 302, 303, 304, 307(e), 309, and 316.

Total Annual Burden: 48 hours.

Total Annual Cost: $2,200.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality pertaining to the information collection requirements in this collection.

Needs and Uses: On March 3, 2020, the Commission released a Report and Order and Order of Proposed Modification titled, ''In the Matter of Expanding Flexible Use of the 3.7 to 4.2 GHz,'' GN Docket Number 18–122 (FCC 20–22). This rulemaking, which is under the purview of the Commission's Wireless Telecommunications Bureau, is hereinafter referred to as the 3.7 GHz Report and Order.

The Commission believes that C-band spectrum for terrestrial wireless uses will play a significant role in bringing next-generation services like 5G to the American public and assuring American leadership in the 5G ecosystem. The agency took action to make this valuable spectrum resource available for new terrestrial wireless uses as quickly as possible, while also preserving the continued operation of existing Fixed Satellite Services (FSS) available during and after the transition.

In the 3.7 GHz Report and Order, the Commission concluded that a public auction of the lower 280 megahertz of the C-band will best carry out our goals, and the agency will add a mobile allocation to the 3.7–4.0 GHz band so that next-generation services such as 5G can use the band. Relying on the Emerging Technologies framework, the Commission adopted a process to relocate FSS operations into the upper 200 megahertz of the band, while fully reimbursing existing operators for the costs of this relocation and offering accelerated relocation payments to encourage a speedy transition. The Commission also adopted service and technical rules for overlay licensees in the 280 megahertz of spectrum designated for transition to flexible use.

Among other information collection requirements in the 3.7 GHz Report and Order, the Commission has adopted several requirements, described in the text, related to the protection of TT&C earth stations and coordination with 3.7 GHz Service licensees. In a section of the 3.7 GHz Report and Order titled ''Adjacent Channel Protection Criteria'' the Commission sets out the following requirements:

Pursuant to paragraph 388 of the 3.7 GHz Report and Order, the Commission requires that the TT&C operators make available certain pertinent technical information about their systems upon request by licensees in the 3.7 GHz Service to ensure the protection of TT&C operations. In addition, paragraph 389 of the 3.7 GHz Report and Order includes the requirement that, in the event of a claim by a TT&C earth station operating in 4.0–4.2 GHz of harmful interference by a 3.7 GHZ operator, the earth station operator must demonstrate that that have installed a filter that complies with the mask requirement prescribed by the Commission. This requirement will facilitate an efficient and safe transition by requiring earth station operators to demonstrate their compliance with the mask requirements, thereby minimizing the risk of interference.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–26098 Filed 11–24–20; 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 10, 2020.

A. Federal Reserve Bank of Chicago

(Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Tamara L. Danover, Marion, Iowa; Terry D. Cooper, Cedar Rapids, Iowa, both individually and as co-trustees of the Delhi Bancshares, Inc. Subtrust, and the Delhi Bancshares, Inc. Subtrust, both of Marion, Iowa; Barbara A. Cooper, individually and as trustee of the Delhi Bancshares, Inc. Revocable Trust and the Delhi Bancshares, Inc. Revocable Trust, all of Robins, Iowa; Tad C. Cooper, Cedar Rapids, Iowa; and Tony A. Cooper, Batavia, Illinois;* as a group acting in concert and to retain voting shares of Delhi Bancshares, Inc., and thereby indirectly retain voting shares of Heritage Bank, both of Marion, Iowa.

B. Federal Reserve Bank of Kansas City

(Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *L. Bruce Boehs and Sherry Boehs, both of Fairview, Oklahoma; Jared Boehs, Piedmont, Oklahoma; Tess Boehs Wicks, Edmond, Oklahoma; Randall Boehs, individually, and as trustee of the Randall Boehs Living Trust, both of Enid, Oklahoma; Jordan Boehs, individually, and as trustee of the Jordan Boehs Revocable Living Trust, both of Edmond, Oklahoma;* to become members of the Boehs Family Group and to retain voting shares of Fairview Bancshares, Inc., and thereby indirectly retain voting shares of Farmers and Merchants National Bank, both of Fairview, Oklahoma.

In addition, L. Bruce Boehs, individually, Donald Lee Martens and Norlene Joyce Martens, both individually and as co-trustees of the Donald Lee Martens Revocable Trust and the Norlene Joyce Martens Revocable Trust, all of Fairview, Oklahoma; to become members of the Boehs-Martens Control Group and to retain voting shares of Fairview Bancshares, Inc., and thereby indirectly

retain voting shares of Farmers and Merchants National Bank.

2. *Austin P. Buerge, individually, as managing member of APB Investments, LLC, and as trustee of The Robin K. Buerge Spouse's 2020 Trust and The Austin P. Buerge 2020 Separate Property Trust, all of Tulsa, Oklahoma;* to become members of the Buerge Family Group, a group acting in concert, to acquire voting shares of Grand Capital Corporation, and thereby indirectly acquire voting shares of Grand Bank, both in Tulsa, Oklahoma.

Board of Governors of the Federal Reserve System, November 20, 2020.

Michele Taylor Fennel,

Deputy Associate Secretary of the Board.

[FR Doc. 2020–26114 Filed 11–24–20; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

[File No. 201 0014]

Stryker and Wright Medical; Analysis of Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; correction.

SUMMARY: The Federal Trade Commission published a document in the **Federal Register** of November 9, 2020, concerning the proposed consent agreement in the Matter of Stryker and Wright Medical. That document did not contain the Statement of Commissioner Rohit Chopra regarding this matter. This document corrects the omission.

FOR FURTHER INFORMATION CONTACT: Jonathan Ripa (202–326–2230), Bureau of Competition, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of November 9, 2020, in FR Doc.2020–24813, on page 71343, in the first column, after the signature of April J. Tabor, Acting Secretary, add the following:

Statement of Commissioner Rohit Chopra

Independent monitors and watchdogs are shadow regulators that promise to impartially report to the government. These individuals are typically paid by companies engaged in alleged wrongdoing as part of a settlement. Monitors typically have relevant expertise in an industry and are often former government officials.

In this matter, the Federal Trade Commission is resolving allegations that the merger between Stryker and Wright is unlawful by requiring divestitures and other provisions that will be overseen by an independent monitor. I write separately to detail some of my ongoing concerns regarding the lack of adequate protections against independent monitor conflicts of interest in FTC orders.

Monitor Independence

Over the last twenty years, there has been substantial concern about whether auditors and other third parties are truly independent, or whether they are influenced by seeking additional fees for future business.[1] When it comes to monitors of settlements, an independent monitor ideally believes its primary responsibilities are to the government agency that relies on their work to ensure compliance with a settlement or order.

Unfortunately, they are not always so independent, given potential incentives for their firms to seek additional business with companies subject to monitoring. For example, in the FTC's investigation of Facebook for compliance with its privacy obligations under a 2012 Commission order, the FTC alleged major violations of the order even though PriceWaterhouseCoopers (PwC) was supposedly providing an independent assessment of the company's compliance.[2] In fact, I am unable to identify any recent case where a monitor has identified a material order violation that led to a subsequent penalty action.

The Commission's practice is to have the party alleged to have engaged in a law violation propose a monitor, subject to Commission approval. The party is also responsible for paying the monitor's fees, which can be substantial.

In this matter, the Commission has appointed a monitor who is an employee of a French-based global advisory business, Mazars, which provides consulting, accounting, tax, and other services.[3] The agency's order requires the monitor to simply self-report any potential conflicts of interest. While this is better than nothing, it is not adequate, particularly when the monitor is employed by a large firm that offers a wide array of consulting and compliance-related services to companies like the targets in this matter. For example, will the monitor need to self-report a conflict when other units of Mazars bid for business with the merged entity? Many of these questions are unclear.

Protecting the Public From Conflicts of Interest

The Commission should strengthen the conflict-of-interest and transparency provisions in our orders related to monitors across the FTC's mission by exploring whether to:

- Require monitors and their employers to agree to non-solicit provisions for a period of time after the completion of a monitoring engagement.[4]
- Publish certain work products of monitors that detail their activities to ensure order compliance.[5]
- Create open application processes for potential monitors to detail their qualifications, as the Commission pursued in the Herbalife matter.[6]
- Require monitors to attest, under penalty of perjury, that they hold no financial interests in the industry of the companies subject to monitoring.

I am skeptical that the Commission can truly remedy anticompetitive harm with complex settlements that require independent monitors. While many monitors certainly provide independent advice and analysis, it is critical that their actions are never distorted by any real or perceived conflicts of interest.

[1] Ken Brown & Ianthe Jeanne Dugan, *Arthur Anderson's Fall From Grace Is a Sad Tale of Greed and Miscues,* Wall St. J. (June 7, 2002), *https://www.wsj.com/articles/SB1023409436545200;* Ben Protess & Jessica Silver-Greenberg, *New York Regulator Moves to Suspend Promontory Financial, N.Y. Times: DealBook/Business & Pol'y* (Aug. 3, 2015), *https://www.nytimes.com/2015/08/04/business/dealbook/new-york-regulator-moves-to-suspend-promontory-financial.html;* Jeff Horwitz, *US to fire monitor overseeing formerly for-profit colleges,* The Seattle Times (Mar. 14, 2016), *https://www.seattletimes.com/business/trouble-remains-following-failed-for-profit-schools-revival-3/.*

[2] *See* Nitasha Tiku, *Facebook's 2017 Privacy Audit Didn't Catch Cambridge Analytica,* Wired (Apr. 19, 2018), *https://www.wired.com/story/facebooks-2017-privacy-audit-didnt-catch-cambridge-analytica/; see also* Dissenting Statement of Commissioner Rohit Chopra In re Facebook, Inc., Comm'n File No. 1823109 (July 24, 2019), *https://www.ftc.gov/system/files/documents/public_statements/1536911/chopra_dissenting_statement_on_facebook_7-24-19.pdf.*

[3] Analysis of Agreement Containing Consent Orders to Aid Public Comment, *In the Matter of Stryker/Wright Medical,* File No. 191–0039; *see also About Us,* Mazars (last visited Nov. 2, 2020), *https://mazarsusa.com/about/.*

[4] *See* Statement of Commissioner Rohit Chopra Regarding Miniclip and the COPPA Safe Harbors, Comm'n File No. 1923129, (May 18, 2020), *https://www.ftc.gov/system/files/documents/public_statements/1575579/192_3129_miniclip_-_statement_of_cmr_chopra.pdf.*

[5] *See* Statement of Commissioner Rohit Chopra In the Matter of Uber Technologies Inc., Comm'n File No. 1523054, (Oct. 26, 2018), *https://www.ftc.gov/system/files/documents/public_statements/1418195/152_3054_c-4662_uber_technologies_chopra_statement.pdf.*

[6] *See* In the Matter of Federal Trade Commission, Plaintiff, v. Herbalife International of America, Inc., Applications for Compliance Auditors, (Aug. 31, 2016), *https://www.ftc.gov/public-statements/2016/08/applications-herbalife-independent-compliance-auditor.*

Dated: November 20, 2020.

April J. Tabor,

Acting Secretary.

[FR Doc. 2020–26104 Filed 11–24–20; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0018; Docket No. 2020–0053; Sequence No. 18]

Information Collection; Federal Acquisition Regulation Part 3: Improper Business Practices and Personal Conflicts of Interest

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on a revision and an extension concerning alternatives to Government-unique standards. DoD, GSA, and NASA invite comments on: Whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through February 28, 2021. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by January 25, 2021.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection through *http://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

Instructions: All items submitted must cite OMB Control No. 9000–0018, Federal Acquisition Regulation (FAR) Part 3: Improper Business Practices and Personal Conflicts of Interest. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Jennifer Hawes, Procurement Analyst, at telephone 202–969–7386, or *jennifer.hawes@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0018, Federal Acquisition Regulation (FAR) Part 3: Improper Business Practices and Personal Conflicts of Interest.

B. Need and Uses

DoD, GSA, and NASA are combining OMB Control Nos. for the Federal Acquisition Regulation (FAR) by FAR part. This consolidation is expected to improve industry's ability to easily and efficiently identify all burdens associated with a given FAR part. The review of the information collections by FAR part allows improved oversight to ensure there is no redundant or unaccounted for burden placed on industry. Lastly, combining information collections in a given FAR part is also expected to reduce the administrative burden associated with processing multiple information collections.

This justification supports the revision and extension of OMB Control No. 9000–0018 and combines it with the previously approved information collections under OMB Control No. 9000–0091, with the new title ''Federal Acquisition Regulation Part 3: Improper Business Practices and Personal Conflicts of Interest.'' Upon approval of this consolidated information collection, OMB Control No. 9000–0091 will be discontinued. The burden requirements previously approved under the discontinued number will be covered under OMB Control No. 9000–0018.

This clearance covers the information collection that offerors or contractors must submit to comply with the following requirements in FAR Part 3:

- *52.203–2, Certificate of Independent Price Determination.* This solicitation provision requires an offeror to certify that the prices in their offer have been arrived at independently, have not been or will not be knowingly disclosed, and have not been submitted for the purpose of restricting competition. This clause is used to ensure that Government contracts are not awarded to firms violating antitrust laws.
- *52.203–7, Anti-Kickback Procedures.* This contract clause requires contractors to report in writing to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Attorney General possible violations of 41 U.S.C. Chapter 87, Kickbacks, and to notify the contracting officer when monies are withheld from sums owed a subcontractor under the prime contract when the contracting officer has directed the prime contractor to do so to offset the amount of a kickback. The information reported by contractors will be used by the Federal agency to investigate potential violations.
- *52.203–13, Contractor Code of Business Ethics and Conduct.* This contract clause requires contractors and subcontractors to report to the agency Office of the Inspector General, whenever it has credible evidence that a principal, employee, agent, or subcontractor of the contractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C., or a violation of the Civil False Claims Act (31 U.S.C. 3729–3733). The information will be used by the Federal agency to investigate suspected violations.
- *52.203–16, Preventing Personal Conflicts of Interest.* This contract clause requires contractors and subcontractors to obtain and maintain from employees assigned to a task under a contract, a disclosure of interests that might be affected by the task to which the employee has been assigned. Contractors must report to any personal conflict of interest violation by a covered employee and the proposed actions to be taken. In exceptional circumstances, the contractor may request the head of the contracting activity approve a plan to mitigate the personal conflict of interest or waive the requirement to prevent personal conflicts of interest. This information is used by the contractor and the contracting officer to identify and mitigate personal conflicts of interest.

C. Annual Burden

Respondents: *10,275.*
Recordkeepers: *8,391.*
Total Annual Responses: *342,019.*
Total Burden Hours: *627,162 (123,702 reporting hours + 503,460 recordkeeping hours).*

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.*

Please cite OMB Control No. 9000–0018, Federal Acquisition Regulation Part 3: Improper Business Practices and Personal Conflicts of Interest.

William F. Clark,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2020–26096 Filed 11–24–20; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Supplemental Evidence and Data Request on Models of Care That Include Primary Care for Adult Survivors of Childhood Cancer

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for Supplemental Evidence and Data Submissions

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review on *Models of Care that Include Primary Care for Adult Survivors of Childhood Cancer,* which is currently being conducted by the AHRQ's Evidence-based Practice Centers (EPC) Program. Access to published and unpublished pertinent scientific information will improve the quality of this review.

DATES: *Submission Deadline* on or before December 28, 2020.

ADDRESSES:

Email submissions: epc@ahrq.hhs.gov.

Print submissions:

Mailing Address: Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E53A, Rockville, MD 20857.

Shipping Address (FedEx, UPS, etc.): Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E77D, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Jenae Benns, Telephone: 301–427–1496 or Email: *epc@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency for Healthcare Research and Quality has commissioned the Evidence-based Practice Centers (EPC) Program to complete a review of the evidence for *Models of Care that Include Primary Care for Adult Survivors of Childhood Cancer.* AHRQ is conducting this systematic review pursuant to Section 902 of the Public Health Service Act, 42 U.S.C. 299a.

The EPC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (*e.g.,* details of studies conducted). We are looking for studies that report on *Models of Care that Include Primary Care for Adult Survivors of Childhood Cancer,* including those that describe adverse events. The entire research protocol is available online at: *https://effectivehealthcare.ahrq.gov/products/pediatric-adolescent-cancer-survivorship/protocol.*

This is to notify the public that the EPC Program would find the following information on *Models of Care that Include Primary Care for Adult Survivors of Childhood Cancer* helpful:

- A list of completed studies that your organization has sponsored for this indication. In the list, please *indicate whether results are available on ClinicalTrials.gov along with the ClinicalTrials.gov trial number.*
- *For completed studies that do not have results on ClinicalTrials.gov,* a summary, including the following elements: Study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- *A list of ongoing studies that your organization has sponsored for this indication.* In the list, please provide the ClinicalTrials.gov trial number or, if the trial is not registered, the protocol for the study including a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.
- Description of whether the above studies constitute *ALL Phase II and above clinical trials* sponsored by your organization for this indication and an index outlining the relevant information in each submitted file.

Your contribution is very beneficial to the Program. Materials submitted must be publicly available or able to be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or information on indications not included in the review cannot be used by the EPC Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EPC Program website and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *https://www.effectivehealthcare.ahrq.gov/email-updates.*

The systematic review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions.

Contextual and Key Questions

We have developed contextual questions to guide our preliminary discussions with the stakeholders, as well as the specific review questions (or key questions) to be addressed.

Contextual Questions (CQ)

CQ1. How is effectiveness defined and measured for survivorship care models for adult survivors of childhood cancer?

CQ2. What are the models of survivorship care for adult survivors of childhood cancer?

a. Which of these models include primary care?

i. What is the evidence of effectiveness of the different models that include primary care?

CQ3. What survivorship care resources are available for adult survivors of childhood cancer and their families?

a. What are the intended outcomes of the different resources available for adult survivors of childhood cancer and their families?

b. What is the evidence of effectiveness of the different resources available for adult survivors of childhood cancer and their families?

c. What are the monetary costs to access these resources?

CQ4. What survivorship care resources are available to providers who care for adult survivors of childhood cancer?

a. What are the intended outcomes of the different resources available to care providers?

b. What is the evidence of effectiveness of the different resources available to care providers?

c. What are the monetary costs to access these resources?

Key Questions (KQs) for the Realist Review

KQ1. For whom and under what circumstances could different survivorship care models for adult survivors of childhood cancer that include primary care be effective?

a. What are the key mechanisms by which these models could be effective?

b. What are important contexts that determine whether different mechanisms could be effective?

KQ2. For whom and under what circumstances could different survivorship care resources for adult survivors of childhood cancer be effective in achieving their intended outcomes?

a. For survivors and their families

i. What are the key mechanisms by which these resources could lead to their intended outcome?

ii. What are important contexts that determine whether different mechanisms could lead to outcomes?

b. For care providers

i. What are the key mechanisms by which these resources could lead to their intended outcome?

ii. What are important contexts that determine whether different mechanisms could lead to outcomes?

PICOTS (Populations, Interventions, Comparators, Outcomes, Timing, Settings)

We will adapt the PICOTS framework (populations, interventions, comparators, outcomes, timing, and setting) to inform our realist review. The PICOTS include but are not limited to the following.

Population(s)

- Adult survivors of childhood cancer (cancer diagnosed prior to age 21years old) with no evidence of clinical disease; and their families
- Care providers of adult survivors of childhood cancer

Interventions

- Models of childhood cancer survivorship care for use in adult survivors
  - Models of childhood cancer survivorship care for use in adult survivors that include primary care
- Survivorship resources available to adult survivors of childhood cancer and their families
- Survivorship resources available to care providers of adult survivors of childhood cancer

Comparators

- Optional (will not require a comparison)

Outcomes

List of outcomes will be informed by contextual questions but may include:

- Intermediate patient health outcomes
- Morbidity
- Mortality
- Relapse
- Quality of life
- Psychosocial outcomes
- Mental health outcomes
- Caregiver burden
- Satisfaction with care
- Educational attainment
- Adherence with care
- Cost and resource utilization
- Unintended consequences
- Additional burdens
- Late effects—new cancers, cardiac or respiratory issues, etc. from original treatment

Timing

- After the transition from childhood cancer care

Settings

- All care settings

Dated: November 19, 2020.

Marquita Cullom,

Associate Director.

[FR Doc. 2020–26041 Filed 11–24–20; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; ORR Serious Medical Procedure Request (SMR) Form (New Collection)

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing to collect data for a new data collection, *the Serious Medical Procedure Request (SMR) Form.*

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION:

Description: Children with complex medical/dental conditions may require surgical intervention or procedures in order to maintain and promote their health while in ORR custody. Procedures requiring general anesthesia, surgeries, and invasive diagnostic procedures (*e.g.,* cardiac catheterization, invasive biopsy, amniocentesis) require advance ORR approval. Before a decision can be rendered by ORR, data on clinical indications, risks and benefits of the surgery/procedure, potential adverse outcomes if services are not rendered, timeframe for recovery, follow-up care, and points of contact must be collected and submitted to ORR. The form is not required for emergency procedures, procedures performed during hospitalization, or procedures resulting from complication of a previously approved procedure.

Respondents: Healthcare providers, ORR grantee staff.

Annual Burden Estimates:

ESTIMATED OPPORTUNITY BURDEN FOR RESPONDENTS

Instrument	Annual number of respondents	Annual number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Healthcare providers:					
Serious Medical Procedure Request (SMR) Form	195	1	.22	128.7	42.9

Estimated Total Annual Burden Hours: 42.9.

Instrument	Annual number of respondents	Annual number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
ORR Grantee Staff:					
Serious Medical Procedure Request (SMR) Form	195	1	.08	46.8	15.6

Estimated Total Annual Burden Hours: 15.6.

ESTIMATED RECORDKEEPING BURDEN FOR RESPONDENTS

Instrument	Annual number of respondents	Annual number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
ORR Grantee Staff:					
Serious Medical Procedure Request (SMR) Form	195	1	.08	46.8	15.6

Estimated Total Annual Burden Hours: 15.6.

Authority: 6 U.S.C. Section 279: Exhibit 1, part A.2 of the Flores Settlement Agreement (Jenny Lisette Flores, et al., v. Janet Reno, Attorney General of the United States, et al., Case No. CV 85–4544–RJK [C.D. Cal. 1996]).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–26121 Filed 11–24–20; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–3077]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Obtaining Information To Understand Challenges and Opportunities Encountered by Compounding Outsourcing Facilities

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by December 28, 2020.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted 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. The OMB control number for this information collection is 0910–0883. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Obtaining Information To Understand Challenges and Opportunities Encountered by Compounding Outsourcing Facilities

OMB Control Number 0910–0883—Extension

This information collection supports Agency-sponsored research. Drug compounding is generally the practice of combining, mixing, or altering ingredients of a drug to create a medication tailored to the needs of an individual patient. Although compounded drugs can serve an important medical need for certain patients when an approved drug is not medically appropriate, they also present a risk to patients. Compounded drugs are not FDA-approved. Therefore, they do not undergo premarket review by FDA for safety, effectiveness, and quality. Since compounded drugs are subject to a lower regulatory standard than approved drugs, Federal law places conditions on compounding that are designed to protect the public health.

The Drug Quality and Security Act of 2013 (Pub. L. 113–54) created ''outsourcing facilities''—a new industry sector of drug compounders held to

higher quality standards to protect patient health. Outsourcing facilities are intended to offer a more reliable supply of compounded drugs needed by hospitals, clinics, and other providers. Seven years since its creation, this domestic industry is still relatively small and is experiencing growth and market challenges. In addition, FDA continues to find concerning quality and safety problems during inspections.

To help this industry meet its intended function, FDA intends to engage in several initiatives to address challenges and support compliance and advancement. One initiative includes conducting in-depth research to understand better the challenges and opportunities encountered by the outsourcing facility sector in a number of different areas. These include: Operational barriers and opportunities related to the outsourcing facility market and business viability; knowledge and operational barriers and opportunities related to compliance with Federal policies and good quality drug production; and barriers and opportunities related to outsourcing facility interactions with FDA.

This is an extension of research that began last year. We have learned about barriers and opportunities encountered by outsourcing facilities in several areas. These include: Operational barriers and opportunities related to the outsourcing facility market and business viability; knowledge and operational barriers and opportunities related to compliance with Federal policies and good quality drug production; and barriers and opportunities related to outsourcing facility interactions with FDA. We need to extend this information collection for two reasons: (1) Based on what we learned, we will want to ask some follow up questions in these areas; (2) We received a low response rate and need to reach the rest of the outsourcing facility industry. We only managed to obtain completed surveys from approximately one third of respondents. Only 45 percent of outsourcing facilities provided any response to the survey. Therefore, over half of outsourcing facilities did not respond to our survey, and we were unable to obtain their viewpoints. The results of this research will be used by FDA to develop a comprehensive understanding of the outsourcing facility sector, its challenges, and opportunities for advancement. The information will be essential to help identify knowledge and information gaps, operational barriers, and views on interactions with FDA. The research results will inform FDA's future approaches to communication, education, training, and other engagement with outsourcing facilities to address challenges and support advancement.

Researchers will engage pharmacists, staff, and management from outsourcing facilities and similar compounding businesses. Researchers may use surveys, interviews, and focus groups to obtain information concerning challenges and opportunities encountered by outsourcing facilities. Within this context, the following questions or similar, related questions may be posed:

1. What financial and operational considerations inform outsourcing facility operational and business model decisions?

2. What factors impact the development of a sustainable outsourcing facility business?

3. What financial and operational considerations inform outsourcing facility product decisions?

4. Do outsourcing facilities understand the Federal legislative and regulatory policies that apply to them? What, if any, knowledge gaps need to be addressed?

5. What challenges do outsourcing facilities face when implementing Federal current good manufacturing practice (CGMP) requirements?

6. How do outsourcing facilities implement quality practices at their facilities?

7. How is CGMP and quality expertise developed by outsourcing facilities? How do they obtain this knowledge, and what training do they need?

8. What are the economic consequences of CGMP noncompliance/product failures for outsourcing facilities?

9. What are outsourcing facility management and staff views on current interactions with FDA? How do they want the interactions to change?

10. What are outsourcing facilities' understanding of how to engage with FDA during and following an inspection?

In the **Federal Register** of June 18, 2020 (85 FR 36857), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received four comments. Although four comments were received, three were not responsive to the four collection of information topics solicited and, therefore, will not be discussed in this document. The other comment included a number of suggested questions to expand upon the questions posed in the 60-day notice and, therefore, can be considered ways to enhance the quality, utility, and clarity of the information to be collected. While the questions will not be included verbatim in our survey instrument, FDA will give the questions due consideration as the Agency proceeds with this study.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Surveys, focus groups, and interviews	300	2	600	1	600

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: November 16, 2020.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2020–26066 Filed 11–24–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1677]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Recordkeeping and Reporting Requirements for Human Food and Cosmetics Manufactured From, Processed With, or Otherwise Containing Material From Cattle

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by December 28, 2020.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted 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. The OMB control number for this information collection is 0910–0623. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Recordkeeping and Reporting Requirements for Human Food and Cosmetics Manufactured From, Processed With, or Otherwise Containing Material From Cattle—21 CFR 189.5 and 700.27

OMB Control Number 0910–0623—Extension

FDA's regulations in §§ 189.5 and 700.27 (21 CFR 189.5 and 700.27) set forth bovine spongiform encephalopathy (BSE)-related restrictions applicable to FDA-regulated human food and cosmetics. The regulations designate certain materials from cattle as ''prohibited cattle materials,'' including specified risk materials (SRMs), the small intestine of cattle not otherwise excluded from being a prohibited cattle material, material from nonambulatory disabled cattle, and mechanically separated (MS) beef.

Sections 189.5(c) and 700.27(c) set forth the requirements for recordkeeping and records access for FDA-regulated human food, including dietary supplements, and cosmetics manufactured from, processed with, or otherwise containing material derived from cattle. We issued these recordkeeping regulations under the adulteration provisions in sections 402(a)(2)(C), (a)(3), (a)(4), (a)(5), 601(c), and 701(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 342(a)(2)(C), (a)(3), (a)(4), (a)(5), 361(c), and 371(a)). Under section 701(a) of the FD&C Act, we are authorized to issue regulations for the FD&C Act's efficient enforcement. With regard to records concerning imported human food and cosmetics, we relied on our authority under sections 701(b) and 801(a) of the FD&C Act (21 U.S.C. 371(b) and 381(a)). Section 801(a) of the FD&C Act provides requirements with regard to imported human food and cosmetics and provides for refusal of admission of human food and cosmetics that appear to be adulterated into the United States. Section 701(b) of the FD&C Act authorizes the Secretaries of Treasury and Health and Human Services to jointly prescribe regulations for the efficient enforcement of section 801 of the FD&C Act.

These requirements are necessary because once materials are separated from an animal it may not be possible, without records, to know the following: (1) Whether cattle material may contain SRMs (brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and dorsal root ganglia from animals 30 months and older and tonsils and distal ileum of the small intestine from all animals of all ages); (2) whether the source animal for cattle material was inspected and passed; (3) whether the source animal for cattle material was nonambulatory disabled, or MS beef; and (4) whether tallow in human food or cosmetics contain less than 0.15 percent insoluble impurities.

FDA's regulations in §§ 189.5(c) and 700.27(c) require manufacturers and processors of human food and cosmetics manufactured from, processed with, or otherwise containing material from cattle establish and maintain records sufficient to demonstrate that the human food or cosmetics are not manufactured from, processed with, or otherwise contain prohibited cattle materials. These records must be retained for 2 years at the manufacturing or processing establishment or at a reasonably accessible location. Maintenance of electronic records is acceptable, and electronic records are considered to be reasonably accessible if they are accessible from an onsite location. Records required by these sections and existing records relevant to compliance with these sections must be available to FDA for inspection and copying. Existing records may be used if they contain all of the required information and are retained for the required time period.

Because we do not easily have access to records maintained at foreign establishments, FDA regulations in §§ 189.5(c)(6) and 700.27(c)(6), respectively, require that when filing for entry with U.S. Customs and Border Protection, the importer of record of human food or cosmetics manufactured from, processed with, or otherwise containing, cattle material must affirm that the human food or cosmetics were manufactured from, processed with, or otherwise contains, cattle material and must affirm that the human food or cosmetics were manufactured in accordance with the applicable requirements of §§ 189.5 or 700.27. In addition, if human food or cosmetics were manufactured from, processed with, or otherwise contains cattle material, the importer of record must provide within 5 business days records sufficient to demonstrate that the human food or cosmetics were not manufactured from, processed with, or otherwise contains prohibited cattle material, if requested.

Under FDA's regulations, we may designate a country from which cattle materials inspected and passed for

human consumption are not considered prohibited cattle materials, and their use does not render human food or cosmetics adulterated. Sections 189.5(e) and 700.27(e) provide that a country seeking to be designated must send a written request to the Director of the Center for Food Safety and Applied Nutrition. The information the country is required to submit includes information about a country's BSE case history, risk factors, measures to prevent the introduction and transmission of BSE, and any other information relevant to determining whether SRMs, the small intestine of cattle not otherwise excluded from being a prohibited cattle material, material from nonambulatory disabled cattle, or MS beef from the country seeking designation should be considered prohibited cattle materials. We use the information to determine whether to grant a request for designation and to impose conditions if a request is granted.

Sections 189.5 and 700.27 further state that countries designated under §§ 189.5(e) and 700.27(e) will be subject to future review by FDA to determine whether their designations remain appropriate. As part of this process, we may ask designated countries to confirm that their BSE situation and the information submitted by them, in support of their original application, has remained unchanged. We may revoke a country's designation if we determine that it is no longer appropriate. Therefore, designated countries may respond to periodic FDA requests by submitting information to confirm their designations remain appropriate. We use the information to ensure their designations remain appropriate.

Description of Respondents: Respondents to this information collection include manufacturers, processors, and importers of FDA-regulated human food, including dietary supplements, and cosmetics manufactured from, processed with, or otherwise containing material derived from cattle, as well as, with regard to §§ 189.5(e) and 700.27(e), foreign governments seeking designation under those regulations.

In the **Federal Register** of August 14, 2020 (85 FR 49657), we published a 60-day notice requesting public comment on the proposed collection of information. Although some comments were received, only one pertained to the information collection. The comment suggested requiring greater than a 2-year retention period for records; however, we believe that additional retention requirements may impose undue burden on respondents to the information collection without providing greater utility to the Agency.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
189.5(c)(6) and 700.27(c)(6); affirmation of compliance.	54,825	1	54,825	0.033 (2 minutes)	1,809
189.5(e) and 700.27(e); request for designation	1	1	1	80	80
189.5(e) and 700.27(e); response to request for review by FDA.	1	1	1	26	26
Total					1,915

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

Type of respondent	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeper	Total hours
Domestic facilities	697	52	36,244	0.25 (15 minutes)	9,061
Foreign facilities	916	52	47,632	0.25 (15 minutes)	11,908
Total					20,969

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: November 18, 2020.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2020–26059 Filed 11–24–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Termination of the Food and Drug Administration's Unapproved Drugs Initiative; Request for Information Regarding Drugs Potentially Generally Recognized as Safe and Effective

AGENCY: Food and Drug Administration (FDA), Department of Health and Human Services (HHS).

ACTION: Notice; request for information.

SUMMARY: The Department of Health and Human Services is issuing this Notice to withdraw FDA's Marketed Unapproved Drugs—Compliance Policy Guide, Sec. 440.100, Marketed New Drugs Without Approved NDAs or ANDAs, and to request information from the public regarding drugs that may be grandfathered or generally recognized as safe and effective.

DATES: Part I of this Notice shall be effective thirty days from the date of publication in the **Federal Register**. To be considered, responses and comments related to Part II of this Notice must be received electronically at the email

address listed below. The Department will consider information submitted by the public in response to Part II of this Notice on a rolling basis, and until further notice.

ADDRESSES: Responses to Part II must be submitted electronically, and should be addressed to *Import@hhs.gov.* In the subject line of the email message, submissions should include ''GRASE RFI Response.''

FOR FURTHER INFORMATION CONTACT: Nick Uehlecke, 200 Independence Ave. SW, Washington, DC 20201; or by email at *Import@hhs.gov;* or by telephone at 1–877–696–6775.

SUPPLEMENTARY INFORMATION: The Trump Administration, through the Department of Health and Human Services (HHS), is continuing its efforts to reduce the price of prescription drugs. This Notice addresses two related but distinct issues: (1) The Food and Drug Administration's (FDA) Unapproved Drugs Initiative (UDI) and (2) the construction of the statutory exemptions from the definition of ''new drugs'' subject to FDA approval under the federal Food, Drug, and Cosmetic Act (FD&C Act), namely so-called pre-1938 grandfathered drugs and drugs that are ''generally recognized as safe and effective'' or ''GRASE.''

I. Unapproved Drugs Initiative

In 1938, Congress created the modern scheme for federal regulation of drugs. Before 1938, there was no requirement under federal law for a manufacturer to obtain FDA approval before marketing a drug. Today, as a general rule, under the FD&C Act, a ''new drug'' must be approved by the FDA for safety and efficacy pursuant to an approved New Drug Application (NDA) or Abbreviated New Drug Application (ANDA) before the drug is introduced into interstate commerce. *See* FD&C Act 201(p), 21 U.S.C. 321(p) (defining ''new drug'' under the Act); FD&C Act 505(a), 21 U.S.C. 355(a) (''No person shall introduce or deliver for introduction into interstate commerce any new drug, unless an approval of an application . . . is effective with respect to such drug.''). A ''person'' that introduces a ''new drug'' into interstate commerce is subject to, among other sanctions, injunctions and/or having the subject product seized in an ex parte proceeding under admiralty rules. *See* FD&C Act 302, 21 U.S.C. 332 (injunction authority); FD&C Act 304, 21 U.S.C. 334 (seizure authority).

Not all drugs are ''new drugs'' which require FDA approval. There are two primary carve-outs from the FD&C Act's definition of ''new drug.'' [1] First, when Congress enacted the modern FD&C Act in 1938, it exempted from the definition of ''new drug'' all drugs ''subject to the Food and Drugs Act of June 30, 1906, as amended, and if at such time its labeling contained the same representations concerning the conditions of its use.'' FD&C Act 201(p)(1), 21 U.S.C. 321(p)(1). Second, drugs that are generally recognized as safe and effective which have also ''been used to a material extent or for a material time'' are not ''new drugs.'' FD&C Act 201(p)(1) and (2), 21 U.S.C. 321(p)(1) and (2). Drugs that meet either of these exceptions may be legally marketed without FDA pre-approval for safety and efficacy, subject to the agency's other regulatory authorities.

Through a guidance document issued in 2006 and later revised in 2011, and without conducting notice-and-comment rulemaking, FDA launched a program called the Unapproved Drugs Initiative (UDI).[2] The UDI sprang from a laudable objective, namely to reduce the number of unapproved drugs on the market. To achieve this end, FDA provided in its 2011 UDI Guidance that ''the first company to obtain an approval [of a previously unapproved drug] will have a period of de facto market exclusivity before other products obtain approval.'' [3] The agency ''hope[d] that this period of market exclusivity will provide an incentive to firms to be the first to obtain approval to market a previously unapproved drug.'' [4] Ultimately, manufacturers of older drugs previously thought to be exempt from the FDA approval requirement obtained market exclusivity for those products after FDA took unapproved versions off the market. An unintended consequence of the ''period of de facto market exclusivity'' provided by the UDI allowed manufacturers an opportunity to raise prices in an environment largely insulated from market competition.

Based on its ongoing review of FDA regulatory programs, the Department has decided to withdraw the 2006 and 2011 Guidance, effective thirty days after the date of publication of this Notice in the **Federal Register**. All compliance manuals, website statements, and other informal issuances with respect to the 2006 and 2011 Guidance are also hereby withdrawn. The withdrawal of the 2006 and 2011 Guidance Documents complies with FDA's current Good Guidance Practices regulation, which allows for ''periodic[ ] review of [of] existing guidance documents to determine whether they need to be changed or withdrawn.'' 21 CFR 10.115(k)(1). Nothing in this Notice otherwise limits FDA's authority to take action against manufacturers of unapproved drugs that meet the statutory definition of a ''new drug'' (such as, for example, an unapproved drug that claims to mitigate, treat, or cure COVID–19) or violate the FD&C Act in other ways. Further, nothing in this Notice limits FDA's grant of regulatory exclusivities authorized by statute, such as a new chemical entity exclusivity, orphan drug exclusivity, or pediatric exclusivity. This Notice does not apply to drugs subject to (1) Investigational New Drug applications (IND) that are in effect as of the effective date of this Notice, (2) any subsequent NDA based on new clinical trial investigations (other than bioavailability studies) derived under such IND, and (3) existing approved NDAs.

The Department is withdrawing the 2006 and 2011 Guidances for several evidence-based reasons. After the UDI began, reports emerged that Americans were paying significantly more for prescription drugs approved by FDA through the UDI than they had paid previously. One report noted that a drug approved through the UDI ''sells for about $4.50 a tablet—nearly 50 times the price of the unapproved version.'' [5] Another report asserted that ''[t]hanks at least partially to the FDA program, the price of vasopressin . . . has risen 10-fold'' and the cost of ''a vial of

[1] There is a third, related exemption which relieves manufacturers from the obligation of showing their drugs are effective prior to marketing. In section 107(c)(4) of the Drug Amendments of 1962, Public Law 87–81, 76 Stat. 780, 789 (Oct. 10, 1962), Congress exempted from the efficacy requirement ''product[s] that, on the day before the 1962 amendments became effective, (A) [were] used or sold commercially in the United States, (B) [were] generally recognized by the experts as safe; and (C) [were] not 'covered' by an 'effective' application.'' *USV Pharmaceutical Corp.* v. *Weinberger,* 412 U.S. 655, 653 (1973). In *Weinberger,* the Supreme Court held that so-called ''me-too drugs,'' *i.e.,* drugs that were copies of NDA drugs, were effectively ''covered'' by an effective application and thus subject to the efficacy requirement just like drugs covered by NDAs. *Id.* at 664–65. Practically, *Weinberger* left as the lone remaining candidates for this exemption from the efficacy requirement drugs (a) on the market prior to 1962, (b) generally recognized as safe, and (c) not themselves subject to a 1938–1962 ''effective'' NDA.

[2] FDA, *Marketed Unapproved Drugs—Compliance Policy Guide Sec. 440.100, Marketed New Drugs Without Approved NDAs or ANDAs* (June 2006) (hereinafter the 2006 Guidance); FDA, *Marketed Unapproved Drugs—Compliance Policy Guide Sec. 440.100, Marketed New Drugs Without Approved NDAs or ANDAs* (Sept. 19, 2011) (hereinafter the 2011 Guidance).

[3] 2011 Guidance at 8.

[4] *Id.*

[5] Harris Meyer, *The High Price of FDA Approval,* Kaiser Health News, Dec. 29, 2009, *https://khn.org/news/fda-approval/.*

neostigimine . . . has gone from less than $5 to $90.'' [6]

In 2017, scholars from the Yale School of Medicine and the University of Utah published a peer-reviewed study corroborating the previous reports.[7] The study reviewed 34 drugs subject to the UDI between 2006 and 2015. The scholars found the average wholesale unit price of 26 of the 34 drugs for which pricing data was available increased by a median of 37% (interquartile range of 23%–204%).[8] The average wholesale unit price of 11 of the drugs surveyed in the study increased by more than 128%.[9]

The study also linked the UDI to drug shortages, which the authors defined as ''a supply issue that affects how a pharmacy prepares or dispenses a drug product that influences patient care when prescribers must use an alternative agent.'' [10] In this regard, the scholars found that 24 of the 34 drugs experienced shortages after FDA took enforcement action after an entity obtained FDA approval of a previously unapproved drug. The median shortage was 217 days.[11]

Finally, the authors considered whether the UDI generated new clinical data evidence for older drugs. The authors found that, of the nineteen drugs that obtained FDA approval during the study period, only two were supported by ''new clinical trial evidence.'' [12] The other seventeen drugs ''were supported by literature reviews and bioequivalence to older drug products.'' [13]

Therefore, the Department has concluded that while the UDI began with laudable goals, it has had numerous negative, unintended consequences on Americans' access to prescription drugs and generated very limited benefits.

Moreover, the fact that the program was initiated through guidance, as opposed to notice-and-comment rulemaking, further supports the Department's decision to withdraw the 2006 and 2011 Guidances, because the Department has serious legal concerns about whether the UDI was implemented through legally permissible procedures.[14] The Department recognizes that some persons might contend that they have reliance interests in the 2011 Guidance remaining in effect. In *Dep't of Homeland Sec.* v. *Regents of the Univ. of California,* 140 S. Ct. 1891 (2020), the Supreme Court struck down the Department of Homeland Security's rescission of the Deferred Action for Childhood Arrivals (DACA) immigration program, in part based on the reliance interests of persons eligible to obtain the benefits of the program. Notably, in that case, immigration authorities ''solicited applications from eligible aliens, instituted a standardized review process, and sent formal notices indicating whether the alien would receive the two-year forbearance.'' *Id.* As the Court explained, DACA ''created a program for conferring affirmative immigration relief.'' *Id.*

The UDI is distinguishable from the DACA program. Unlike DACA, the 2011 Guidance described how the FDA intended to exercise its enforcement discretion, but stopped short of committing FDA to any particular action. FDA stated that it was ''more likely to take enforcement action'' against unapproved competitors of newly approved drugs under the UDI, but that the agency ''intend[s] to take into account the circumstances once the product is approved in determining how to exercise our enforcement discretion with regard to the unapproved products.'' [15] Moreover, the 2011 Guidance stated that it ''does not create or confer any rights for or on any person and does not operate to bind FDA or the public.'' [16] Any reliance interests are thus illusory. Furthermore, Congress vested FDA with the sole authority to enforce the FD&C Act. FD&C Act 310, 21 U.S.C. 337. Under *Heckler* v. *Chaney,* 470 U.S. 821 (1985), FDA's decision about the extent to which it shall enforce the FD&C Act is unreviewable under the Administrative Procedure Act.

Even if there were cognizable reliance interests in the UDI, the Department has ample evidence-based justification for rescinding the 2006 and 2011 Guidances. After more than fourteen years of experience with the program, evidence has emerged that the UDI has caused significant prescription drug price increases and drug shortages while providing limited new clinical data on older drugs. The Department believes these costs imposed on American patients and taxpayers outweigh any reliance interests that may exist in the program. The Department has also considered the public health effects of withdrawing the 2006 and 2011 Guidances. As the 2011 Guidance acknowledges, there are ''several thousand'' products on the market that lack FDA approval.[17] To the extent this program has limited patient access to important, safe medications due to price increases or drug shortages, the withdrawal of the 2006 and 2011 Guidances will have a positive impact on public health. Moreover, eliminating this program allows FDA's resources to be directed toward monitoring unapproved ''new drugs'' that fall squarely within the traditional scope of the definition of that term in the FD&C Act. At the same time, the Notice allows FDA to use its limited review resources on innovative potential therapies, as opposed to older drugs with longstanding use.

Besides, any reliance interests (if they existed) would be minimal. This Notice does not apply to drugs subject to (1) INDs in effect as of the effective date of this Notice, (2) any subsequent NDA based on new clinical investigations (other than bioavailability studies) derived under such IND, and (3) existing approved NDAs.

II. Pre-1938 Grandfathered and GRASE Drugs; Request for Information

As noted above, when Congress enacted the FD&C Act in 1938 and later amended the Act in 1962, it exempted certain drugs from the FDA approval requirement. Section 201(p) of the FD&C Act, 21 U.S.C. 321(p), excludes from the definition of ''new drug'' certain drugs marketed prior to June 25, 1938 and drugs generally recognized as safe and effective, or GRASE. In the 2011 Guidance, FDA stated that ''it is not likely that any currently marketed prescription drug is grandfathered or is otherwise not a *new drug,*'' though the

[6] Michael Hiltzik, *The little-known FDA program that's driving drug prices higher,* L.A. Times (Sept. 23, 2015), *https://www.latimes.com/business/hiltzik/la-fi-mh-the-little-known-fda-program-20150923-column.html.*

[7] Ravi Gupta et al., *The FDA Unapproved Drugs Initiative: An Observational Study of the Consequences for Drug Prices and Shortages in the United States,* 23 J. of Man. Care & Specialty Pharm. 1066 (Oct. 2017).

[8] *Id.* at 1071.

[9] *See id.* at 1072.

[10] *Id.* at 1068.

[11] *Id.* at 1073.

[12] *Id.*

[13] *Id.; see also* Aaron S. Kesselheim and Daniel H. Solomon, *Incentives for Drug Development—The Curious Case of Colchicine,* N. Engl. J. Med. 362;22 at 2046 (noting the dramatic rise in the price of Colchicine after implementation of the UDI, but that ''there is no evidence of any meaningful improvement to the public health'' from the regulatory changes).

[13] 36 FR 14662, 14662–63 (Aug. 7, 1971).

[14] *See, e.g.,* 5 U.S.C. 553. The Department also has concerns regarding whether the issuance of the 2011 Guidance complied with FDA's good guidance practices regulation, 21 CFR 10.115, in effect at the time. FDA issued the 2011 Guidance ''without public comment because the Agency has determined that prior public participation is not feasible or appropriate.'' 76 FR 58398 (Sept. 21, 2011).

[15] 2011 Guidance at 7.

[16] *Id.* at 2.

[17] *Id.* at 3.

agency stated ''that it is at least theoretically possible.'' [18]

That was not always the case. For many years, FDA acknowledged that at least some drugs are not ''new drugs'' subject to FDA approval prior to marketing. In a 1980 version of the *Orange Book,* FDA stated that ''[t]he law also permits drugs to be legally marketed without such fully approved applications under certain circumstances,'' including ''drugs marketed prior to 1938 that are not subject to the pre-market clearance procedures of the law'' and ''drug products marketed between 1938 and 1962 that were approved for safety but not effectiveness.'' [19] In the same publication, the agency went on to identify specific products, noting ''commonly used large volume intravenous products are not included on the List [of FDA-approved drugs] (*e.g.,* dextrose 5% with water, dextrose 10% with water, sodium chloride 0.9% injection),'' since ''all of these drug products came on the market in glass containers before 1938 and have not been required to obtain an approved new drug application as a condition of marketing.'' [20] In the 2000 edition of the *Orange Book,* FDA cited to the barbiturate ''Phenobarbital Tablets'' as an example of ''pre-1938 drugs.'' [21] The 2011 Guidance, issued absent notice-and-comment rulemaking and without prior public comment, contains no acknowledgement of these prior positions.[22]

This evolution in the agency's thinking has had consequences. Under the UDI, FDA required the manufacturer of an epinephrine brand which originally came onto the market in 1901 to submit an NDA.[23] The drug colchicine, a product FDA acknowledged ''was available in oral dosage form during the 19th century,'' [24] was also approved through the UDI. The interpretation of the definition of ''new drug'' espoused in the 2011 Guidance essentially foreclosed the possibility that these two century-old drugs were pre-1938 grandfathered drugs exempt from the approval process. The 2017 study discussed above found that the average wholesale unit price of epinephrine and colchicine increased by 58.3% and 3,323.5%, respectively,[25] costs absorbed by American patients and taxpayers.

The regulatory history of the prescription drug Daraprim raises similar issues. FDA originally approved Daraprim (pyrimethamine) for safety in 1953, and later deemed the drug effective through the Drug Efficacy Study Implementation, or DESI review process.[26] The drug is listed on the World Health Organization's *List of Essential Medications,* ''a list of minimum medicine needs for a basic health-care system, listing the most efficacious, safe and cost-effective medicines for priority conditions.'' [27] In 2015, the company Turing Pharmaceuticals ''raised the price [of the drug] to $750 a tablet from $13.50, bringing the annual cost of treatment for some patients to hundreds of thousands of dollars.'' [28] Turing came by this windfall, at least in part, because of FDA's interpretation of the definition of ''new drug'' in the FD&C Act as articulated in the 2006 and 2011 Guidances, a view that foreclosed the possibility that Daraprim, a drug more than sixty years old, could ever qualify as GRASE. That position effectively prevented other manufacturers of generic versions of this product from entering the market without an approved abbreviated new drug application, allowing Turing to enjoy a single-source position in the marketplace while potential competitors went through the regulatory process. In February 2016, Congress held a hearing on this widely-publicized issue. Ultimately, FDA approved a generic competitor for this single-source drug in February 2020.

The Department wishes to engage with the public on the contours of the exceptions to the definition of ''new drug.'' In this regard, HHS is reviewing whether certain drugs, including the drug subject to Congressional scrutiny in 2016, might qualify as exempt from the FDA approval requirement. To aid that effort, HHS asks for input from patients, health care providers, industry, and other stakeholders to provide information responsive to any of the topics below:

1. Lists of drugs marketed prior to June 25, 1938 that are currently available on the market.
2. The extent to which drugs marketed prior to June 25, 1938, or drugs that might qualify as GRASE, have regulatory approvals in countries outside the United States.
3. Whether there would be adverse clinical or economic consequences to deeming as GRASE those drugs previously approved by the FDA for which patent and regulatory exclusivity have expired.
4. Any published literature reviews or clinical studies related to any drugs potentially exempt from the new drug approval requirement.

Dated: November 20, 2020.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2020–26133 Filed 11–24–20; 8:45 am]

BILLING CODE 4150–26–P

[18] *Id.* at 12 (emphasis in original).

[19] FDA, *Approved Prescription Drug Products with Therapeutic Equivalence Evaluations* (herein the *Orange Book*), at I–3 (1st ed. 1980).

[20] *Id.* at I–13.

[21] *Id.* at I–13. FDA, *Orange Book,* at v (2000); *see also* FDA, *Orange Book,* at iv (29th ed. 2009) (containing same reference to ''pre-1938 drugs'' and phenobarbital tablets). FDA included a reference to ''pre-1938 drugs'' like phenobarbital tablets in the *Orange Book* as late as 2016, FDA, *Orange Book,* at iv (36th ed. 2016), but removed the reference in its 2017 edition and subsequent versions.

[22] *Cf. F.C.C.* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009) (''To be sure, the requirement that an agency provide reasoned explanation for its action would ordinarily demand that it display awareness that it *is* changing position.'')

[23] FDA, Ctr. For Drug Evaluation and Research, Application Number: 204200Origs1s000, 204200Orig2s000, Summary Review, at 3, *https://www.accessdata.fda.gov/drugsatfda_docs/nda/2012/204200Orig1Orig2s000SumR.pdf.*

[24] 75 FR 60768 (Oct. 1, 2010).

[25] Gupta, *supra* note 7, at 1072; *see also* Aaron S. Kesselheim and Daniel H. Solomon, *Incentives for Drug Development—The Curious Case of Colchicine,* N. Engl. J. Med. 362;22 at 2046 (noting the dramatic rise in the price of Colchicine after implementation of the UDI, but that ''there is no evidence of any meaningful improvement to the public health'' from the regulatory changes).

[26] 36 FR 14662, 14662–63 (Aug. 7, 1971).

[27] World Health Organization, *20th WHO Model List of Essential Medications,* at 24 (Mar. 2017).

[28] Andrew Pollack, *Drug Goes From $13.50 a Tablet to $750, Overnight,* N.Y. Times, Sept. 20, 2015, *https://www.nytimes.com/2015/09/21/business/a-huge-overnight-increase-in-a-drugs-price-raises-protests.html.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0529]

Qualification Process for Drug Development Tools; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration's (FDA or Agency) Center for Drug Evaluation and Research (CDER) and Center for Biologics Evaluation and Research (CBER) are announcing the availability of a final guidance for industry and FDA staff entitled ''Qualification Process for Drug Development Tools.'' Under the 21st Century Cures Act (Cures Act), enacted on December 13, 2016, a new section was added to the Federal Food, Drug, and Cosmetic Act (FD&C Act), which defined a three-stage qualification process for drug development tools (DDTs). This guidance meets the Cures

Act's requirement to issue guidance on this qualification process. It elaborates on the new qualification process and transparency requirements and discusses the taxonomy for biomarkers and other DDTs. This guidance finalizes the draft guidance of the same title issued on December 16, 2019.

DATES: The announcement of the guidance is published in the **Federal Register** on November 25, 2020.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2010–D–0529 for ''Qualification Process for Drug Development Tools.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Chris Leptak, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6461, Silver Spring, MD 20993–0002, 301–796–0017; or Stephen Ripley, Center for Biologics Evaluation and Research, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002; 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

CDER and CBER are announcing the availability of a final guidance for industry and FDA staff entitled ''Qualification Process for Drug Development Tools.'' Signed into law on December 13, 2016, the Cures Act codified, in new section 507 of the FD&C Act (21 U.S.C. 357), a new statutory process for DDT qualification and added transparency provisions for information related to qualification submissions through which there is enhanced ability to share knowledge. In addition, Congress directed the establishment of a taxonomy for the classification of biomarkers (and related scientific concepts) for use in drug (including biological product) development. CDER and CBER convened a public meeting on December 11, 2018, to solicit public input about implementing the new qualification process under section 507 of the FD&C Act and about identifying the Biomarkers, EndpointS, and other Tools (BEST) glossary as the taxonomy for classifying types of DDTs, including biomarkers. CDER and CBER are issuing this final guidance to meet the Cures Act requirement that the Agency issue final guidance on the section 507 qualification process.

DDTs are methods, materials, or measures that can aid drug development and regulatory review. Qualification means that a DDT and its proposed context of use can be relied upon to have a specific interpretation and application in drug development and regulatory review. Qualified DDTs can accelerate the integration of innovation, clinical knowledge, and scientific advances, thereby expediting drug development and aiding the regulatory review of applications.

Although the DDT qualification process is voluntary, requestors who seek qualification under section 507 of the FD&C Act must follow the three-

stage process described in the Cures Act. This consists of the following stages: The Letter of Intent, the Qualification Plan, and the Full Qualification Package. These stages are discussed in detail in section III of the final guidance.

The Cures Act includes transparency provisions that require the Agency to make information with respect to qualification submissions publicly available. A description of information that is made public on the Agency's website is provided in section II of the final guidance.

CDER and CBER have considered public comments made during the December 11, 2018, public meeting and submitted to the docket in developing the draft guidance of the same title published on December 16, 2019 (84 FR 68460). The Agency received various comments to the docket in response to the publication of the draft guidance and has considered those comments in developing this final guidance. Changes made in the final guidance in response to comments include requests for additional clarity on the qualification process, support for the proposed time frames, and requests to reference specific programs' content element outlines in the guidance. This final guidance meets the Cures Act's requirement to finalize guidance on the section 507 qualification process and affirms the BEST glossary as the taxonomy for classifying types of DDTs. This guidance does not address evidentiary standards for purposes of DDT qualification. It also does not address the qualification of medical device development tools or other programs under the Center for Devices and Radiological Health oversight, which are not addressed in section 507 of the FD&C Act.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on the ''Qualification Process for Drug Development Tools.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The previously approved collections of information are subject to review by OMB under the PRA. The collections of information pertaining to submissions of investigational new drug applications have been approved under OMB control number 0910–0014; the collections of information pertaining to submissions of new drug applications and abbreviated new drug applications have been approved under OMB control number 0910–0001; and the collections of information pertaining to submissions of biologics license applications in 21 CFR part 601 have been approved under OMB control number 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics,* or *https://www.regulations.gov.*

Dated: November 19, 2020.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2020–26051 Filed 11–24–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–D–5739]

Formal Meetings Between the Food and Drug Administration and Abbreviated New Drug Application Applicants of Complex Products Under Generic Drug User Fee Amendments; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Formal Meetings Between FDA and ANDA Applicants of Complex Products Under GDUFA.'' This guidance describes an enhanced pathway for discussions between FDA and a prospective applicant preparing to submit (or an applicant that has submitted) to FDA an abbreviated new drug application (ANDA) for a complex product. Specifically, this guidance provides information on requesting and conducting product development meetings, presubmission meetings, and midreview cycle meetings with FDA. This guidance will assist applicants in generating and submitting a meeting request and the associated meeting package to FDA for complex products to be submitted under the Federal Food, Drug, and Cosmetic Act (FD&C Act) and as contemplated in the commitments made by FDA in connection with the reauthorization of the Generic Drug User Fee Amendments for Fiscal Years (FYs) 2018–2022 (GDUFA II). This guidance finalizes the draft guidance of the same title issued on October 3, 2017.

DATES: The announcement of the guidance is published in the **Federal Register** on November 25, 2020.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No FDA–2017–D–5739 for ''Formal Meetings Between FDA and ANDA Applicants of Complex Products Under GDUFA.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Giaquinto Friedman, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1670, Silver Spring, MD 20993–0002, 240–402–7930, *elizabeth.giaquinto@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Formal Meetings Between FDA and ANDA Applicants of Complex Products Under GDUFA.'' This guidance describes an enhanced pathway for discussions between FDA and a prospective applicant preparing to submit (or an applicant that has submitted) to FDA an ANDA for a complex product. Specifically, this guidance provides information on requesting and conducting product development meetings, presubmission meetings, and midreview cycle meetings with FDA.

This guidance reflects a unified approach to all formal meetings between FDA and ANDA applicants or prospective ANDA applicants for complex products. This guidance is intended to assist ANDA applicants and prospective ANDA applicants in generating and submitting to FDA a meeting request and the associated meeting package for these complex products, as defined in this guidance, to be submitted under section 505(j) of the FD&C Act (21 U.S.C. 355(j)) and as contemplated in GDUFA II.

As part of the commitments FDA made in connection with GDUFA II, FDA agreed to develop a program to assist ANDA applicants and prospective ANDA applicants of complex products before the submission of an ANDA to FDA. As stated in the GDUFA Reauthorization Performance Goals and Program Enhancements Fiscal Years 2018–2022 (GDUFA II Goals or Commitment Letter available at *https://www.fda.gov/media/101052/download*), this pre-ANDA program is intended to clarify regulatory expectations for prospective applicants early in product development, assist applicants to develop more complete submissions, promote a more efficient and effective ANDA review process, and reduce the number of review cycles required to obtain ANDA approval, particularly for complex products (GDUFA II Commitment Letter at 14).

To facilitate development of complex products that may be submitted in an ANDA, FDA and industry agreed to a series of meetings between ANDA applicants and prospective ANDA applicants and FDA to discuss the proposed complex product and support submission of a high-quality, approvable ANDA.

In addition to developing a robust pre-ANDA program, FDA agreed to respond to requests for and conduct meetings related to the development of complex products submitted on or after October 1, 2017, within specific timeframes.

This guidance finalizes the draft guidance entitled ''Formal Meetings Between FDA and ANDA Applicants of Complex Products Under GDUFA'' issued on October 3, 2017 (82 FR 46071). FDA considered comments received on the draft guidance as the guidance was finalized. Changes from the draft to the final guidance were made to address requests for clarity in seeking such meetings, as described in the guidance, with FDA.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Formal Meetings Between FDA and ANDA Applicants of Complex Products Under GDUFA.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The previously collections of information are subject to review by OMB under the PRA. The collections of information for meetings related to generic drug development have been approved under OMB control number 0910–0797.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.*

Dated: November 18, 2020.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2020–26050 Filed 11–24–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0380]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Product Jurisdiction and Combination Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act (PRA) of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by December 28, 2020.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted 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. The OMB control number for this information collection is 0910–0523. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Product Jurisdiction and Combination Products—21 CFR Part 3

OMB Control Number 0910–0523—Revision

This information collection supports implementation of section 503(g) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 353(g)), as amended by the 21st Century Cures Act (Pub. L. 114–255) (Cures Act), section 563 of the FD&C Act (21 U.S.C 360bbb–2) added to the FD&C Act by the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115), and Agency regulations in 21 CFR part 3. Section 503(g) of the FD&C Act expressly provides for the regulation of combination products, including how primary Agency responsibility shall be designated for such products and how certain submissions regarding such products may be made to the Agency. Section 563 of the FD&C Act requires FDA to classify products as biological products, devices, drugs, or combination products and to assign products to an Agency component for regulation, in response to requests for designation (RFDs) submitted by product sponsors. We updated our regulations in 21 CFR part 3 in 2005 to clarify the meaning of the statutory term ''primary mode of action,'' which determines the FDA component to which a combination product is assigned. We proposed to update these regulations further on May 15, 2018 (83 FR 22428), intending to: (1) Clarify the scope of our regulations; (2) streamline and clarify the appeals process; (3) align the regulations with more recent legislative and regulatory measures; (4) update advisory content; and (5) clarify Agency policies and practices.

We are revising the information collection to include changes to these existing procedures and current statutory and legislative mandates. Specifically, as amended by the Cures Act, section 503(g) of the FD&C Act includes provisions exclusive to FDA's Office of Combination Products (OCP) and/or to provide for combination product-specific submission types, including provisions addressing engagement between OCP and combination product sponsors and Combination Product Agreement Meetings (CPAMs) for sponsors to engage with FDA. In addition, FDA has developed an associated jurisdictional process to the RFD process, the pre-RFD process, for sponsors to obtain feedback regarding medical product classification and assignment.

To assist respondents with format and content elements related to the information collection for RFDs and pre-RFDs, we have developed proposed Forms FDA 5003, 5004, and 5005 (pre-request and request for designation). To support RFD and pre-RFD submissions, FDA has also made information technology improvements, enabling sponsors to use preferred submission methods, including automated, electronic, mechanical, and other technological collection techniques. We expect the use of improved technology to enhance sponsors' user experience with submissions.

We have also developed Agency guidance consistent with sections 503(g) and 563 of the FD&C Act and with our Good Guidance Practice regulations in 21 CFR 10.115 (approved under OMB control number 0910–0191).

The guidance entitled ''How to Write a Request for Designation'' (issued April 2011), provides instruction regarding the information that needs to be submitted to OCP in a RFD as described in 21 CFR 3.7. The guidance is available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/how-write-request-designation-rfd.* In the **Federal Register** of July 17, 2019 (84 FR 34188), we published a notice requesting public comment on the proposed collection of information associated with 21 CFR part 3; no comments were received.

The guidance entitled ''How to Prepare a Pre-Request for Designation,'' was developed to assist sponsors in obtaining a preliminary, nonbinding assessment from OCP through the pre-RFD process. The guidance explains the pre-RFD process and helps a sponsor understand the type of information to provide in a pre-RFD submission. The guidance is available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/how-prepare-pre-request-designation-pre-rfd.* In the **Federal Register** of January 13, 2017 (82 FR 4351), we published a notice announcing the availability of the draft guidance that included an analysis under the PRA and solicited public comment on the recommended information collection. In consideration of comments, we made minor edits to the guidance, including clarifying our pledge of confidentiality for information submitted and clarifying that OCP may be contacted at any time to discuss questions. No comments suggested revision to the information collection, and therefore we made no adjustment in our burden estimate.

The guidance entitled ''Requesting FDA Feedback on Combination Products,'' was developed to discuss ways in which combination product sponsors can obtain feedback from FDA on scientific and regulatory questions

and to describe best practices for FDA and sponsors when interacting on these topics. The guidance is available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/requesting-fda-feedback-combination-products.* In the **Federal Register** of December 26, 2019 (84 FR 70976), we published a notice announcing the availability of the draft guidance that included an analysis under the PRA and solicited public comment on the proposed collection of information for CPAMs. One comment was received in support of the collection but suggested no change in FDA's burden estimate.

Respondents to the information collection are sponsors of medical products, including combination products. We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (hours)	Total hours
3.7; request for designation	53	1	53	24	1,272
Pre-RFD submissions	83	1	83	24	1,992
CPAMs requests	3	1	3	25	75
Total					3339

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

For RFDs and pre-RFDs, our estimate is based on the number of submissions received from October 1, 2018, to September 30, 2019. We assume 1 submission per respondent, for an annual average of 53 RFD submissions, and 83 pre-RFD submissions and assume that each submission requires an average of 24 hours to prepare and submit to FDA.

Our estimate for CPAM requests is based on future activity in light of the minimal use of CPAMs to date; FDA has received two CPAM requests since the enactment of the Cures Act in December 2016. We estimate one CPAM request will be received per year by each medical product center (Center for Biologics Evaluation and Research, Center for Drug Evaluation and Research, and Center for Devices and Radiological Health). We assume it will take sponsors approximately 25 hours to compile and submit the recommended information. Because we expect burden associated with application submissions is already captured by approved information collection requests for drug, biologic, and medical device applications, respectively (approved under OMB control numbers 0910–0001, 0910–0338, and 0910–0231), we do not include burden associated with application submissions captured by these programs in this information collection request.

Dated: November 18, 2020.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2020–26062 Filed 11–24–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Findings of research misconduct have been made against Dr. David J. Panka (Respondent), former Harvard Medical School (HMS) Instructor of Medicine, and former HMS Associate Professor of Medicine at Beth Israel Deaconess Medical Center (BIDMC). Dr. Panka engaged in research misconduct in research supported by U.S. Public Health Service (PHS) funds, specifically National Cancer Institute (NCI), National Institutes of Health (NIH), grants P50 CA093683 and P50 CA101942. The administrative actions, including supervision for a period of three (3) years, were implemented beginning on November 9, 2020, and are detailed below.

FOR FURTHER INFORMATION CONTACT: Elisabeth A. Handley, Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 240, Rockville, MD 20852, (240) 453–8200.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Dr. David J. Panka, Harvard Medical School and Beth Israel Deaconess Medical Center: Based on the report of an inquiry conducted by BIDMC and HMS and additional analysis conducted by ORI in its oversight review, ORI found that Dr. Panka, former HMS Instructor of Medicine, and former HMS Associate Professor of Medicine at BIDMC, engaged in research misconduct in research supported by PHS funds, specifically NCI, NIH, grants P50 CA093683 and P50 CA101942.

ORI found that Respondent engaged in research misconduct by intentionally, knowingly, and/or recklessly falsifying and/or fabricating Western blot images by selectively cutting, flipping, reordering, and reusing the same source images or non-correlated images to represent different results in the following three (3) published papers and one (1) conference presentation:

- The Raf inhibitor BAY 43–9006 (Sorafenib) induces caspase-independent apoptosis in melanoma cells. *Cancer Res.* 2006 Feb 1; 66(3):1611–9 (hereafter referred to as ''*Cancer Res.* 2006''). Retraction in: *Cancer Res.* 2019 Oct 15;79(20):5459.
- Differential modulatory effects of GSK–3b and HDM2 on sorafenib-induced AIF nuclear translocation (programmed necrosis) in melanoma. *Mol Cancer* 2011 Sep 19;10:115 (hereafter referred as to ''*Mol Cancer* 2011'').
- Effects of HDM2 antagonism on sunitinib resistance, p53 activation, SDF–1 induction, and tumor infiltration by CD11b+/Gr-1+ myeloid derived suppressor cells. *Mol Cancer* 2013 Mar 5;12:17 (hereafter referred to as ''*Mol Cancer* 2013'').
- Presentation #5328, ''BAY 43–9006 induces apoptosis in melanoma cell lines'', presented during Cellular and Molecular Biology session #63 '' ('Apoptosis 4: Chemotherapeutic Agents II')'' on April 20, 2005, at the 96th Annual American Association for Cancer Research (AACR) meeting, held in Anaheim, California (hereafter referred to as the ''2005 AACR Presentation'').

Specifically, ORI found that Respondent knowingly, intentionally, and/or recklessly falsified and/or fabricated:

• Western blot images in twelve (12) figures of three (3) published papers and one (1) conference presentation by editing, reusing, and relabeling the same source images or the non-correlated blots to represent different results from different experiments. Specifically:

—Respondent reused and relabeled the same source bands to falsely represent different protein expression in the following two figures in *Cancer Res.* 2006 and to represent more than one lane within a single row:

▪ Figure 1A, bottom row, in *Cancer Res.* 2006, representing MEK expression in A375, A2058, and SK MEL 5 cells treated by different doses of Bay 43–9006

▪ Figure 2C, bottom row, in *Cancer Res.* 2006, representing the expression of Vinculin in the same three cell types without or with Bay 43–9006 treatment at different time points

—Respondent reused and relabeled the same source bands to falsely represent different protein expression in two figures as follows and to represent more than one lane within a single row:

▪ Figure 5, bottom row, in the 2005 AACR Presentation, representing the expression of Total Bad in A375 cells with different treatments

▪ Figure 2C, second row, in *Cancer Res.* 2006, representing the expression of Bax in three different cell types

—Respondent reused and relabeled the bands that were used for Figure 4, bottom row, in *Cancer Res.* 2006, representing ERK expression in A2058 cell type with different treatments at different time points, to falsely represent the expression of ERK in three different cell types in Figure 1A, second row, in *Cancer Res.* 2006.

—Respondent reused and relabeled the same source bands to falsely represent unrelated experimental results in two rows of Figure 3A in *Cancer Res.* 2006 as follows:

▪ Figure 3A, fourth row, in *Cancer Res.* 2006, representing the expression of pBad ser 75 in A2058 cell type with different treatments at different time points

▪ Figure 3A, seventh row, in *Cancer Res.* 2006, representing pBad ser 75 expression in A375 cell type with the same treatments and at the same time points as the representation of the fourth row

—Respondent reused and relabeled the source bands to falsely represent unrelated experimental results in two rows of Figure 3A in *Cancer Res.* 2006 as follows:

▪ Figure 3A, first row, in *Cancer Res.* 2006, representing the expression of pBad ser 75 in SK MEL 5 cell type with different treatments at different time points

▪ Figure 3A, eighth row, in *Cancer Res.* 2006, representing pBad ser 99 expression in A375 cell type with the same treatments and at the same time points as the representation of the first row

—Respondent fabricated the bands that were used for Figure 3A, second row, in *Cancer Res.* 2006, representing the expression of pBad ser 99 in SK MEL 5 cell type with different treatments at different time points by using an unrelated image.

—Respondent reused and relabeled the bands to falsely represent AIF expression in mitochondria of the three cell types with different treatments in Figure 6A, the bottom row, in *Cancer Res.* 2006, by:

▪ Duplicating the bands in the second to fourth lanes to represent mitochondria expression in A375 cell type with Bay 43–9006 (second lane), PD 98059 (third lane), and U0126 (fourth lane) treatments

▪ duplicating the band for both the fifth and seventh lanes to represent AIF expression in mitochondria of A2058 cell type with no treatment control (fifth lane) and PD 98059 treatment (seventh lane)

—Respondent reused and relabeled the same source bands to falsely represent different experimental results in Figure 3A in *Mol Cancer* 2011 as follows:

▪ Figure 3A, first four lanes in the middle row of the left panel, in *Mol Cancer* 2011, representing c-myc expression in nucleus of A375 cell type

▪ Figure 3A, first four lanes in the middle row of the right panel, in *Mol Cancer* 2011, representing c-myc expression in nucleus of SK MEL 5 cell type

—Respondent reused and relabeled the same source bands to falsely represent different experimental results in Figure 5 in *Mol Cancer* 2011 as follows:

▪ Figure 5, sixth to eighth lanes of the middle row, in *Mol Cancer* 2011, representing BCL–XL expression in A375–GSK cells with DOX

▪ Figure 5, last three lanes of the middle row, in *Mol Cancer* 2011, representing BCL–XL expression in SK MEL 5 S9A

—Respondent reused and relabeled the unrelated source bands to falsely represent different experimental results in Figure 5 of *Mol Cancer* 2011 as follows:

▪ Figure 5, thirteenth to fifteenth lanes of the top row, in *Mol Cancer* 2011, representing BCL2 expression in SK MEL 5 S9A

▪ Figure 5, thirteenth to fifteenth lanes of the bottom row, in *Mol Cancer* 2011, representing VINCULIN expression in SK MEL 5 S9A

—Respondent reused and relabeled the same source bands to falsely represent different experimental results in Figure 1 in *Mol Cancer* 2013; specifically respondent:

▪ Reused the bands that were used for Figure 1, fourth to fifth lanes of the second row, in *Mol Cancer* 2013, representing noxa expression in the control group of A498 cell type, to falsely represent noxa expression in the sunitinib resistant group of A498 cells in the same figure, eleventh to twelfth lanes of the second row

▪ reused the band that was used for Figure 1, eighth lane of the second row, in *Mol Cancer* 2013, representing noxa expression in the third sample of the sunitinib responding group, to falsely represent noxa expression in the fifth sample of the sunitinib responding group in the same figure, tenth lane of the second row

—Respondent reused and relabeled the same source bands to falsely represent different experimental results in Figure 6B in *Mol Cancer* 2013 as follows:

▪ Figure 6B, first two lanes of the bottom row, in *Mol Cancer* 2013, representing vinculin expression in control group

▪ Figure 6B, eleventh and twelfth lanes of the bottom row, in *Mol Cancer* 2013, representing vinculin expression in dox + sunitinib group

—Respondent reused and relabeled the same source bands to falsely represent different experimental results in the following three figures:

▪ Figure 10, second rows of both upper and lower panels, in the 2005 AACR Presentation, representing pSRC–Y416 expression in A2058 (upper) and A375 (lower) cell types

▪ Figure 4 in *Cancer Res.* 2006 and Figure 6 in the 2005 AACR Presentation, second rows of middle and lower panels, representing Bcl-XL expression in

A2058 (middle) and SK MEL 5 (lower) cell types

—Respondent reused and relabeled the same source band to falsely represent two different experimental results in Figure 5 in the 2005 AACR Presentation as follows:

- Figure 5, lane 1 of the seventh row, in the 2005 AACR Presentation, representing pBad ser 75 expression at 0 hour in control group
- Figure 5, lane 2 of the seventh row, in the 2005 AACR Presentation, representing pBad ser 75 expression at 1 hour in control group

Dr. Panka entered into a Voluntary Settlement Agreement and agreed to the following:

(1) Respondent agreed to have his research supervised for a period of three (3) years beginning on November 9, 2020. Respondent agrees that prior to the submission of an application for PHS support for a research project on which Respondent's participation is proposed and prior to Respondent's participation in any capacity on PHS-supported research, Respondent shall ensure that a plan for supervision of Respondent's duties is submitted to ORI for approval. The supervision plan must be designed to ensure the scientific integrity of Respondent's research contribution. Respondent agrees that he shall not participate in any PHS-supported research until such a supervision plan is submitted to and approved by ORI. Respondent agrees to maintain responsibility for compliance with the agreed upon supervision plan.

(2) The requirements for Respondent's supervision plan are as follows:

i. A committee of 2–3 senior faculty members at the institution who are familiar with Respondent's field of research, but not including Respondent's supervisor or collaborators, will provide oversight and guidance for a period of three (3) years from the effective date of the Agreement. The committee will review primary data from Respondent's laboratory on a quarterly basis and submit a report to ORI at six (6) month intervals, setting forth the committee meeting dates and Respondent's compliance with appropriate research standards and confirming the integrity of Respondent's research.

ii. The committee will conduct an advance review of any PHS grant applications (including supplements, resubmissions, etc.), manuscripts reporting PHS-funded research submitted for publication, and abstracts. The review will include a discussion with Respondent of the primary data represented in those documents and will include a certification to ORI that the data presented in the proposed application/publication are supported by the research record.

(3) Respondent agreed that for a period of three (3) years beginning on November 9, 2020, any institution employing him shall submit, in conjunction with each application of PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported in the application, report, manuscript, or abstract.

(4) If no supervisory plan is provided to ORI, Respondent agreed to provide certification to ORI at the conclusion of the supervision period that he has not engaged in, applied for, or had his name included on any application, proposal, or other request for PHS funds without prior notification to ORI.

(5) Respondent agreed to exclude himself voluntarily from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for a period of three (3) years, beginning on November 9, 2020.

(6) As a condition of the Agreement, Respondent will request that the following papers and conference abstract be corrected or retracted in accordance with 42 CFR 93.407(a)(1) and § 93.411(b):

- *Mol Cancer* 2011 Sep 19;10:115
- *Mol Cancer* 2013 Mar 5;12:17
- 2005 AACR Presentation

Respondent will copy ORI and the Research Integrity Officer at HMS and BIDMC on the correspondence.

Dated: November 20, 2020.

Elisabeth A. Handley,

Director, Office of Research Integrity, Office of the Assistant Secretary for Health.

[FR Doc. 2020–26100 Filed 11–24–20; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review: Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Neuroscience, Biomarkers and Therapeutics.

Date: December 7, 2020.

Time: 1:00 p.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joseph G. Rudolph, Ph.D., Chief and Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, (301) 408–9098, *josephru@csr.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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 19, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–26030 Filed 11–24–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences: Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with a short public comment period at the end. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov*).

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and

the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory General Medical Sciences Council.

Date: February 3, 2021.

Open: 8:30 a.m. to 12:00 p.m.

Agenda: To review and evaluate for the discussion of program policies and issues; opening remarks; report of the Director, NIGMS; and other business of the Council.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Closed: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Erica L. Brown, Ph.D., Acting Associate Director for Extramural Activities, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 2AN24F, Bethesda, MD 20892, (301) 594–4499, *erica.brown@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nigms.nih.gov/About/Council,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: November 19, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–26026 Filed 11–24–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health: Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Council of Councils.

The meeting will be held as a virtual meeting and will be open to the public as indicated below. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov*).

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Council of Councils.

Closed: January 29, 2021.

Time: 10:00 a.m. to 11:00 a.m.

Agenda: Review of Grant Applications.

Place: National Institutes of Health, Building 1, One Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Open: January 29, 2021.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: Call to Order and Introductions; Announcements and Updates; NIH Program Updates; Scientific Talks and Other Business of the Committee.

Place: National Institutes of Health, Building 1, One Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Franziska Grieder, D.V.M., Ph.D., Executive Secretary, Council of Councils, Director, Office of Research Infrastructure Programs, Division of Program Coordination, Planning, and Strategic Initiatives, Office of the Director, NIH, 6701 Democracy Boulevard, Room 948, Bethesda, MD 20892, *GriederF@mail.nih.gov,* 301–435–0744.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Council of Council's home page at *http://dpcpsi.nih.gov/council/* where an agenda will be posted before the meeting date.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: November 19, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–26024 Filed 11–24–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute Of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Division of Intramural Research Board of Scientific Counselors, National Institute of Allergy and Infectious Diseases.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL INSTITUTE OF DENTAL & CRANIOFACIAL RESEARCH, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Dental and Craniofacial Research.

Date: December 1–2, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Room 660, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alicia J. Dombroski, Ph.D., Director, Division of Extramural Activities, National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Room 660, Bethesda,

MD 20892, (301) 594–4805, *adombroski@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

Information is also available on the Institute's/Center's home page: *https://www.nidcr.nih.gov/about-us/advisory-committees,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: November 20, 2020.

Patricia B. Hansberger,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–26109 Filed 11–24–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Request for Information on Research Opportunities Related to the National Institutes of Health Scientific Workshop on Violence and Related Health Outcomes in Sexual and Gender Minority Communities

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: Through this Request for Information (RFI), the Sexual & Gender Minority Research Office (SGMRO) in the Division of Program Coordination, Planning, and Strategic Initiatives (DPCPSI), Office of the Director (OD), National Institutes of Health (NIH), invites feedback from stakeholders throughout the scientific research community, clinical practice communities, patient and family advocates, scientific or professional organizations, federal partners, internal NIH stakeholders, and other interested constituents on research opportunities related to the upcoming NIH Scientific Workshop on Violence and Related Health Outcomes in Sexual and Gender Minority (SGM) Communities. The overarching purpose of this workshop is to identify and prioritize key research opportunities to further our understanding of violence against SGM individuals.

DATES: The SGMRO's RFI is open for public comment for a period of 8 weeks. Comments must be received on or before COB (5:00 p.m. E.T.) January 29, 2021, to ensure consideration. After the public comment period has closed, the comments received by SGMRO will be considered in a timely manner and shared with invitees to the Scientific Workshop on Violence and Related Health Outcomes in SGM Communities.

ADDRESSES: Please see the supplementary information to view the draft domains and themes of focus for the Scientific Workshop on Violence and Related Health Outcomes in SGM Communities. It is strongly encouraged to submit comments by email to *SGMRO@nih.gov.* Please include ''SGM Health and Violence Workshop'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Irene Avila, Ph.D., Assistant Director, Sexual & Gender Minority Research Office (SGMRO), 6555 Rock Spring Drive, Rm 2SE31J, Bethesda, MD 20817, *avilai@mail.nih.gov,* 301–594–9701.

SUPPLEMENTARY INFORMATION:

Background: ''Sexual and gender minority'' is an umbrella term that includes, but is not limited to, individuals who identify as lesbian, gay, bisexual, asexual, transgender, Two-Spirit, queer, and/or intersex. Individuals with same-sex or -gender attractions or behaviors and those with a difference in sex development are also included. These populations also encompass those who do not self-identify with one of these terms but whose sexual orientation, gender identity or expression, or reproductive development is characterized by non-binary constructs of sexual orientation, gender, and/or sex.

In accordance with Section 404N of the 21st Century Cures Act (Pub. L. 114–255), the Director of NIH shall encourage research on SGM populations. The Sexual and Gender Minority Research Office (SGMRO) coordinates sexual and gender minority (SGM)–related research and activities by working directly with NIH Institutes, Centers, and Offices. The Office was officially established in September 2015 within the DPCPSI in the NIH OD and has the following operational goals: (1) Advance rigorous research on the health of SGM populations in both the extramural and intramural research communities; (2) expand SGM health research by fostering partnerships and collaborations with a strategic array of internal and external stakeholders; (3) foster a highly skilled and diverse workforce in SGM health research; and (4) encourage data collection related to SGM populations in research and the biomedical research workforce. The Scientific Workshop on Violence and Related Health Outcomes in Sexual and Gender Minority Communities represents an important step in pursuing these goals specifically in the field of violence research.

Request for Comment on Research Opportunities: NIH will be holding a workshop to enhance our understanding of violence against SGM individuals and identify opportunities in violence-related research. The SGMRO invites input from stakeholders throughout the scientific research community, clinical practice communities, patient and family advocates, scientific or professional organizations, federal partners, internal NIH stakeholders, and other interested members of the public on research opportunities related to the four domains highlighted below. This input will serve as a valuable element in the development of the workshop and subsequent report out, and the community's time and consideration are highly appreciated.

This RFI serves as the first phase of the Scientific Workshop on Violence and Related Health Outcomes in Sexual and Gender Minority Communities. After the RFI has closed and comments from the public have been reviewed by workshop invitees, the second phase of the workshop will take place. During phase II, workshop invitees will discuss the current landscape of violence research, including an overview of specific subsets of violence research, relevant terminology, impacts on SGM populations, and institutional contexts. This phase will focus on four domains of violence research:

- *Family of origin abuse across the lifespan,* including child maltreatment (sexual, physical, psychological, and neglect) and elder abuse;
- *Victimization by peers and friends,* including youth and adult peer victimization (including bullying) and cyberbullying (among both youths and adults);
- *Romantic and sexual partner violence,* including teen dating violence, intimate partner violence, and sexual violence; and
- *Community violence,* including gender-based violence, hate crimes, workplace violence, neighborhood violence, and police violence.

In addition, relevant systemic and institutional barriers will be considered for each of these four areas.

In phase III, workgroups will be formed to identify and describe central themes and opportunities in violence research, taking into consideration feedback from the RFI. The workgroups will comprise expert participants from each of the four phase II sessions as well as other key partners and stakeholders. The four themes for workgroup discussion will be:

- Socio-demographics and epidemiology
- Risk factors and pathways
- Preventive strategies and interventions
- Structural interventions

NIH seeks comments and/or suggestions from all interested parties on key research opportunities in SGM health and violence.

Responses to this RFI are voluntary. Do not include any proprietary, classified, confidential, trade secret, or sensitive information in your response. The responses will be reviewed by NIH staff, and individual feedback will not be provided to any responder. The Government will use the information submitted in response to this RFI at its discretion. The Government reserves the right to use any submitted information on public NIH websites; in reports; in summaries of the state of the science; in any possible resultant solicitation(s), grant(s), or cooperative agreement(s); or in the development of future funding opportunity announcements.

This RFI is for information and planning purposes only and should not be construed as a solicitation for applications or proposals, or as an obligation in any way on the part of the United States Federal Government, NIH, or individual NIH Institutes, Centers, and Offices to provide support for any ideas identified in response to it. The Federal Government will not pay for the preparation of any information submitted or for the Government's use of such information. No basis for claims against the U.S. Government shall arise as a result of a response to this RFI or from the Government's use of such information. Additionally, the Government cannot guarantee the confidentiality of the information provided.

Dated: November 18, 2020.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2020–26094 Filed 11–24–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: January 8, 2021.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700 B Rockledge Drive, Room 3185, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Barbara J. Thomas, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700 B Rockledge Drive, Room 3185, Bethesda, MD 20892, 301–402–8837, *barbara.thomas@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: November 19, 2020.

Patricia B. Hansberger,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–26110 Filed 11–24–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review: Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: SBIR/STTR Commercialization Readiness Pilot Program.

Date: December 17, 2020.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Allen Richon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7892, Bethesda, MD 20892, 301–379–9351, *allen.richon@nih.hhs.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 19, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–26031 Filed 11–24–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences: Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of Diversity Program Consortium Sponsored Programs Administration Development (SPAD) Program applications.

Date: November 23, 2020.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lisa A. Dunbar, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892, (301) 594–2849, *dunbarl@mail.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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: November 19, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–26025 Filed 11–24–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging: Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group; Basic Neuroscience of Aging Review Committee NIA–N.

Date: January 20–21, 2021.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maurizio Grimaldi, MD, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, (301) 496–9374, *grimaldim2@mail.nih.gov.*

Name of Committee: National Institute on Aging Initial Review Group; Clinical and Translational Research of Aging Review Committee NIA–T.

Date: January 28–29, 2021.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Greg Bissonette, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, (301) 402–1622, *bissonettegb@mail.nih.gov.*

Name of Committee: National Institute on Aging Initial Review Group; Clinical Aging Review Committee NIA–C.

Date: January 28–29, 2021.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Isis S. Mikhail, MD, MPH, D.P.H., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 402–7704, *mikhaili@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: November 19, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–26027 Filed 11–24–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging: Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Genetic Analysis.

Date: December 21, 2020.

Time: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Nijaguna Prasad, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, (301) 496–9667, *nijaguna.prasad@nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Auditory System II.

Date: December 22, 2020.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Nijaguna Prasad, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, (301) 496–9667, *nijaguna.prasad@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: November 19, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–26032 Filed 11–24–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders: Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Deafness and Other Communication Disorders Advisory Council.

This is a virtual meeting and will be open to the public as indicated below. The url link to this meeting is: *https://www.nidcd.nih.gov/about/advisory-council/upcoming-meetings.* The meeting is partially Closed to the public.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Deafness and Other Communication Disorders Advisory Council.

Date: January 28–29, 2021.

Closed: January 28, 2021, 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Neuroscience Center, Rockville, MD 20852 (Virtual Meeting).

Open: January 28, 2021, 1:00 p.m. to 3:00 p.m.

Agenda: Staff reports on divisional, programmatical, and special activities.

Place: National Institutes of Health, Neuroscience Center, Rockville, MD 20852 (Virtual Meeting).

Open: January 29, 2021, 10:00 a.m. to 12:30 p.m.

Agenda: Staff reports on divisional, programmatical, and special activities.

Place: National Institutes of Health, Neuroscience Center, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Craig A. Jordan, Ph.D., Director, Division of Extramural Activities, NIDCD, NIH, Room 8345, MSC 9670, 6001 Executive Blvd., Bethesda, MD 20892–9670, (301) 496–8693, *jordanc@nidcd.nih.gov.*

Information is also available on the Institute's/Center's home page: *https://www.nidcd.nih.gov/about/advisory-council,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: November 19, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–26028 Filed 11–24–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2020–0064]

Commercial Customs Operations Advisory Committee (COAC)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security (DHS).

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Commercial Customs Operations Advisory Committee (COAC) will hold its quarterly meeting on Wednesday, December 16, 2020. The meeting will be open to the public via webinar only. There is no on-site, in-person option for this quarterly meeting.

DATES: The COAC will meet on Wednesday, December 16, 2020, from 1:00 p.m. to 5:00 p.m. EST. Please note that the meeting may close early if the committee has completed its business. Comments must be submitted in writing no later than December 15, 2020.

ADDRESSES: The meeting will be held via webinar. The webinar link and conference number will be provided to all registrants by 10:00 a.m. EST on December 16, 2020. For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Florence Constant-Gibson, Office of Trade Relations, U.S. Customs and Border Protection, at (202) 344–1440, as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Florence Constant-Gibson, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.5A, Washington, DC 20229; telephone (202) 344–1440; or Mr. Jon B. Perdue, Designated Federal Officer, at (202) 344–1440.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the authority of the Federal Advisory Committee Act, 5 U.S.C. Appendix. The Commercial Customs Operations Advisory Committee (COAC) provides advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within the Department of Homeland Security and the Department of the Treasury.

Pre-registration: For members of the public who plan to participate via webinar, please register online at *https://teregistration.cbp.gov/index.asp?w=213* by 5:00 p.m. EST by December 15, 2020. For members of the public who are pre-registered to attend the webinar and later need to cancel, please do so by December 15, 2020, utilizing the following link: *https://teregistration.cbp.gov/cancel.asp?w=213.*

Please feel free to share this information with other interested members of your organization or association.

To facilitate public participation, we are inviting public comment on the issues the committee will consider prior to the formulation of recommendations as listed in the Agenda section below.

Comments must be submitted in writing no later than December 15, 2020, and must be identified by Docket No. USCBP–2020–0064, and may be submitted by one (1) of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: tradeevents@cbp.dhs.gov.* Include the docket number in the subject line of the message.
- *Mail:* Ms. Florence Constant-Gibson, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.5A, Washington, DC 20229.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number (USCBP–2020–0064) for this action. Comments received will be posted without alteration at *http://www.regulations.gov.* Please do not submit personal information to this docket.

Docket: For access to the docket or to read background documents or comments, go to *http://www.regulations.gov* and search for Docket Number USCBP–2020–0064. To submit a comment, click the ''Comment Now!'' button located on the top-right hand side of the docket page.

There will be multiple public comment periods held during the meeting on December 16, 2020. Speakers are requested to limit their comments to two (2) minutes or less to facilitate greater participation. Please note that the public comment period for speakers may end before the time indicated on the schedule that is posted on the CBP web page, *http://www.cbp.gov/trade/stakeholder-engagement/coac.*

Agenda

The COAC will hear from the current subcommittees on the topics listed below and then will review, deliberate, provide observations, and formulate recommendations on how to proceed:

1. The Secure Trade Lanes Subcommittee will present updates related to the four active working groups as follows: Trusted Trader Working Group will present recommendations on the newly issued CBP White Paper for the Implementation of CTPAT Trade Compliance Requirements for Forced Labor; the In-Bond Working Group will provide an update on the ongoing work with the technical enhancements that is being shared with the Trade Support Network; the Export Modernization Working Group will report on the progress of the development of the White Paper mentioned during the October COAC meeting and present additional recommendations; and, the Remote and Autonomous Cargo Processing Working Group will provide an update on the progress reviewing the

various modes of conveyance and automation opportunities.

2. The Intelligent Enforcement Subcommittee will discuss the kickoff of the Intellectual Property Rights Process Modernization Working Group that will leverage prior recommendations by formulating recommendations to address automation and data sharing. The Bond Working Group will report on continued work with CBP on the Monetary Guidelines for Setting Bond Amounts as part of a larger risk-based bonding initiative. The Anti-Dumping and Countervailing Duty (AD/CVD) Working Group will report on their continued work with CBP related to the growing number of complex AD/CVD cases. The Forced Labor Working Group will report on progress toward prioritized recommendations and future scope of work.

3. The Next Generation Facilitation Subcommittee will provide an update on the progress of the One U.S. Government Working Group and work-to-date on the Global Business Identifier initiative. The subcommittee will also report on their progress with Partner Government Agencies regarding advancement in Trusted Trader initiatives. There will be an update by the Emerging Technologies Working Group regarding their assessment of various technologies such as quantum computing evaluated this past quarter that could be adapted for use by CBP and the trade. The subcommittee will provide an update on the 21st Century Customs Framework initiative.

4. The Rapid Response Subcommittee will discuss the work that has been done by the Broker Exam Modernization Working Group regarding resolving challenges encountered during the recent October exam and continuing efforts to modernize and improve the quality and experience of future broker exams.

Meeting materials will be available by December 14, 2020, at: *http://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings.*

Dated: November 19, 2020.

Jon B. Perdue,

Executive Director, Office of Trade Relations.

[FR Doc. 2020–26039 Filed 11–24–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0136]

Agency Information Collection Activities: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection 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 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted no later than January 25, 2021 to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0136 in the subject line and the agency name.

Please submit comments via email to *CBP_PRA@cbp.dhs.gov.* Due to COVID–19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (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) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Number: 1651–0136.

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Individuals and businesses.

Abstract: Executive Order 12862 directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. In order to work continuously to ensure that our programs are effective and meet our customers' needs, U.S. Customs and Border Protection (CBP) (hereafter ''the Agency'') seeks to obtain OMB approval of a generic clearance to collect qualitative feedback on our service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study.

This collection of information is necessary to enable CBP to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving service delivery. The information collected from our

customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with CBP's programs. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between CBP and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Type of Collection: Comment Cards

Estimated Number of Respondents: 10,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 10,000.

Estimated Time per Response: 3 minutes.

Estimated Total Annual Burden Hours: 500 hours.

Type of Collection: Customer Surveys

Estimated Number of Respondents: 290,000.

Estimated Numbers of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 290,000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 24,490.

Dated: November 19, 2020.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2020–26021 Filed 11–24–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below. The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The date of April 7, 2021 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Jefferson County, Iowa and Incorporated Areas Docket No.: FEMA–B–1911	
City of Batavia	City Hall, 304 Alto Street, Batavia, IA 52533.
City of Fairfield	City Hall, 118 South Main Street, Fairfield, IA 52556.
City of Maharishi Vedic City	City Hall, 1750 Maharishi Center Avenue, Maharishi Vedic City, IA 52556.
Unincorporated Areas of Jefferson County	Jefferson County Courthouse, 51 East Briggs Avenue, Fairfield, IA 52556.
Howell County, Missouri and Incorporated Areas Docket No.: FEMA–B–1731 and FEMA–B–1979	
City of West Plains	City Hall, 1910 Holiday Lane, West Plains, MO 65775.

Community	Community map repository address
Unincorporated Areas of Howell County	Howell County Surveyor's Office, 1390 Bill Virdon Boulevard, West Plains, MO 65775.
Seminole County, Oklahoma and Incorporated Areas Docket No.: FEMA–B–1962	
City of Konawa	City Hall, 122 North Broadway, Konawa, OK 74849.
City of Maud	City Hall, 208 West Main Street, Maud, OK 74854.
City of Seminole	Municipal Court, 401 North Main Street, Seminole, OK 74868.
City of Wewoka	City Hall, 123 South Mekusukey Avenue, Wewoka, OK 74884.
Town of Bowlegs	Town Hall, 120 Main Street, Bowlegs, OK 74830.
Town of Cromwell	Town Hall, 100 Jenkins Street, Cromwell, OK 74837.
Town of Lima	Seminole County Courthouse, 110 South Wewoka Avenue, Wewoka, OK 74884.
Town of Sasakwa	Seminole County Courthouse, 110 South Wewoka Avenue, Wewoka, OK 74884.
Unincorporated Areas of Seminole County	Seminole County Courthouse, 110 South Wewoka Avenue, Wewoka, OK 74884.

[FR Doc. 2020–26057 Filed 11–24–20; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2020–0014; OMB No. 1660–0132]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Consolidated FEMA-National Training and Education Division (NTED) Level 3 Training Evaluation Forms

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: 30 Day notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on a reinstatement, with change, of a previously approved information collection for which approval has expired. The reinstatement includes minor changes to survey questions in order for the agency to better assess changes to students' behaviors on the job. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the use of the three separate Kirkpatrick Training Program Evaluation Level 3 instruments by three geographically separated National Training and Education (NTED) Training Organizations: The Training Partners Program Branch (TPP) located at FEMA Headquarters, Washington, DC, the Center for Domestic Preparedness (CDP) located in Anniston, AL, and the Emergency Management Institute (EMI) located in Emmitsburg, MD.

DATES: Comments must be submitted on or before December 28, 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: For any questions, please contact Dalia Abdelmeguid at *FEMA-NTES@fema.dhs.gov* or via phone 202–431–7739. You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION:

While these three instruments contain five common questions or data sets, other questions are required due to unique occupational and operational needs of their respective customers and the different course/program content or subject material that is designed to develop interoperable National Preparedness Core Capabilities, Community Lifelines, and/or Recovery Sector capabilities across and among various responder communities. Level 3 data is used to measure and monitor transfer or retention of knowledge, skills and abilities obtained during training to the students' work environment and/or organizational work environment. Data collected is utilized to continuously improve course material, delivery and to inform key stakeholders on course/program performance in accordance with the Government Performance and Results Act (GPRA) Modernization Act of 2010 (GPRAMA).

FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

In support of Presidential Policy Directive (PPD–8) National Preparedness, the National Preparedness Goal (NPG) and National Preparedness System (NPS) FEMA's NTED provides program oversight of three geographically separated training organizations: TPP in Washington DC, CDP in Anniston, AL, and EMI in Emmitsburg, MD. These organizations with the National Domestic Preparedness Consortium (NDPC) and the Continuing Training Grant (CTG) members comprise the National Training and Education System (NTES) and are organized to optimize the 6 U.S.C. 748 required National Training Program on behalf of the FEMA Administrator in collaboration with other Federal agencies. Working collectively as a NTES, the training capabilities and capacity of the Nation increase the planning, capability and capacity to design, develop, deliver and evaluate training and education solutions to build sustainable and interoperable National Core Capabilities, Community Lifelines, and Recovery Sectors that prevent, protect, mitigate, respond and recover the Nation from acts of terrorism and natural disasters.

As part of the Federal Government, FEMA's NTED and component organizations have developed these training evaluation instruments to measure their individual and collective program performance as required by the GPRA Modernization Act of 2010. Paragraph(a) of 31 U.S.C. 1115 covers Federal Government and Agency Performance Plans while paragraph (b) covers Agency Performance Plans (6) requires a balanced set of performance indicators to be used in measuring or assessing progress toward each performance goal, including, as appropriate, customer service, efficiency, output, and outcome indicators.

This information collection expired on February 28, 2019. FEMA is requesting a reinstatement, with change, of a previously approved information collection for which approval has expired.

This proposed information collection previously published in the **Federal Register** on May 26, 2020, at 85 FR 31538 with a 60-day public comment period. FEMA received two non-germane comments. FEMA is requesting a reinstatement, with change, of a previously approved information collection for which approval has expired. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Consolidated FEMA-National Training and Education Division (NTED) Level 3 Training Evaluation Forms.

Type of information collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

OMB Number: 1660–0132

Form Titles and Numbers: FEMA Form 016–0–2, Post Course Assessment National Training & Education Division, Training Partners Program (TPP); FEMA Form 092–0–2A, PER–220 Field Force Operations (FFO) Post-Graduate Questionnaire for Students; FEMA Form 092–0–2B, PER–220 Field Force Operations (FFO) Post-Graduate Training Evaluation for Supervisors; and FEMA Form 519–0–1, Emergency Management Institute (EMI): FEMA Follow-up Evaluation Survey.

Abstract: This data collection is required in support of GPRAMA 2010 Section 115 to provide National Preparedness Training Program performance evaluation data to FEMA; DHS Executives; Congress; and State, local, Tribal and territorial (SLTT) elected officials. This instrument is part of a larger training program evaluation collection that applies the Kirkpatrick Training Evaluation Model. Respondents include SLTT emergency responders from Law Enforcement, Emergency Medical and Public Health communities.

Affected Public: State, local, Tribal, and territorial employees. Others include non-profits and Federal Emergency Support Function Lead Agency employees.

Estimated Number of Respondents: 124,692.

Estimated Number of Responses: 124,692.

Estimated Total Annual Burden Hours: 31,173.

Estimated Total Annual Respondent Cost: $1,489,450.

Estimated Respondents' Operation and Maintenance Costs: N/A.

Estimated Respondents' Capital and Start-Up Costs: N/A.

Estimated Total Annual Cost to the Federal Government: $168,913.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Maile Arthur,

Acting Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2020–26052 Filed 11–24–20; 8:45 am]

BILLING CODE 9111–53–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to

section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Arizona: Pinal (FEMA Docket No.: B–2044).	Unincorporated areas of Pinal County (19–09–1873P).	The Honorable Anthony Smith, Chairman, Pinal County Board of Supervisors, P.O. Box 827, Florence, AZ 85132.	Pinal County Flood Control District, 31 North Pinal Street, Building F, Florence, AZ 85132.	Oct. 30, 2020	040077
Arkansas: Benton (FEMA Docket No.: B–2044).	City of Rogers (19–06–2805P).	The Honorable Greg Hines, Mayor, City of Rogers, 301 West Chestnut Street, Rogers, AR 72756.	Community Development Department, 301 West Chestnut Street, Rogers, AR 72756.	Oct. 27, 2020	050013
Colorado:					
Arapahoe (FEMA Docket No.: B–2052).	City of Littleton (20–08–0155P).	The Honorable Jerry Valdes, Mayor, City of Littleton, 2255 West Berry Avenue, Littleton, CO 80120.	City Hall, 2255 West Berry Avenue, Littleton, CO 80120.	Nov. 6, 2020	080017
Arapahoe (FEMA Docket No.: B–2052).	Town of Columbine Valley (20–08–0155P).	The Honorable Roy Palmer, Mayor, Town of Columbine Valley, 2 Middlefield Road, Columbine Valley, CO 80123.	Town Hall, 5931 South Middlefield Road, Columbine Valley, CO 80123.	Nov. 6, 2020	080014
Boulder (FEMA Docket No.: B–2049).	City of Boulder (19–08–0976P).	The Honorable Sam Weaver, Mayor, City of Boulder, 1777 Broadway Street, Boulder, CO 80302.	Central Records Department, 1777 Broadway Street, Boulder, CO 80302.	Oct. 30, 2020	080024
Boulder (FEMA Docket No.: B–2049).	Unincorporated areas of Boulder County (19–08–0976P).	The Honorable Deb Gardner, Chair, Boulder County Board of Commissioners, P.O. Box 471, Boulder, CO 80306.	Boulder County Department of Public Works, 1739 Broadway, Suite 300, Boulder, CO 80306.	Oct. 30, 2020	080023
Weld (FEMA Docket No.: B–2044).	City of Evans (19–08–0862P).	The Honorable Brian Rudy, Mayor, City of Evans, 1100 37th Street, Evans, CO 80620.	Engineering Department, 1100 37th Street, Evans, CO 80620.	Oct. 26, 2020	080182
Weld (FEMA Docket No.: B–2044).	Unincorporated areas of Weld County (19–08–0862P).	The Honorable Mike Freeman, Chairman, Weld County Board of Commissioners, P.O. Box 758, Greeley, CO 80632.	Weld County Department of Planning Services, 1555 North 17th Avenue, Greeley, CO 80631.	Oct. 26, 2020	080266
Florida:					
Alachua (FEMA Docket No.: B–2044).	City of Hawthorne (18–04–6771P).	The Honorable Matthew Surrency, Mayor, City of Hawthorne, P.O. Box 2413, Hawthorne, FL 32640.	Public Works Department, 6875 Southeast 221st Street, Hawthorne, FL 32640.	Oct. 26, 2020	120682
Alachua (FEMA Docket No.: B–2044).	Unincorporated areas of Alachua County (18–04–6771P).	The Honorable Robert ''Hutch'' Hutchinson, Chairman, Alachua County Board of Commissioners, 12 Southeast 1st Street, 2nd Floor, Gainesville, FL 32601.	Alachua County Public Works Department, 5620 Northwest 120th Lane, Gainesville, FL 32653.	Oct. 26, 2020	120001
Charlotte (FEMA Docket No.: B–2044).	Unincorporated areas of Charlotte County (20–04–2886P).	The Honorable Bill Truex, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Suite 536, Port Charlotte, FL 33948.	Charlotte County Building Department, 18400 Murdock Circle, Port Charlotte, FL 33948.	Nov. 6, 2020	120061
Gulf (FEMA Docket No.: B–2052).	Unincorporated areas of Gulf County (20–04–1556P).	Mr. Michael Hammond, Gulf County Administrator, 1000 Cecil G. Costin, Sr. Boulevard, Room 302, Port St. Joe, FL 32456.	Gulf County Planning and Development Department, 1000 Cecil G. Costin Sr. Boulevard, Room 303, Port St. Joe, FL 32456.	Oct. 30, 2020	120098
Lee (FEMA Docket No.: B–2049).	Town of Fort Myers Beach (20–04–1546P).	The Honorable Ray Murphy, Mayor, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.	Community Development Department, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.	Oct. 22, 2020	120673
Monroe (FEMA Docket No.: B–2044).	Unincorporated areas of Monroe County (20–04–2774P).	The Honorable Heather Carruthers, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Nov. 2, 2020	125129

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Orange (FEMA Docket No.: B–2044).	Unincorporated areas of Orange County (19–04–5112P).	The Honorable Jerry L. Demings, Mayor, Orange County, 201 South Rosalind Avenue, 5th Floor, Orlando, FL 32801.	Orange County Stormwater Department, 4200 South John Young Parkway, Orlando, FL 32839.	Oct. 27, 2020	120179
Georgia:					
Douglas (FEMA Docket No.: B–2044).	Unincorporated areas of Douglas County (19–04–5352P).	The Honorable Romona Jackson Jones, Chair, Douglas County Board of Commissioners, 8700 Hospital Drive, 3rd Floor, Douglasville, GA 30134.	Douglas County Development Services Department, 8700 Hospital Drive, Douglasville, GA 30134.	Oct. 23, 2020	130306
Richmond (FEMA Docket No.: B–2049).	City of Augusta (19–04–6697P).	The Honorable Hardie Davis, Jr., Mayor, City of Augusta, 535 Telfair Street, Suite 200, Augusta, GA 30901.	Planning and Development Department, 535 Telfair Street, Suite 300, Augusta, GA 30901.	Oct. 30, 2020	130158
Maine:					
Washington (FEMA Docket No.: B–2044).	Baring Plantation (20–01–0666P).	Ms. Stacie Beyer, Planning Manager, Baring Plantation, Land Use Planning Commission, 22 State House Station, Augusta, ME 04333.	Baring Plantation Hall, 22 State House Station, Augusta, ME 04333.	Oct. 26, 2020	230468
Washington (FEMA Docket No.: B–2052).	City of Calais (20–01–0624P).	The Honorable Billy Howard, Mayor, City of Calais, P.O. Box 413, Calais, ME 04619.	City Hall, 11 Church Street, Calais, ME 04619.	Oct. 22, 2020	230134
Washington (FEMA Docket No.: B–2044).	Grand Lake Stream Plantation (20–01–0494P).	Ms. Stacie Beyer, Planning Manager, Grand Lake Stream Plantation Land Use Planning Commission, 18 Elkins Lane, Augusta, ME 04333.	Grand Lake Stream Plantation Hall, 22 SHS, 18 Elkins Lane, Augusta, ME 04333.	Oct. 22, 2020	230469
Washington (FEMA Docket No.: B–2044).	Town of Alexander (20–01–0625P).	The Honorable Foster Carlow Jr., Chairman, Town of Alexander Board of Selectmen, 50 Cooper Road, Alexander, ME 04694.	Town Hall, 50 Cooper Road, Alexander, ME 04694.	Oct. 23, 2020	230303
Washington (FEMA Docket No.: B–2044)..	Town of Alexander (20–01–0666P).	The Honorable Foster Carlow Jr., Chairman, Town of Alexander Board of Selectmen, 50 Cooper Road, Alexander, ME 04694.	Town Hall, 50 Cooper Road, Alexander, ME 04694.	Oct. 26, 2020	230303
Washington (FEMA Docket No.: B–2044).	Town of Baileyville (20–01–0666P).	Mr. Chris Loughlin, Town of Baileyville, Manager, P.O. Box 370, Baileyville, ME 04694.	Town Hall, 63 Broadway, Baileyville, ME 04694.	Oct. 26, 2020	230304
Washington (FEMA Docket No.: B–2044).	Town of Crawford (20–01–0625P).	The Honorable Coburn Wallace, Chairman, Town of Crawford Board of Selectmen, 359 Crawford Arm Road, Crawford, ME 04694.	Town Hall, 359 Crawford Arm Road, Crawford, ME 04694.	Oct. 23, 2020	230309
Washington (FEMA Docket No.: B–2044).	Town of Danforth (20–01–0423P).	The Honorable Carrie Oliver, Chair, Town of Danforth Board of Selectmen, P.O. Box 117, Danforth, ME 04424.	Town Hall, 18 Central Street, Danforth, ME 04424.	Oct. 22, 2020	230136
Washington (FEMA Docket No.: B–2052).	Town of Northfield (20–01–0667P).	The Honorable Glen Morgan, Chairman, Town of Northfield Board of Selectmen, 1940 Northfield Road, Northfield, ME 04654.	Town Hall, 1940 Northfield Road, Northfield, ME 04654.	Oct. 22, 2020	230318
Washington (FEMA Docket No.: B–2052).	Town of Robbinston (20–01–0624P).	The Honorable Tom Moholland, Chairman, Town of Robbinston Board of Selectmen, 986 Ridge Road, Robbinston, ME 04671.	Town Hall, 986 Ridge Road, Robbinston, ME 04671.	Oct. 22, 2020	230321
Washington (FEMA Docket No.: B–2044).	Town of Talmadge (20–01–0494P).	The Honorable Zachary Beane, Chairman, Town of Talmadge Board of Selectmen, 455 Houlton Road, #13, Waite, ME 04492.	Town Hall, 14 Old Mill Road, Waite, ME 04492.	Oct. 22, 2020	230914
Washington (FEMA Docket No.: B–2044).	Town of Topsfield (20–01–0423P).	The Honorable Rickey Irish, Chairman, Town of Topsfield Board of Selectmen, 48 North Road, Topsfield, ME 04490.	Town Hall, 48 North Road, Topsfield, ME 04490.	Oct. 22, 2020	230324
Washington (FEMA Docket No.: B–2044).	Town of Topsfield (20–01–0494P).	The Honorable Rickey Irish, Chairman, Town of Topsfield Board of Selectmen, 48 North Road, Topsfield, ME 04490.	Town Hall, 48 North Road, Topsfield, ME 04490.	Oct. 22, 2020	230324
Washington (FEMA Docket No.: B–2044).	Town of Wesley (20–01–0625P).	The Honorable Glen Durling, Chairman, Town of Wesley Board of Selectmen, 2 Whining Pines Drive, Wesley, ME 04686.	Town Hall, 2 Whining Pines Drive, Wesley, ME 04686.	Oct. 23, 2020	230327
Washington (FEMA Docket No.: B–2052).	Town of Wesley (20–01–0667P).	The Honorable Glen Durling, Chairman, Town of Wesley Board of Selectmen, 2 Whining Pines Drive, Wesley, ME 04686.	Town Hall, 2 Whining Pines Drive, Wesley, ME 04686.	Oct. 22, 2020	230327
Washington (FEMA Docket No.: B–2044).	Township of Brookton (20–01–0423P).	Ms. Stacie Beyer, Chief Planner, Township of Brookton Land Use Planning Commission, 18 Elkins Lane, Augusta, ME 04333.	Township Hall, 22 SHS, 18 Elkins Lane, Augusta, ME 04333.	Oct. 22, 2020	230470
Oklahoma: Tulsa (FEMA Docket No.: B–2044).	City of Tulsa (20–06–0617P).	The Honorable G.T. Bynum, Mayor, City of Tulsa, 175 East 2nd Street, 15th Floor, Tulsa, OK 74103.	Development Services Department, 175 East 2nd Street, 4th Floor, Tulsa, OK 74103.	Oct. 30, 2020	405381
Pennsylvania:					

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Chester (FEMA Docket No.: B–2049).	Township of Easttown (20–03–0073P).	The Honorable James W. Oram, Jr., Chairman, Township of Easttown Board of Supervisors , 566 Beaumont Road, Devon, PA 19333.	Township Hall, 566 Beaumont Road, Devon, PA 19333.	Oct. 30, 2020	422600
Columbia (FEMA Docket No.: B–2044).	Township of Mifflin (20–03–0995X).	The Honorable Ricky L. Brown, President, Township of Mifflin Board of Supervisors, P.O. Box 359, Mifflinville, PA 18631.	Code Enforcement and Zoning Department, 207 East 1st Street, Mifflinville, PA 18631.	Oct. 26, 2020	421167
South Dakota:					
Custer (FEMA Docket No.: B–2049).	City of Custer (20-08-0443P).	The Honorable Corbin Herman, Mayor, City of Custer, 622 Crook Street, Custer, SD 57730.	Planning and Building Department, 622 Crook Street, Custer, SD 57730.	Oct. 22, 2020	460019
Custer (FEMA Docket No.: B–2049).	Unincorporated areas of Custer County (20-08-0443P).	The Honorable Jim Lintz, Chairman, Custer County Board of Commissioners, 420 Mount Rushmore Road, Custer, SD 57730.	Custer County, Department of Planning and Economic Development, 420 Mount Rushmore Road, Custer, SD 57730.	Oct. 22, 2020	460018
Texas:					
Bexar (FEMA Docket No.: B–2049).	City of San Antonio (19–06–4014P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 114 West Commerce Street, 7th Floor, San Antonio, TX 78205.	Oct. 26, 2020	480045
Bexar (FEMA Docket No.: B–2049).	Unincorporated areas of Bexar County (19–06–3557P).	The Honorable Nelson W. Wolff, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 1948 Probandt Street, San Antonio, TX 78214.	Oct. 26, 2020	480035
Bexar (FEMA Docket No.: B–2049).	Unincorporated areas of Bexar County (19–06–4014P).	The Honorable Nelson W. Wolff, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 1948 Probandt Street, San Antonio, TX 78214.	Oct. 26, 2020	480035
Collin (FEMA Docket No.: B–2049).	City of McKinney (20–06–0689P).	The Honorable George Fuller, Mayor, City of McKinney, P.O. Box 517, McKinney, TX 75070.	Engineering Department, 221 North Tennessee Street, McKinney, TX 75069.	Nov. 2, 2020	480135
Fort Bend (FEMA Docket No.: B–2049).	Unincorporated areas of Fort Bend County (20–06–0547P).	The Honorable K.P. George, Fort Bend County Judge, 301 Jackson Street, 4th Floor, Richmond, TX 77469.	Fort Bend County Engineering Department, 301 Jackson Street, 4th Floor, Richmond, TX 77469.	Oct. 30, 2020	480228
Midland (FEMA Docket No.: B–2043).	City of Midland (19–06–3901P).	The Honorable Patrick Payton, Mayor, City of Midland, 300 North Loraine Street, Midland, TX 79701.	City Hall, 300 North Loraine Street, Midland, TX 79701.	Oct. 26, 2020	480477
Tarrant (FEMA Docket No.: B–2049).	City of Crowley (20–06–0069P).	The Honorable Billy P. Davis, Mayor, City of Crowley, 201 East Main Street, Crowley, TX 76036.	Department of Community Development, 201 East Main Street, Crowley, TX 76036.	Oct. 26, 2020	480591
Williamson (FEMA Docket No.: B–2049).	City of Leander (19–06–3344P).	Mr. Rick Beverlin, Manager, City of Leander, 105 North Brushy Street, Leander, TX 78641.	City Hall, 105 North Brushy Street, Leander, TX 78641.	Oct. 30, 2020	481536
Williamson (FEMA Docket No.: B–2049).	City of Leander (19–06–3660P).	Mr. Rick Beverlin, Manager, City of Leander, 105 North Brushy Street, Leander, TX 78641.	City Hall, 105 North Brushy Street, Leander, TX 78641.	Oct. 30, 2020	481536
Williamson (FEMA Docket No.: B–2044).	Unincorporated areas of Williamson County (20–06–0255P).	The Honorable Bill Gravell, Jr., Williamson County Judge, 710 South Main Street, Suite 101, Georgetown, TX 78626.	Williamson County Engineering Department, 3151 Southeast Inner Loop, Georgetown, TX 78626.	Oct. 29, 2020	481079
Utah:					
Salt Lake (FEMA Docket No.: B–2049).	City of Riverton (20–08–0458P).	The Honorable Trent Staggs, Mayor, City of Riverton, 12830 South Redwood Road, Riverton, UT 84065.	Public Works Department, 12526 South 4150 West, Riverton, UT 84065.	Oct. 22, 2020	490104
Summit (FEMA Docket No.: B–2049).	Unincorporated areas of Summit County (19–08–1037P).	The Honorable Doug Clyde, Chairman, Summit County Council, P.O. Box 128, Coalville, UT 84017.	Summit County Government Office, 60 North Main Street, Coalville, UT 84017.	Oct. 29, 2020	490134

[FR Doc. 2020–26053 Filed 11–24–20; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0002; Internal Agency Docket No. FEMA–B–2068]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before February 23, 2021.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2068, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Delaware County, Iowa and Incorporated Areas **Project: 16–07–2177S Preliminary Date: May 29, 2020**	
Unincorporated Areas of Delaware County	Delaware County Engineering Office, 2139 Highway 38, Manchester, IA 52057.
Ellis County, Kansas and Incorporated Areas **Project: 18–07–0006S Preliminary Date: June 26, 2020**	
City of Ellis	Municipal Offices, 815 Jefferson Street, Ellis, KS 67637.

Community	Community map repository address
City of Hays	City Hall, 1507 Main Street, Hays, KS 67601.
City of Schoenchen	Ellis County Administrative Center, 718 Main Street, Hays, KS 67601.
City of Victoria	City Hall, 1005 4th Street, Victoria, KS 67671.
Unincorporated Areas of Ellis County	Ellis County Administrative Center, 718 Main Street, Hays, KS 67601.
Franklin County, Kansas and Incorporated Areas Project: 19–07–0034S Preliminary Date: June 9, 2020	
City of Lane	City Hall, 600 3rd Street, Lane, KS 66042.
City of Ottawa	City Hall, 101 South Hickory Street, Ottawa, KS 66067.
City of Pomona	City Hall, 219 Jefferson Street, Pomona, KS 66076.
City of Princeton	City Hall, 316 Galveston Street, Princeton, KS 66078.
City of Rantoul	City Hall, 120 East Main Street, Rantoul, KS 66079.
City of Wellsville	City Hall, 411 Main Street, Wellsville, KS 66092.
City of Williamsburg	City Hall, 123 West William Street, Williamsburg, KS 66095.
Unincorporated Areas of Franklin County	Franklin County Courthouse, 315 South Main Street, Ottawa, KS 66067.
Lyon County, Kansas and Incorporated Areas Project: 19–07–0038S Preliminary Date: May 22, 2020	
City of Allen	City Hall, 4 West 5th Street, Allen, KS 66833.
City of Americus	City Hall, 604 Main Street, Americus, KS 66835.
City of Emporia	City Hall, 111 East 6th Avenue, Emporia, KS 66801.
City of Neosho Rapids	City Hall, 238 North Main Street, Neosho Rapids, KS 66864.
City of Olpe	City Hall, 102 Westphalia Street, Olpe, KS 66865.
City of Reading	City Hall, 613 1st Street, Reading, KS 66868.
Unincorporated Areas of Lyon County	Lyon County Courthouse, 430 Commercial Street, Emporia, KS 66801.
Osage County, Kansas and Incorporated Areas Project: 19–07–0036S Preliminary Date: April 14, 2020	
City of Burlingame	City Hall, 101 East Santa Fe Avenue, Burlingame, KS 66413.
City of Carbondale	City Offices, 234 Main Street, Carbondale, KS 66414.
City of Lyndon	City Hall, 730 Topeka Avenue, Lyndon, KS 66451.
City of Melvern	City Hall, 141 Southwest Main Street, Melvern, KS 66510.
City of Osage City	City Hall, 201 South 5th Street, Osage City, KS 66523.
City of Overbrook	City Hall, 401 Maple Street, Overbrook, KS 66524.
City of Quenemo	City Hall, 109 East Maple Street, Quenemo, KS 66528.
City of Scranton	Municipal Building, 120 West Boone Street, Scranton, KS 66537.
Unincorporated Areas of Osage County	Osage County Courthouse, 717 Topeka Avenue, Lyndon, KS 66451.
Stevens County, Minnesota and Incorporated Areas Project: 18–05–0004S Preliminary Date: May 29, 2020	
City of Alberta	City Hall, 309 Main Street, Alberta, MN 56207.
City of Donnelly	City Hall, 107 3rd Street, Donnelly, MN 56235.
City of Morris	City Hall, 610 Oregon Avenue, Morris, MN 56267.
Unincorporated Areas of Stevens County	Stevens County Courthouse, 400 Colorado Avenue, Morris, MN 56267.

[FR Doc. 2020–26055 Filed 11–24–20; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The date of March 23, 2021 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
City and County of San Francisco, California and Incorporated Areas Docket No.: FEMA–B–1604 and FEMA–B–1961	
City and County of San Francisco	Office of the City Administrator, City Hall, Room 362, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.
Scott County, Iowa and Incorporated Areas Docket No.: FEMA–B–1925	
City of Bettendorf	City Hall, 1609 State Street, Bettendorf, IA 52722.
City of Blue Grass	City Hall, 114 North Mississippi Street, Blue Grass, IA 52726.
City of Buffalo	City Hall, 329 Dodge Street, Buffalo, IA 52728.
City of Davenport	City Hall, 226 West 4th Street, Davenport, IA 52801.
City of Dixon	City Hall, 610 Davenport Street, Dixon, IA 52745.
City of Donahue	City Hall, 106 1st Avenue, Donahue, IA 52746.
City of Eldridge	City Hall, 305 North 3rd Street, Eldridge, IA 52748.
City of Le Claire	City Hall, 325 Wisconsin Street, Le Claire, IA 52753.
City of Long Grove	City Hall, 119 South 1st Street, Long Grove, IA 52756.
City of McCausland	City Hall, 305 North Salina Street, McCausland, IA 52758.
City of Panorama Park	City Hall, 120 Short Street, Panorama Park, IA 52722.
City of Princeton	City Hall, 311 3rd Street, Princeton, IA 52768.
City of Riverdale	City Hall, 110 Manor Drive, Riverdale, IA 52722.
City of Walcott	City Hall, 128 West Lincoln Street, Walcott, IA 52773.
Unincorporated Areas of Scott County	Scott County Administrative Center, 600 West 4th Street, Davenport, IA 52801.
Carroll County, Kentucky and Incorporated Areas Docket No.: FEMA–B–1918	
City of Prestonville	Carroll County Emergency Operations Center, 829 Polk Street, Carrollton, Kentucky 41008.
Unincorporated Areas of Carroll County	Carroll County Emergency Operations Center, 829 Polk Street, Carrollton, Kentucky 41008.
Henry County, Kentucky and Incorporated Areas Docket No.: FEMA–B–1918	
Unincorporated Areas of Henry County	Henry County Planning and Zoning Department, 19 South Property Road, New Castle, Kentucky 40050.
Oldham County, Kentucky and Incorporated Areas Docket No.: FEMA–B–1918	
City of Crestwood	Oldham County Planning and Zoning Department, 100 West Jefferson Street, La Grange, KY 40031.
City of La Grange	Oldham County Planning and Zoning Department, 100 West Jefferson Street, La Grange, KY 40031.
City of Orchard Grass Hills	Oldham County Planning and Zoning Department, 100 West Jefferson Street, La Grange, KY 40031.
Unincorporated Areas of Oldham County	Oldham County Planning and Zoning Department, 100 West Jefferson Street, La Grange, KY 40031.

Community	Community map repository address
Trimble County, Kentucky and Incorporated Areas Docket No.: FEMA–B–1918	
City of Milton	City Hall, 10179 Highway 421 North, Milton, KY 40045.
Unincorporated Areas of Trimble County	Trimble County Office of the Executive County Judge, 123 Church Street, Bedford, KY 40006.
Benzie County, Michigan (All Jurisdictions) Docket No.: FEMA–B–1972	
City of Frankfort	City Hall, 412 Main Street, Frankfort, MI 49635.
Township of Benzonia	Township Hall, 1020 Michigan Avenue, Benzonia, MI 49616.
Township of Blaine	Blaine Township Hall, 4760 Herring Grove Road, Arcadia, MI 49613.
Township of Crystal Lake	Crystal Lake Township Hall, 1651 Frankfort Highway, Frankfort, MI 49635.
Township of Gilmore	Gilmore Township Clerk's Office, 1246 Grace Road, Elberta, MI 49635.
Township of Lake	Lake Township Hall, 5153 Scenic Highway, Honor, MI 49640.
Township of Platte	Platte Township Hall, 11935 Fowler Road, Honor, MI 49640.
Village of Beulah	Village Hall, 7228 Commercial Avenue, Beulah, MI 49617.
Village of Elberta	Village Hall, 151 Pearson Street, Elberta, MI 49628.
Benzie County, Michigan (All Jurisdictions) Docket No.: FEMA–B–1972	
City of Frankfort	City Hall, 412 Main Street, Frankfort, MI 49635.
Township of Benzonia	Township Hall, 1020 Michigan Avenue, Benzonia, MI 49616.
Township of Blaine	Blaine Township Hall, 4760 Herring Grove Road, Arcadia, MI 49613.
Township of Crystal Lake	Crystal Lake Township Hall, 1651 Frankfort Highway, Frankfort, MI 49635.
Township of Gilmore	Gilmore Township Clerk's Office, 1246 Grace Road, Elberta, MI 49635.
Township of Lake	Lake Township Hall, 5153 Scenic Highway, Honor, MI 49640.
Township of Platte	Platte Township Hall, 11935 Fowler Road, Honor, MI 49640.
Village of Beulah	Village Hall, 7228 Commercial Avenue, Beulah, MI 49617.
Village of Elberta	Village Hall, 151 Pearson Street, Elberta, MI 49628.
Marshall County, Minnesota and Incorporated Areas Docket No.: FEMA–B–1529 and B–1925	
City of Alvarado	City Hall, 155 Marshall Street, Alvarado, MN 56710.
City of Argyle	City Hall, 701 Pacific Avenue, Argyle, MN 56713.
City of Grygla	Civic Building, 219 West Beltrami Street, Grygla, MN 56727.
City of Middle River	City Hall, 250 Hill Avenue, Middle River, MN 56737.
City of Newfolden	City Office, 145 East First Street, Newfolden, MN 56738.
City of Oslo	City Hall, 107 Third Avenue East, Oslo, MN 56744.
City of Stephen	City Clerk's Office, 413 5th Street, Suite B, Stephen, MN 56757.
City of Warren	City Hall, 120 East Bridge Avenue, Warren, MN 56762.
Unincorporated Areas of Marshall County	Marshall County Courthouse, 208 East Colvin Avenue, Warren, MN 56762.
Bolivar County, Mississippi and Incorporated Areas Docket No.: FEMA–B–1946	
Town of Renova	City Hall, 1339 Old Highway 61, Renova, MS 38732.
Unincorporated Areas of Bolivar County	Bolivar County Courthouse Administrator's Office, 200 South Court Street, Cleveland, MS 38732.
Humphreys County, Mississippi and Incorporated Areas Docket No.: FEMA–B–1946	
Town of Isola	Town Hall, 203 Julia Street, Isola, MS 38754.
Unincorporated Areas of Humphreys County	Humphreys County Courthouse, Tax Assessor's Office, 102 Castleman Street, Belzoni, MS 39038.
Panola County, Mississippi and Incorporated Areas Docket No.: FEMA–B–1946	
City of Batesville	City Hall, 103 College Street, Batesville, MS 38606.
City of Sardis	City Hall, 114 West Lee Street, Sardis, MS 38666.
Unincorporated Areas of Panola County	Panola County Land Development Office, 245 Eureka Street, Batesville, MS 38606.

Community	Community map repository address
Sharkey County, Mississippi and Incorporated Areas Docket No.: FEMA–B–1946	
Unincorporated Areas of Sharkey County	Sharkey County Courthouse, 120 Locust Street, Rolling Fork, MS 39159.
Sunflower County, Mississippi and Incorporated Areas Docket No.: FEMA–B–1946	
City of Indianola	City Hall, Inspection Department, 101 Front Street, Indianola, MS 38751.
Town of Sunflower	Town Hall, 103 East Quiver Street, Sunflower, MS 38778.
Unincorporated Areas of Sunflower County	Sunflower County Courthouse, EMA/Floodplain Office, 200 Main Street, Indianola, MS 38751.
Tallahatchie County, Mississippi and Incorporated Areas Docket No.: FEMA–B–1946	
City of Charleston	City Hall, 26 South Square Street, Charleston, MS 38921.
Unincorporated Areas of Tallhatchie County	Tallahatchie County Courthouse, 1 Court Square, Charleston, MS 38921.
Washington County, Mississippi and Incorporated Areas Docket No.: FEMA–B–1946	
Unincorporated Areas of Washington County	Washington County Planning Department, 900 Washington Avenue, Greenville, MS 38701.
Yalobusha County, Mississippi and Incorporated Areas Docket No.: FEMA–B–1946	
Town of Oakland	City Hall, 13863 Hickory Street, Oakland, MS 38948.
Unincorporated Areas of Yalobusha County	Yalobusha County Courthouse, 201 Blackmur Drive, Water Valley, MS 38965.
Douglas County, Oregon and Incorporated Areas Docket No.: FEMA–B–1914	
City of Reedsport	City Hall, 451 Winchester Avenue, Reedsport, OR 97467.
Unincorporated Areas of Douglas County	Douglas County Courthouse, Justice Building, 1036 Southeast Douglas Avenue, Room 106, Roseburg, OR 97470.
Grant County, Oregon and Incorporated Areas Docket No.: FEMA–B–1979	
City of Seneca	City Hall, 106 A Avenue, Seneca, Oregon 97873.
Unincorporated Areas of Grant County	Grant County Planning Department, 201 South Humbolt Street, Suite 170, Canyon City, Oregon 97820.
Beaufort County, South Carolina and Incorporated Areas Docket No.: FEMA–B–1814	
City of Beaufort	City Hall, 1911 Boundary Street, Beaufort, SC 29902.
City of Hardeeville	City Hall, 205 Main Street, Hardeeville, SC 29927.
Town of Bluffton	Town Hall, 20 Bridge Street, Bluffton, SC 29910.
Town of Hilton Head Island	Town Hall, 1 Town Center Court, Hilton Head Island, SC 29928.
Town of Port Royal	Town Hall, 700 Paris Avenue, Port Royal, SC 29935.
Town of Yemassee	Town Hall, 101 Town Circle, Yemassee, SC 29945.
Unincorporated Areas of Beaufort County	Beaufort County Building Codes Department, 100 Ribaut Road, Beaufort, SC 29902.
Summit County, Utah and Incorporated Areas Docket No.: FEMA–B–1718 and FEMA–B–2004	
City of Coalville	City Hall, 10 North Main Street, Coalville, UT 84017.
City of Kamas	City Hall, 170 North Main Street, Kamas, UT 84036.
City of Oakley	City Hall, 960 West Center Street, Oakley, UT 84055.
City of Park City	City Hall, 445 Marsac Avenue, Park City, UT 84060.
Unincorporated Areas of Summit County	Summit County Courthouse, 60 North Main Street, Coalville, UT 84017.
Greene County, Virginia and Incorporated Areas Docket No.: FEMA–B–1934	
Town of Stanardsville	Town Hall, 19 Celt Road, Stanardsville, VA 22973.

Community	Community map repository address
Unincorporated Areas of Greene County	Greene County Administration Building, 40 Celt Road, Stanardsville, VA 22973.

[FR Doc. 2020–26056 Filed 11–24–20; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0002; Internal Agency Docket No. FEMA–B–2071]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Arizona:						
Maricopa	City of Goodyear (20–09–0477P).	The Honorable Georgia Lord, Mayor, City of Goodyear, 190 North Litchfield Road, Goodyear, AZ 85338.	Engineering and Development Services, 14455 West Van Buren Street, Suite D101, Goodyear, AZ 85338.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 15, 2021	040046

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Maricopa	City of Scottsdale (20–09–0557P).	The Honorable W.J. ''Jim'' Lane, Mayor, City of Scottsdale, 3939 North Drinkwater Boulevard, Scottsdale, AZ 85251.	Planning Records, 7447 East Indian School Road, Suite 100, Scottsdale, AZ 85251.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 12, 2021	045012
Maricopa	Town of Fountain Hills (20–09–1429P).	The Honorable Ginny Dickey, Mayor, Town of Fountain Hills, 16705 East Avenue of the Fountains, Fountain Hills, AZ 85268.	Town Hall, 16705 East Avenue of the Fountains, Fountain Hills, AZ 85268.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 15, 2021	040135
Maricopa	Unincorporated Areas of Maricopa County (20–09–1429P).	The Honorable Clint L. Hickman, Chairman, Board of Supervisors, Maricopa County, 301 West Jefferson Street, Phoenix, AZ 85009.	Flood Control District of Maricopa County, 2801 Wets Durango Street, Phoenix, AZ 85009.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 15, 2021	040037
Yavapai	Town of Prescott Valley (20–09–0254P).	The Honorable Kell Palguta, Mayor, Town of Prescott Valley, Civic Center, 7501 East Skoog Boulevard, 4th Floor, Prescott Valley, AZ 86314.	Town Hall, Engineering Division, 7501 East Civic Circle, Prescott Valley, AZ 86314.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 27, 2021	040121
Yavapai	Unincorporated Areas of Yavapai County (20–09–0254P).	The Honorable Craig L. Brown, Chairman, Board of Supervisors, Yavapai County, 1015 Fair Street, Prescott, AZ 86305.	Yavapai County Flood Control District, 1120 Commerce Drive, Prescott, AZ 86305.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 27, 2021	040093
California: San Luis Obispo.	City of El Paso de Robles (20–09–0780P).	The Honorable Steven W. Martin, Mayor, City of El Paso de Robles, 1000 Spring Street, Paso Robles, CA 93446.	City Hall, 1000 Spring Street, Paso Robles, CA 93446.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 18, 2021	060308
Hawaii: Honolulu	City and County of Honolulu (20–09–0544P).	The Honorable Kirk Caldwell, Mayor, City and County of Honolulu, 530 South King Street Room 306, Honolulu, HI 96813.	Department of Planning and Permitting, 650 South King Street 1st Floor, Honolulu, HI 96813.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 4, 2021	150001
Indiana: Hancock	Unincorporated Areas of Hancock County (20–05–0636P).	Mr. John Jessup, District 1, Hancock County Commissioner 111 South American Legion Place, Suite 219 Greenfield, IN 46140.	Hancock County Government Building, 111 South American Legion Place, Greenfield, IN 46140.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 4, 2021	180419
Kansas:						
Johnson	City of Leawood (20–07–0997P).	The Honorable Peggy J. Dunn, Mayor, City of Leawood, 4800 Town Center Drive, Leawood, KS 66211.	City Hall, 4800 Town Center Drive, Leawood, KS 66211.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 10, 2021	200167
Leavenworth	City of Basehor (20–07–1354P).	The Honorable David Breuer, Mayor, City of Basehor, P.O. Box 406, Basehor, KS 66007.	City Hall, 2620 North 155th Street, Basehor, KS 66007.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 17, 2021	200187
Michigan: Wayne	Township of Huron (20–05–1619P).	Mr. David Glaab, Supervisor, Township of Huron, The Huron Township Office, 29950 Huron River Drive, New Boston, MI 48164.	Township of Huron, 29950 Huron River Drive, New Boston, MI 48164.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 18, 2021	260545
Missouri:						
Jackson	City of Kansas City (20–07–0962P).	The Honorable Quinton Lucas, Mayor, City of Kansas City, City Hall, 414 East 12th Street, Kansas City, MO 64106.	Federal Office Building, 911 Walnut Street, Kansas City, MO 64106.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 6, 2020	290173
St. Louis	City of Bridgeton (20–07–0235P).	The Honorable Terry Briggs, Mayor, City of Bridgeton, 12355 Natural Bridge Road, Bridgeton, MO 63044.	Government Center, 12355 Natural Bridge Road, Bridgeton, MO 63044.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 26, 2021	290339
Nebraska: Lancaster.	Unincorporated Areas of Lancaster County (19–07–1293P).	Mr. Sean Flowerday, Board Chair, Lancaster County County/City Building, 555 South 10th Street Room 110, Lincoln, NE 68508.	Lancaster County Building & Safety Department, 555 South 10th Street, Lincoln, NE 68508.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 16, 2021	310134

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Nevada: Douglas	Unincorporated Areas of Douglas County (20–09–0629P).	The Honorable Barry Penzel, Chairman, Board of Commissioners, Douglas County, P.O. Box 218, Minden, NV 89423.	Douglas County, Community Development, 1594 Esmeralda Avenue, Minden, NV 89423.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 8, 2021	320008
New Jersey: Middlesex.	Township of Old Bridge (20–02–1168X).	The Honorable Owen Henry, Mayor, Township of Old Bridge, Municipal Building, 1 Old Bridge Plaza, Old Bridge, NJ 08857.	Municipal Building, 1 Old Bridge Plaza, Old Bridge, NJ 08857.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 26, 2021	340265
Ohio: Fairfield	City of Lancaster (20–05–2575P).	The Honorable David L. Scheffler, City Hall, Mayor, City of Lancaster, 104 East Main Street, Room 101, Lancaster, OH 43130.	City Building Department, 121 East Chestnut Street, Lancaster, OH 43130.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 26, 2021	390161
Texas:						
Collin	City of Frisco (19–06–1387P).	The Honorable Jeff Cheney, Mayor, City of Frisco, George A. Purefoy Municipal Center, 6101 Frisco Square Boulevard, Frisco, TX 75034.	George A. Purefoy Municipal Center, 6101 Frisco Square Boulevard, 3rd Floor, Frisco, TX 75034.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 22, 2021	480134
Denton	City of Carrollton (19–06–3346P).	The Honorable Kevin Falconer, Mayor, City of Carrollton, 1945 East Jackson Road Carrollton, TX 75006.	Engineering Department, 1945 East Jackson Road, Carrollton, TX 75006.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 4, 2021	480167
Denton	City of Lewisville (19–06–3346P).	The Honorable Rudy Durham, Mayor, City of Lewisville, 151 West Church Street Lewisville, TX 75057.	Engineering Division, 151 West Church Street, Lewisville, TX 75057.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 4, 2021	480195
Lamar	City of Paris (19–06–4007P).	The Honorable Dr. Steve Clifford, Mayor, City of Paris, P.O. Box 9037, Paris, TX 75461.	City Hall, 135 Southeast 1st Street, Paris, TX 75460.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 5, 2021	480427

[FR Doc. 2020–26054 Filed 11–24–20; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6225–N–01]

Notice of FY2020 Allocations, Waivers, and Alternative Requirements for the Pilot Recovery Housing Program

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Implementation notice for the pilot recovery housing program, including allocations and applicable rules, waivers, and alternative requirements.

SUMMARY: This notice describes the program rules, waivers, and alternative requirements that apply to $25,000,000 for activities authorized under the SUPPORT for Patients and Communities Act, entitled Pilot Program to Help Individuals in Recovery From a Substance Use Disorder Become Stably Housed, herein referred to as the Recovery Housing Program, or RHP. This pilot program authorizes assistance to grantees (states and the District of Columbia) to provide stable, temporary housing to individuals in recovery from a substance use disorder. The assistance is limited, per individual, to a period of not more than 2 years or until the individual secures permanent housing, whichever is earlier. The funds for fiscal year 2020 allocations described in this notice were made available by the Further Consolidated Appropriations Act, 2020, which was signed by President Trump on December 20, 2019. The SUPPORT Act requires funds appropriated or made available for the RHP be treated as community development block grant (CDBG) funds under the Housing and Community Development Act of 1974 (HCD Act), unless otherwise provided or modified by waivers and alternative requirements. The SUPPORT Act also authorizes the Secretary to waive or specify alternative requirements to any provision of the HCD Act, except for requirements related to fair housing, nondiscrimination, labor standards, the environment, and requirements that activities benefit persons of low- and moderate-income. This notice describes applicable waivers and alternative requirements to the CDBG program requirements which have been found to be necessary to expedite or facilitate the use of RHP funds.

DATES: *Effective Date:* November 19, 2020.

FOR FURTHER INFORMATION CONTACT: Jessie Handforth Kome, Director, Office of Block Grant Assistance, Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW, Room 7282, Washington, DC 20410, telephone number 202–708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Facsimile inquiries may be sent to Ms. Kome at 202–708–0033. (Except for the ''800'' number, these telephone numbers are not toll-free). Email inquiries may be sent to *RecoveryHousing@hud.gov.*

SUPPLEMENTARY INFORMATION: This pilot program would support individuals in recovery onto a path to self-sufficiency. By providing stable housing to support recovery, RHP aims to support efforts for independent living. More specifically, RHP would provide the funds to develop housing or maintain housing for individuals. To maximize and leverage these resources, grantees

should coordinate RHP-funded projects with other Federal and non-federal assistance related to substance abuse, homelessness and at-risk of homelessness, employment, and other wraparound services.

Section 8071 of the SUPPORT Act (Section 8071) required funds appropriated or made available for the Recovery Housing Program be treated as community development block grant (CDBG) funds under title I of the Housing and Community Development Act of 1974, unless otherwise provided in Section 8071 or modified by waivers and alternative requirements. The SUPPORT Act authorizes the Secretary to waive or specify alternative requirements to any provision of title I of the HCD Act, except for requirements related to fair housing, nondiscrimination, labor standards, the environment, and requirements that activities benefit persons of low- and moderate-income. This notice describes applicable waivers and alternative requirements to the CDBG program requirements at title I of the HCD Act and 24 CFR part 570 which have been found to be necessary to expedite or facilitate the use of RHP funds.

I. Background

A. Formula and Allocations

The Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94) (''FY 20 Appropriations Act'') made available $25,000,000 for activities authorized under Section 8071 and required the Secretary to allocate the funds based on the percentages shown in Table 1 of the **Federal Register** Notice published on April 17, 2019 (84 FR 16027) (the ''Formula Notice''). HUD published the allocations for the appropriated RHP funds to 25 grantees on HUD's website on February 13, 2020 at: *https://www.hud.gov/program_offices/comm_planning/communitydevelopment/recovery_housing_program/.*

The 25 grantees include 24 states and the District of Columbia. For grants authorized by the SUPPORT for Patients and Communities Act (Pub. L. 115–271, approved Oct. 24, 2018) (''SUPPORT Act''), the term ''state'' includes any state as defined in section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302) (HCD Act) and the District of Columbia. As required by the SUPPORT Act, HUD allocated funds only to states with an age-adjusted rate of drug overdose deaths above the national overdose mortality rate, according to the Centers for Disease Control and Prevention.

The SUPPORT Act authorized the Secretary to use up to 2 percent of the funds made available under the FY 20 Appropriations Act for technical assistance to grantees. Therefore, 2 percent ($500,000) will be used by the Secretary to provide technical assistance to grantees. The remaining $24,500,000 was allocated following the percentages shown in Table 1 of the Formula Notice, pursuant to the FY 20 Appropriations Act.

TABLE 1—RECOVERY HOUSING PROGRAM FY2020 ALLOCATIONS

Grantee	Allocation shares * per formula notice (%)	FY2020 allocation
West Virginia	*6.47*	$1,585,000.00
District of Columbia	*5.01*	1,226,000.00
Ohio	*5.00*	1,225,000.00
Pennsylvania	*4.90*	1,200,000.00
New Hampshire	*4.68*	1,148,000.00
Kentucky	*4.56*	1,116,000.00
Maryland	*4.31*	1,056,000.00
Massachusetts	*4.30*	1,052,000.00
Rhode Island	*4.26*	1,043,000.00
Delaware	*4.17*	1,022,000.00
Maine	*3.88*	951,000.00
Connecticut	*3.85*	944,000.00
New Mexico	*3.84*	940,000.00
Michigan	*3.67*	899,000.00
Tennessee	*3.63*	891,000.00
Florida	*3.56*	871,000.00
New Jersey	*3.49*	855,000.00
Indiana	*3.48*	853,000.00
Nevada	*3.46*	847,000.00
Missouri	*3.43*	839,000.00
Louisiana	*3.42*	838,000.00
Arizona	*3.28*	804,000.00
Oklahoma	*3.21*	787,000.00
Utah	*3.08*	755,000.00
Vermont	*3.07*	753,000.00
Subtotal		*24,500,000.00*
TA-Set Aside		*500,000.00*
Total		25,000,000.00

* *shares were slightly adjusted to evenly round all award amounts.*

B. Submission Deadline and Reallocation

RHP Grantees must submit an RHP Action Plan, including the Form SF–424, application for federal funds, by August 16, 2021. The RHP action plan must meet the specific requirements identified in this notice under section II.H.

If a grantee receiving an allocation of funds under this notice fails to submit

a RHP Action Plan for its allocation by no later than the August 16, 2021 deadline, or submits a RHP Action Plan for less than the total allocation amount, HUD may simultaneously notify the grantee of the reduction in its allocation amount and reallocate those funds in accordance with the SUPPORT Act's requirements.

II. Applicable Rules, Waivers, and Alternative Requirements

The SUPPORT Act requires amounts appropriated or amounts otherwise made available to grantees be treated as though such funds are CDBG funds under the HCD Act. Except as provided in Section 8071 or in this notice, the statutory and regulatory provisions governing the CDBG program shall apply to grantees.

The SUPPORT Act authorizes the Secretary to waive or specify alternative requirements to any provision of title I of the HCD Act necessary to facilitate or expedite the use of RHP funds, except for requirements related to fair housing, nondiscrimination, labor standards, the environment, and requirements that activities benefit persons of low- and moderate-income.

As required by the SUPPORT Act, the Secretary has determined that the statutory and regulatory waivers and alternative requirements described in this notice are necessary to expedite or facilitate the use of RHP funds.

These waivers and alternative requirements are only applicable to the use of RHP funds and do not apply to CDBG funds used in conjunction with RHP funds or other sources of CDBG funds (*i.e.,* from other grants or guaranteed loan funds) that are used for similar activities.

A. State Definition

Section 8071(g) provides for purposes of Section 8071, the term ''state'' includes the District of Columbia and any state as defined in section 102 of the HCD Act (42 U.S.C. 5302).

Under the HCD Act, the District of Columbia is a CDBG entitlement grantee, not a grantee under the state CDBG program. Therefore, only for the District of Columbia, HUD is waiving the regulations in 24 CFR part 570, subpart I and imposing the requirements in 24 CFR 570, subparts A, C, D, J, K, and O, to permit the District of Columbia to be subject to the entitlement CDBG regulations for its RHP grant, except as modified by the waivers and alternative requirements in this notice.

B. Selecting an Administrative Agency

Pursuant to section 102(c) of the HCD Act, the chief executive officer of a state or a unit of general local government may designate one or more public agencies to undertake activities assisted by RHP funds. Given that RHP is subject to CDBG program requirements, HUD recommends involving administrators with experience with CDBG funds, the Disaster Recovery Grant Reporting (DRGR) system, and other federally funded programs supporting recovery from a substance use disorder. If the administrator role is shared between multiple agencies (such as those described in Section II.D below), HUD recommends that these agencies enter into interagency agreements that describe how they will share responsibilities for grant administration.

C. Mandatory Priorities Imposed by the SUPPORT Act

The SUPPORT Act requires all grantees to distribute RHP funds giving priority to entities with the greatest need and ability to deliver effective assistance in a timely manner. Grantees must use RHP funds in a manner that reflects these priorities. Grantees are required to include a description of how they will comply with this requirement in their RHP Action Plans, as described in section II.H. of this notice.

D. State Direct Administration (Applies to All Grantees Except the District of Columbia)

The waivers and alternative requirements in this section permit a state grantee to use its RHP funds to act directly, subject to state law and RHP requirements, to carry out activities through employees, contractors, and subrecipients in all geographic areas within its jurisdiction, including entitlement areas and tribal areas.

HUD has determined that these waivers and alternative requirements will facilitate and streamline the use of RHP funds, particularly by nonprofits and other subrecipients that currently administer residential programs for persons in recovery from a substance use disorder. Permitting states to carry out activities directly will help the state to focus RHP funds towards projects that complement (but do not supplant) federal substance abuse-related assistance (*e.g.,* State Opioid Response (SOR) Grants or Substance Abuse Prevention and Treatment Block Grants (SABG) awarded by the Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services (HHS)). For example, RHP funding could be used for eligible temporary housing costs in coordination with other counseling and medication-assisted treatment (MAT) services funded by other federal programs, or other wrap-around services such as employment programs by the U.S. Department of Labor under the Workforce Innovation and Opportunity Act. Additionally, grantees are encouraged to partner with other programs that may be assisting these same individuals either before or after their participation in an RHP-funded program, such as HUD's Continuum of Care (CoC) Program, Emergency Solutions Grants (ESG) program, Housing Opportunities for Persons With AIDS (HOPWA) Program, and also HUD–VASH, a joint program between HUD and the U.S. Department of Veterans Affairs (VA).

Requirements at 42 U.S.C. 5306(d) and 24 CFR 570.480(g) are waived to the extent necessary to allow a state to use its RHP grant to directly carry out activities eligible under this notice, rather than only distribute its RHP funds to units of general local government. For example, a state may also directly fund a public or private nonprofit entity as a subrecipient, may procure a for-profit entity to carry out the RHP activities, or may use state employees to administer RHP-funded activities. The waiver and alternative requirement do not apply to the District of Columbia, which can directly carry out activities under requirements applicable to entitlement CDBG grantees.

A state's proposal to act directly and to distribute or use RHP funds in entitlement areas must be published for public comment in its RHP action plan in accordance with its citizen participation plan. States carrying out projects in tribal areas through employees, contractors, or subrecipients must obtain the consent of the Indian tribe with jurisdiction over the tribal area.

While states may carry out RHP activities directly, states are not required to carry out activities directly and may use the existing authority under the HCD Act and state CDBG program regulations to develop a method of distribution (MOD) to distribute RHP funds to units of general local government, Indian tribes, and tribally-designated housing entities. At the state's discretion, the units of general local government eligible for RHP funds may include those participating in the Entitlement CDBG program.

To facilitate the use of RHP funds, HUD is granting the following waiver

and alternative requirements when states carry out activities directly:

i. *Use of subrecipients by states (including nonprofits and tribes).* HUD is adopting the following alternative requirement that shall apply when states carry out activities directly: States carrying out activities through subrecipients must comply with 24 CFR 570.489(m) relating to monitoring and management of subrecipients. The definition of subrecipient at 24 CFR 570.500(c) applies when states carry out activities through subrecipients, and the requirements of 24 CFR 570.489(g) (as modified by section II.D.vii) shall apply. For purposes of this alternative requirement, the definition of subrecipients at 24 CFR 570.500(c) is modified to expressly include Indian tribes. Indian tribes that receive RHP funding from a state grantee must comply with the Indian Civil Rights Act (Title II of the Civil Rights Act of 1968, 25 U.S.C. 1301 *et seq.*). This conforming requirement is necessary because the state CDBG regulations do not anticipate states distributing funds through means other than a method of distribution to units of general local government.

ii. *Activities carried out by states in entitlement areas.* The provisions of 24 CFR 570.486(c) are waived to the extent necessary to allow states, either directly or through units of general local government, to use RHP funds for activities located in entitlement areas without contribution from the entitlement jurisdiction, consistent with the waiver and alternative requirements in section II.D. HUD is granting this waiver to facilitate and expedite the use of RHP funds.

iii. *Recordkeeping.* When a state carries out activities directly, 24 CFR 570.490(b) is waived, and the state shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of a state's administration of RHP funds under 24 CFR 570.493. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other federal requirements, the records maintained by the state shall be sufficient to: (1) Enable HUD to make the applicable determinations described at 24 CFR 570.493; (2) make compliance determinations for activities carried out directly by the state; (3) show how activities are consistent with the descriptions of activities in the RHP Action Plan in the DRGR system and with the requirements that apply to the use of RHP funds; and (4) demonstrate that monitoring standards and procedures are sufficient to ensure program requirements are met and provide for continual quality assurance and adequate program oversight. For fair housing and equal opportunity (FHEO) purposes, and as applicable, such records shall include data on racial, ethnic, and gender characteristics of persons and households who are applicants for, participants in, or beneficiaries of the program.

iv. *Change of use of real property.* For purposes of the RHP program, all references to ''unit of general local government'' in 24 CFR 570.489(j), shall be read as ''state and unit of general local government.''

v. *HUD Review of State Activities.* HUD is waiving the requirements at section 104(e)(2) of the HCD Act (42 U.S.C. 5304(e)(2)) and the regulation at 24 CFR 570.480(c) to the extent necessary to permit the following alternative requirements. The reviews and audits described in section 104(e)(2) shall also include a review of whether the state has carried out RHP activities in a timely manner and in conformance with its certifications and the RHP grant requirements. The regulation at 24 CFR 570.480(c) shall be modified with respect to the basis for HUD determining whether the state has failed to carry out its certifications, so that the Secretary must find that procedures and requirements adopted by the state are insufficient to afford reasonable assurance that activities undertaken by units of general local government or the state were not plainly inappropriate to meeting the primary objectives of the HCD Act, Section 8071, this notice, and the state's RHP objectives.

vi. *Responsibility for review and handling of noncompliance.* HUD is waiving 24 CFR 570.492 and implementing the alternative requirement that the state shall make reviews and audits, including on-site reviews, of any designated public agencies, units of general local government, and subrecipients, as may be necessary or appropriate to meet the requirements of section 104(e)(2) of the HCD Act, as modified by this notice. In the case of noncompliance with these requirements, the state shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence. The state shall establish remedies for noncompliance by any designated public agencies, units of general local government, and subrecipients.

vii. *Procurement.* HUD is waiving 24 CFR 570.489(g) only to the extent necessary to expand state procurement requirements to include all subrecipients in addition to units of general local government. Grantees must comply with the procurement requirements at 24 CFR 570.489(g) and shall establish requirements for procurement policies and procedures for units of general local governments and subrecipients consistent with the requirements at 24 CFR 570.489(g).

viii. *Means of Carrying Out Activities and Use of Subrecipients.* Activities directly carried out by states may be carried out, subject to state law, by the state through its employees, through procured contracts, or through assistance provided under agreements with subrecipients. A state is responsible for ensuring that RHP funds are used in accordance with all program requirements. The use of interagency agreements, subrecipient agreements, or contracts does not relieve the state of this responsibility. States are responsible for determining the adequacy of performance under all agreements and contracts covering the use of RHP funds, and for taking appropriate action when performance problems arise. States continue to be responsible for civil rights, labor standards, and environmental protection requirements, for compliance with all applicable requirements, including conflict of interest provisions in 24 CFR 570.489(g) and (h). HUD reminds states carrying out activities directly that all RHP grants remain subject to the provisions of 2 CFR part 200 that are incorporated by state CDBG regulations at 24 CFR part 570, subpart I, including the cost principles in 2 CFR part 200, subpart E. As a reminder, the cost principles require that costs be necessary and reasonable for the performance of the grantee's RHP grant. This requirement applies to all costs charged to the grant, including residential rehabilitation and reconstruction costs.

ix. *Environmental Review.* According to the environmental review regulations at 24 CFR 58.4(b), when a state carries out activities directly, the state must submit the certification and Request for Release of Funds (RROF) to HUD for approval. While a state usually distributes CDBG funds to a unit of general local government and takes on HUD's role as the responsible entity in receiving certifications from grant recipients and approving RROFs, for RHP activities carried out directly by the state, the state must submit the certification and RROF to HUD for approval.

E. Administrative Costs Cap, Elimination of State Matching Funds, and Related Provisions

The SUPPORT Act contains two requirements that modify existing CDBG requirements. Pursuant to Section

8071(c)(3), up to 5 percent of any RHP grant may be used for administrative costs by the grantee. Therefore, the total of all costs classified as administrative for a state, unit of general local government, and subrecipient(s) must be less than or equal to the 5 percent cap. Secondly, Section 8071(d)(2) provides that no matching funds are required for grantees to receive RHP grants.

In addition, to implement the requirements of the SUPPORT Act, HUD is limiting the eligible activities that grantees may carry out with RHP funds to those activities described in section II.L. For example, although allowed in the state CDBG program, a planning-only grant is not an eligible RHP activity.

HUD is also clarifying the inapplicability of CDBG requirements that conflict with the SUPPORT Act and imposing waivers and alternative requirements to modify the applicability of requirements related to administrative, management, planning, and technical assistance costs.

i. *Administrative Cost Cap 5 percent.* The requirements at section 106(d)(3) and (d)(6)(A) of the HCD Act (42 U.S.C. 5306(d)(3) and (d)(6)(A)) and the regulations at 24 CFR 570.200(g) and 570.489(a) are waived to the extent that they conflict with the Section 8071 provisions which establish a 5 percent cap on administrative costs with no match requirement, and section II.E of this notice which precludes planning-only grants. RHP grantees may expend up to 5 percent of the RHP grant and up to 5 percent of program income received for administrative costs. A nonfederal match for administrative costs is not required.

ii. *Technical Assistance Cost Cap 3 percent.* Section 106(d)(5) and (d)(6) of the HCD Act (42 U.S.C. 5306(d)(5) and (6)) and 24 CFR 570.489(a) are waived to the extent necessary to establish the following alternative requirement. In addition to the 5 percent of its RHP grant that a grantee may use for administrative costs, a grantee may use up to an additional 3 percent of the grant for technical assistance activities. Additionally, RHP grantees may expend up to 3 percent of program income received for technical assistance activities.

iii. *Consolidated plan requirements.* Section 104(a)–(c), and (e) (42 U.S.C. 5304(a)–(c), and (e)) and 24 CFR 570.304, 24 CFR 570.485 are waived to the extent necessary to allow the grant process and RHP action plan requirements imposed by this notice.

F. Funding Activities in Entitlements and Tribal Lands

To facilitate the use of RHP funds to address the need for stable, temporary housing for individuals in recovery from a substance use disorder in all areas of a grantee's jurisdiction, 24 CFR 570.480(g) is waived to the extent necessary for a state to carry out activities in all areas of its jurisdiction and to distribute RHP funds to entitlement and non-entitlement units of general local government, Indian tribes, or tribally designated housing entities within all areas of its jurisdiction. Furthermore, HUD is waiving 24 CFR 570.486(c) to allow a state to use RHP funds for an activity located in an entitlement jurisdiction without a contribution from the entitlement jurisdiction. Indian tribes that receive RHP funds from a state grantee must comply with the Indian Civil Rights Act (Title II of the Civil Rights Act of 1968, 25 U.S.C. 1301 *et seq.*).

Under the waiver and alternative requirements described in section II.D., states may carry out activities in all areas of its jurisdiction by carrying out activities directly or by distributing RHP funds using a method of distribution. At the state's discretion, the eligible units of general local government for RHP funds may include those participating in the Entitlement CDBG program.

For the purpose of the District of Columbia, the definition of subrecipients at 24 CFR 570.500(c) is also modified to expressly include Indian tribes. Indian tribes that receive RHP funding from a grantee must comply with the Indian Civil Rights Act. This alternative requirement provides the District of Columbia with requirements consistent with those applicable to the state grantees under RHP.

G. Pre-Award/Pre-Agreement Costs

To expedite and facilitate the use of RHP grant funds for eligible activities authorized by the SUPPORT Act, HUD is imposing the following waivers and alternative requirements:

i. The District of Columbia and its subrecipients are subject to the provisions of 24 CFR 570.200(h) for pre-award costs, except HUD waives 24 CFR 570.200(h) to require the effective date of the RHP grant agreement to be the date of HUD's execution of the RHP grant agreement. HUD is waiving 24 CFR 570.200(h)(1)(i)–(vi) and as an alternative requirement, the District of Columbia may reimburse pre-award costs in an amount not to exceed 25 percent of the grant, provided that the District of Columbia has described the pre-award costs in its RHP Action Plan and the costs comply with the RHP requirements, including applicable requirements at 2 CFR part 200 and Environmental Review Procedures stated in 24 CFR part 58.

ii. The provisions at 24 CFR 570.489(b) are modified to permit a state grantee to charge allowable pre-agreement costs incurred by itself, its recipients, or subrecipients to the RHP grant and require that all pre-agreement costs comply with RHP program requirements, including applicable requirements at 2 CFR part 200 and Environmental Review Procedures stated in 24 CFR part 58. Additionally, a grantee must include a description of pre-agreement costs to be reimbursed with RHP funds in its RHP Action Plan.

H. Overview of Grant Process and RHP Action Plan Requirements

Grantees must complete the following steps to access RHP grant funds:

1. The grantee develops the proposed RHP Action Plan and publishes it in accordance with the grantee's adopted citizen participation plan (CPP) it has established in accordance with 24 CFR 91.105 or 24 CFR 91.115 and this Notice.

2. The grantee provides opportunity for public comment and public hearings, if any, on the RHP action plan and responds to such comments in accordance with its CPP. The CPP may be amended in accordance with 24 CFR 91.105(a)(3) and 91.115(a)(3) concurrently to address RHP funds, and to allow no less than 15 calendar days of public comment and encourage participation by organizations interested in residential recovery programs for individuals with substance use disorder.

3. The grantee considers and summarizes public comments received in its RHP Action Plan and attaches a summary to its RHP Action Plan, which must include a summary of any comments not accepted and the reasons therefore;

4. The grantee submits its final RHP Action Plan to HUD via DRGR by August 16, 2021, which includes Standard Form 424 (SF–424), SF–424D (HUD collects these assurances for both construction and non-construction activities), and certifications;

5. HUD will review the RHP Action Plan in accordance with 24 CFR 91.500;

6. Once HUD accepts the RHP Action Plan, HUD and the grantee will enter into a grant agreement. HUD transmits the RHP grant agreement to the grantee, and the grantee signs and returns the grant agreement for HUD's signature;

7. HUD establishes the line of credit that can be accessed through DRGR; and

8. The grantee may draw down funds from the line of credit after the Responsible Entity completes applicable environmental reviews(s) pursuant to 24 CFR part 58 and, as applicable, receives from HUD or the state the Authority to Use Grant Funds (AUGF) form and certification.

HUD is granting the following waivers and alternative requirements below for a grantee's RHP Action Plan to expedite the use of RHP grants. HUD is waiving 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 42 U.S.C. 5306(a)(1), 42 U.S.C. 5306(d)(2)(C)(iii) 24 CFR 570.485, and 24 CFR 570.304 to the extent necessary to require a grantee to submit an RHP Action Plan separately from the consolidated plan covering other Community Planning and Development Programs, including CDBG. Under this waiver and alternative requirement, grantees do not need to reference the RHP program in the consolidated plan submitted via HUD's Integrated Disbursement and Information System (IDIS), unless the information included references other HUD programs. For example, if joint public comment and hearings are conducted by the grantee for RHP and CDBG, those meeting documents and comments may be uploaded for both RHP in DRGR and CDBG in IDIS. The RHP Action Plan will be separately submitted in DRGR and will be reviewed by HUD separately from any plan submissions made for other programs reported in IDIS. A grantee may prepare a single RHP Action Plan, including objectives and outcome measures, for its RHP allocation. In addition, RHP Action Plans may be submitted without updating the current consolidated plan's assessment, analysis, and strategy.

This waiver does not amend the CPP requirements or 24 CFR 570.486. HUD is imposing 24 CFR 91.505, as modified by this notice, to make the RHP Action Plan subject to the process provided for substantial amendments in a grantee's CPP. The CPP may be amended concurrently by grantees to allow no less than 15 calendar days of RHP public comment and to encourage participation by organizations interested in residential recovery programs for individuals with a substance use disorder. In addition to CPP requirements, HUD strongly encourages grantees to seek feedback from their Single State Agency (SSA), the state agency responsible for administering SABG and SOR grants from SAMHSA. The directory for SSA contacts for each state and the District of Columbia can be found at *https://www.samhsa.gov/sites/default/files/ssa-directory-04282020.pdf.*

A grantee's RHP Action Plan must include the proposed use of all funds, criteria for eligibility, and how the use addresses the purpose of RHP funds to provide stable, temporary housing to persons in recovery from a substance use disorder. The RHP Action Plan must include the following:

i. Standard Form 424 and *424D (HUD collects these assurances for both construction and non-construction activities).*

ii. Program Summary: A concise executive summary that identifies needs and specific goals for the grantee's RHP funds.

iii. *Resources:* A concise summary of the amounts of RHP funds and other federal and non-federal resources. Federal resources shall include any RHP program income expected to be available for RHP eligible activities, as well as other federal program funding for RHP eligible activities made available by the grantee. The RHP Action Plan must identify other state, local, nonprofit, or private resources expected to be made available in conjunction with the use of RHP funds for RHP eligible activities. HUD encourages grantees to review designated Opportunity Zone census tracts in their jurisdiction when considering the distribution of resources and placement of RHP projects. Where the grantee deems it appropriate, it may identify publicly owned land or property located within the grantee's jurisdiction that may be used to carry out the activities identified in the RHP Action Plan.

iv. *Administration Summary:* A concise summary of the role(s) of one or more of the grantee's agencies and departments in the administration of the RHP grant and contact information for these agencies and departments.

v. *Use of Funds:* A description of the use of funds that addresses the following:

(1) Awards to Communities by Method of Distribution (this element applies to grantees other than the District of Columbia). A statement of whether the grantee will distribute all or part of the RHP funds through a method of distribution and, if so, a description of the grantee's method for distributing RHP funds to any entitlement and non-entitlement units of general local government, Indian tribes, or tribally designated housing entities.

(2) Activities carried out directly. A statement of whether the grantee will use all or part of its RHP funds for activities to be carried out directly by the grantee, as described in section II.D., and, if so, a description of the eligible activities as described in section II.L. that will be carried out directly by the grantee. A grantee may carry out the activity with its own staff, procure a for-profit entity, or make a grant to a subrecipient.

(3) Eligible Subrecipients. A description of the types of entities or organizations that are eligible to become subrecipients. A grantee may choose to make public or private nonprofit entities eligible for RHP funding. A grantee may set other criteria related to the potential subrecipient's existing services, unmet need, experience, and past performance.

(4) Criteria for evaluation of applications and applicants. The grantee shall describe all criteria used to make funding choices, and describe the relative importance of the criteria, where applicable. This is required for all funding decisions, including items (1) and (2), and eligibility decisions under item (3) above. The description of the criteria must provide sufficient information so that applicants will be able to comment on it, know what criteria and information their application will be judged on, and be able to prepare responsive applications. The criteria must include a description of how the grantee will give priority to:

(a) Entities with the greatest need. A grantee may solicit qualitative and/or quantitative information from applicants to demonstrate a need for the activities being proposed for RHP funding. A grantee shall consider both the projected demand for the proposed temporary recovery housing solution and the financial need for assistance.

(b) Entities with the ability to deliver effective assistance in a timely manner. For example, a grantee may consider an applicant's prior performance related to administering prior federal awards and/or collaborating with other federal programs, including both HUD and HHS programs.

vi. *Definitions:* Definitions must be adopted by grantees for the following terms included in the SUPPORT Act and this notice, which the grantee must adhere to when carrying out its RHP grant. Grantees may adopt definitions for the following terms used by other publicly funded programs that provide support for recovery from substance use disorders.

(1) Individual in recovery.

(2) Substance use disorder.

A grantee's definitions cannot exclude individuals with certain types of substance issues or co-occurring disabilities, or exclusively target a specific type of substance use disorder.

vii. *Anticipated Outcomes and Expenditure Plan:* The following

information about outcomes and expenditures.

(1) *Expenditures.* A concise summary of how the grantee intends to comply with the requirement described in section II.J. that the grantee expends at least 30 percent of its RHP funds within one year from the date the funds are available to the grantee, and a concise summary of how the grantee intends to expend 100 percent of the RHP funds before the end of the period of performance. Additionally, this summary shall address administrative costs and describe how the grantee will expend no more than 5 percent of the RHP grant for its administrative costs.

(2) *Outcomes.* Sufficient information on proposed outcomes so that the annual performance report can include a comparison of the proposed versus actual outcomes for each outcome measure. Grantees must report the number of individuals assisted in RHP activities, and the number individuals able to transition to permanent housing through RHP-assisted temporary housing. Grantees should consider other outcome measures and are encouraged to engage with researchers to better understand other measurable impacts of RHP funding.

viii. *Citizen Participation Summary:* The grantee must include a summary of the citizen participation process for RHP, the public comments or views provided on the RHP Action Plan, and a summary of any of those public comments or views not accepted and the reasons they were rejected. The summary shall address public comments and views received during any public hearing, if a hearing is required by the CPP. This includes virtual public hearings as permitted due to national or local health authorities' recommendations for social distancing and limiting public gatherings for public health reasons.

ix. *Partner Coordination:* A summary of coordination with partners. RHP grantees are encouraged to coordinate with other federal substance abuse-related assisted partners, such as SOR grantees and SABG grantees from HHS, as well as other partners potentially serving the same populations, such as HUD's CoC Program, ESG program, HOPWA program, and HUD–VASH. RHP grantees are also encouraged to consult with a range of residential recovery service providers, such as private, faith-based nonprofits, public nonprofits such as Public Housing Authorities, or other entities assisting individuals in recovery.

x. *Subrecipient Management and Monitoring:* A summary of the grantee's subrecipient oversight and management policies and procedures.

xi. *Pre-award/Pre-Agreement Costs:* The grantee must include a description of pre-award or pre-agreement costs to be reimbursed with RHP funds.

xii. *Certifications:* Each grantee must make the following certifications with its RHP Action Plan:

(1) The grantee certifies that it has in effect and is following a residential anti-displacement and relocation assistance plan in connection with any activity assisted with funding under the RHP program. The grantee certifies that it will comply with the residential anti-displacement and relocation assistance plan, relocation assistance, and one-for-one replacement housing requirements of section 104(d) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304(d)) and implementing regulations at 24 CFR part 42, as applicable, except where waivers or alternative requirements are provided.

(2) The grantee certifies its compliance with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by part 87.

(3) The grantee certifies that the RHP Action Plan is authorized under state and local law (as applicable) and that the grantee, and any entity or entities designated by the grantee, and any contractor, subrecipient, or designated public agency carrying out an activity with RHP funds, possess(es) the legal authority to carry out the program for which it is seeking funding, in accordance with applicable HUD regulations and the grant requirements. The grantee certifies that activities to be undertaken with RHP funds are consistent with its RHP Action Plan.

(4) The grantee certifies that it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*), and implementing regulations at 49 CFR part 24, except where waivers or alternative requirements are provided.

(5) The grantee certifies that it will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135.

(6) The grantee certifies that it is following a citizen participation plan adopted pursuant to 24 CFR 91.115 or 91.105 (as imposed in notices for its RHP grant). Also, each unit of general local government receiving RHP assistance from a state must comply with the citizen participation requirements of 24 CFR 570.486(a)(1) through (a)(7) for proposed and actual uses of RHP funding (except as provided in **Federal Register** notices providing waivers and alternative requirements for the use of RHP funds).

(7) The grantee certifies that it is complying with each of the following criteria: (1) Funds will be used solely for allowable activities to provide individuals in recovery from a substance use disorder stable, temporary housing for a period of not more than 2 years or until the individual secures permanent housing, whichever is earlier; (2) with respect to activities expected to be assisted with RHP funds, the RHP Action Plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate-income individuals and families; (3) the aggregate use of RHP funds shall principally benefit low- and moderate-income families in a manner that ensures the grant amount is expended for activities that benefit such persons; and (4) the grantee will not attempt to recover any capital costs of public improvements assisted with RHP grant funds, by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless: (a) RHP grant funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than RHP; or (b) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary that it lacks sufficient RHP funds (in any form, including program income) to comply with the requirements of clause (a).

(8) The grantee certifies that the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. 3601–3619), and implementing regulations, and that it will affirmatively further fair housing.

(9) The grantee certifies that it has adopted and is enforcing the following policies, and, in addition, must certify that it will require local governments that receive grant funds to certify that they have adopted and are enforcing: (1) A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and (2) a policy of enforcing applicable state and local laws against physically barring entrance to or exit from a facility or

location that is the subject of such nonviolent civil rights demonstrations within its jurisdiction.

(10) The grantee certifies that the grant will be conducted and administered in conformity with the requirements of the Religious Freedom Restoration Act (42 U.S.C. 2000bb) and 24 CFR 5.109, allowing the full and fair participation of faith-based entities.

(11) The grantee certifies that it (and any subrecipient or administering entity) currently has or will develop and maintain the capacity to carry out RHP eligible activities in a timely manner and that the grantee has reviewed the requirements of the grant.

(12) The grantee certifies that its activities concerning lead-based paint will comply with the requirements of HUD's lead-based paint rules (Lead Disclosure; and Lead Safe Housing (24 CFR part 35)), and EPA's lead-based paint rules (*e.g.,* Repair, Renovation and Painting; Pre-Renovation Education; and Lead Training and Certification (40 CFR part 745)).

(13) The grantee certifies that it will comply with environmental review procedures and requirements at 24 CFR part 58.

(14) The grantee certifies that it will comply with applicable laws.

I. Consistency With Consolidated Plan

As previously described, HUD is waiving Section 104(a)–(c) (42 U.S.C. 5304(a)–(c)), 24 CFR 570.304, and 24 CFR 570.485 so that RHP funds are not required to be consistent with a grantee's consolidated plan because grantees may not have considered the needs associated with this special purpose funding when developing their current consolidated plan, strategic plan, and needs assessment. In conjunction, 42 U.S.C. 5304(e), to the extent that it would require HUD to annually review grantee performance under the consistency criteria, is also waived.

J. Timeliness

HUD is waiving the timely expenditure and obligation requirements of 42 U.S.C. 5304(e) and 24 CFR 570.494 and 570.902 and imposing the following alternative requirement: RHP funds will not be included in determining compliance with the requirements of 24 CFR 570.494 and 570.902. The RHP program is subject to the following requirements regarding the timely use of funds:

i. *30 Percent Expenditure in First Year.* Section 8071(c)(1) of the SUPPORT Act requires grantees to ''expend at least 30 percent of such funds within one year of the date funds become available to the grantee for obligation.'' The date of the execution of the grant agreement will be used for this purpose.

ii. *100 Percent Expenditure by September 1, 2027.* All program funds must be expended before the end of the period of performance on September 1, 2027.

K. Two-Year Limitation per Individual

RHP funds may only assist individuals in recovery from a substance use disorder for a cumulative period of not more than 2 years or until the individual secures permanent housing, whichever is earlier.

L. Eligible Activities

Although the SUPPORT Act provides that RHP funds are treated as CDBG funds, not all CDBG eligible activities in section 105 of the HCD Act (42 U.S.C. 5305(a)) satisfy the purpose of RHP funds to provide stable, temporary housing to individuals in recovery from a substance use disorder. HUD is imposing the following waiver and alternative requirement to modify section 105(a) for the statutory purpose described in the SUPPORT Act.

The use of RHP funds is limited to the following eligible activities.

i. *Public Facilities and Improvements.* RHP funds may be used for activities under 24 CFR 570.201(c) or section 105(a)(2) of the HCD Act (42 U.S.C. 5305(a)(2)) only for the purpose of providing stable, temporary housing for individuals in recovery from a substance use disorder in accordance with Section 8071 and this notice.

ii. *Acquisition of Real Property.* RHP funds may be used for acquisition under 24 CFR 570.201(a) or section 105(a)(1) of the HCD Act (42 U.S.C. 5305(a)(1)) for the purpose of providing stable, temporary housing to persons in recovery from a substance use disorder. For example, a nonprofit could purchase a residential property for the purpose of providing stable, temporary housing for individuals in recovery from a substance use disorder in accordance with Section 8071 and this notice.

iii. *Lease, rent, and utilities.* HUD is waiving and modifying 42 U.S.C. 5305(a)(8), 24 CFR 570.207(b)(4), 24 CFR 570.201(e), and 24 CFR 570.482(c)(2) to the extent necessary to permit RHP funds to be used to make payments for lease, rent, utilities, and associated costs (*e.g.,* fees), for the purpose of providing stable, temporary housing, on behalf of an individual in recovery from a substance use disorder in accordance with Section 8071 and this notice. Under this waiver and alternative requirement, such payments are not limited to 15 percent of the RHP grant, and individual may be assisted for up to 2 years or until the assisted individual find permanent housing, whichever is earlier. These payments may not be made directly to an individual. These payments may not have been previously paid from other sources; and the payments must result in either a new service and/or a quantifiable increase in the level of an existing service above that which has been provided in the 12 calendar months prior to approval of the RHP Action Plan. For example, a subrecipient currently operating a recovery group home may use RHP funds to rent an additional house and increase the number of persons served. In which case, the rent and utility costs of the additional house may be paid with RHP funds; however, the rent and utilities of the original house would not be an eligible cost under the RHP program. In this example, an individual may only stay in the temporary housing assisted by RHP for a period of up to 2 years or until the individual finds permanent housing, whichever is earlier.

iv. *Rehabilitation and Reconstruction of Single-Unit Residential.* RHP funds may be used for rehabilitation or reconstruction of publicly- or privately-owned single-unit residential buildings and improvements eligible under 24 CFR 570.202(a)(1) or section 105(a)(4) of the HCD Act (42 U.S.C. 5305(a)(4)) for the purpose of providing stable, temporary housing for individuals in recovery from a substance use disorder in accordance with Section 8071 and this notice.

v. *Rehabilitation and Reconstruction of Multi-Unit Residential.* RHP funds may be used for rehabilitation or reconstruction of publicly- or privately-owned buildings and improvements with two or more permanent residential units that otherwise comply with 24 CFR 570.202(a) and section 105(a)(4) of the HCD Act (42 U.S.C. 5305(a)(4)) for the purpose of providing stable, temporary housing for individuals in recovery from a substance use disorder in accordance with Section 8071 and this notice.

vi. *Rehabilitation and Reconstruction of Public Housing.* RHP funds may be used for rehabilitation or reconstruction of buildings and improvements owned and operated by a public housing authority to the extent eligible under 24 CFR 570.202(a)(2) and section 105(a)(4) of the HCD Act (42 U.S.C. 5305(a)(4)), for the purpose of providing stable, temporary housing for individuals in recovery from a substance use disorder

in accordance with Section 8071 and this notice.

vii. *Disposition of Real Property.* RHP funds may be used for disposition through sale, lease, or donation, or otherwise of real property acquired with RHP funds subject to 24 CFR 570.201(b) and section 105(a)(7) of the HCD Act (42 U.S.C. 5305(a)(7)), for the purpose of providing stable, temporary housing for individuals in recovery from a substance use disorder in accordance with Section 8071 and this notice. Eligible costs may include costs incidental to disposing of the property, such as preparation of legal documents, fees paid for surveys, transfer taxes, and other costs involved in the transfer of ownership of the RHP-assisted property.

viii. *Clearance and Demolition.* RHP funds may be used for clearance, demolition, and removal of buildings and improvements, including movement of structures to other sites to the extent eligible under 24 CFR 570.201(d) or section 105(a)(4) of the HCD Act (42 U.S.C. 5305(a)(4)) for the purpose of providing stable, temporary housing for individuals in recovery from a substance use disorder in accordance with Section 8071 and this notice. This is limited to projects where RHP funds are used only for the clearance and demolition.

ix. *Relocation.* RHP funds may be used for relocation payments and other assistance for permanently or temporarily displaced individuals and families in connection with activities using RHP funds, to the extent eligible under 24 CFR 570.201(i) and section 105(a)(11) of the HCD Act (42 U.S.C. 5305(a)(11)).

x. *Expansion of existing eligible activities to include new construction.* RHP funds can be used for new construction of housing, to the extent the newly constructed housing shall be used for the purpose of providing stable, temporary housing for individuals in recovery from a substance use disorder in accordance with Section 8071 and this notice. HUD is waiving 42 U.S.C. 5305(a) and 24 CFR 570.207(b)(3) and adopting alternative requirements to the extent necessary to permit new construction of housing, subject to the same requirements that apply to rehabilitation activities under the provisions at section 105(a)(4) of the HCD Act (42 U.S.C. 5305(a)(4)) and 24 CFR 570.202(b).

xi. *Grant Administration.* Subject to the limitations described in section II.E of this notice, RHP funds may be used to pay administrative costs of the RHP program. These administrative costs include, but are not limited to, the costs related to the development and submission of the RHP Action Plan, costs associated with carrying out subrecipient monitoring and oversight, and costs associated with reporting to HUD.

xii. *Technical Assistance.* Subject to the limitations described in section II.E of this notice, RHP funds may be used to pay for the grantee's non-administrative costs associated with providing technical assistance to a nonprofit or a unit of general local government to successfully apply for and implement the RHP program, to the extent eligible under 24 CFR 570.201(p) and section 105(a)(19) of the HCD Act (42 U.S.C. 5305(a)(19)).

M. National Objective & Overall Benefit

To facilitate the use of the RHP funds, the following waivers and alternative requirements modify several national objective criteria to be consistent with the purpose of Section 8071. All RHP activities must comply with the Limited Clientele National Objective as modified by this notice.

(i) *Expansion of Limited Clientele National Objective to include RHP-assisted housing.* HUD is imposing a waiver and alternative requirement to the limited clientele national objective criteria at 24 CFR 570.208(a)(2) and 570.483(b)(2)(i)(B) to the extent necessary to enable the use of the limited clientele national objective for acquisition, rehabilitation, reconstruction, or new construction activities assisted by RHP funds that provide stable, temporary housing to individuals in recovery from substance use disorder, when at least 51 percent of the individuals benefitting are low- or moderate-income persons. Any cost or other limitations on the participation by beneficiaries in RHP activities must not be prohibitive for low-income persons. The RHP activities, when taken as a whole, must not benefit moderate-income persons to the exclusion of low-income persons.

(ii) *Modification of Limited Clientele Presumptions.* Persons in certain group categories may be presumed to be low- and moderate-income persons pursuant to the requirements at 24 CFR 570.208(a)(2)(i)(A) or 570.483(b)(2)(ii)(A). HUD is modifying the requirements at 570.208(a)(2)(i)(A) and 570.483(b)(2)(ii)(A) to add additional categories of groups of persons that, when served exclusively or in combination with groups of persons in other listed categories, may be presumed to benefit persons, 51 percent of whom are low- and moderate-income, barring any evidence to the contrary. Under this alternative requirement, the categories are expanded to include persons who meet the federal poverty limits or are insured by Medicaid.

(iii) *Overall benefit to Low- and Moderate-Income Persons.* Section 101(c) of the HCD Act (42 U.S.C. 5301(c)) establishes the primary objective of the HCD Act to be the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low- and moderate-income. Unlike the CDBG program, RHP funds may not be used for activities to aid in the prevention or elimination of slums or blight, or activities designed to meet community development needs having a particular urgency. Therefore, all RHP funds must be used to support activities that benefit low- and moderate-income persons. Additionally, administrative and technical assistance expenditures are counted toward low- and moderate-income benefit in the same proportion as RHP expenditures for other activities.

N. Program Income

Income generated from the use of RHP funds is subject to 42 U.S.C. 5304(j), 24 CFR 570.489(e) (states), and 24 CFR 570.500 and 570.504 (District of Columbia) regarding program income. To expedite or facilitate the use of RHP funds, HUD is issuing the following alternative requirements to program income provisions at 24 CFR 570.489(e) and 24 CFR 570.504 as described below.

i. Definition of Program income. HUD is modifying 24 CFR 570.489(e)(1) (states) to modify the definition of ''Program income'' to include gross income received by subrecipients that was generated from the use of RHP funds. In addition, HUD is modifying 24 CFR 570.489(e)(2) (states) and 24 CFR 570.500(a)(4) (District of Columbia) to exclude from program income any income received and retained by a nonprofit operating within the grantee's jurisdiction whose primary mission includes serving individuals in recovery from substance use disorder. If a grantee chooses to require the nonprofit to return income generated from the use of RHP funds, the income returned by the nonprofit to the grantee would be defined as program income.

ii. Treatment of program income.

(1) Prior to closeout of an RHP grant, except as described in (2) below, a grantee must transfer program income to another open RHP grant or its annual CDBG program. Program income received by a grantee after closeout of all RHP grants must be transferred to the grantee's annual CDBG award. Once transferred to the annual program, the

waivers and alternative requirements that apply to the RHP grant no longer apply to the use of transferred program income. Rather, those funds will be subject to the grantee's regular CDBG program rules.

(2) Grantees other than the District of Columbia may require that any subrecipient pay RHP program income to the state unless the exception in 24 CFR 570.489(e)(3)(ii)(A) applies. The provisions of 24 CFR 570.489(e)(3)(ii)(A) are modified to add an additional requirement that the state must require a unit of general local government to return to the state program income generated from the use of RHP funds, if the program income will not be used to continue the RHP-eligible activity from which it was derived. Program income returned to the state must be used for additional RHP-eligible activities pursuant to a grantee's RHP Action Plan or transferred to the state's annual CDBG program as described in (1) above.

iii. All RHP program income and assets shall be treated as program income and assets of the grantee's annual CDBG program at the earlier of grantee closeout or the date the grantee's RHP appropriation account is canceled pursuant to section II.P. of this notice.

iv. Revolving loan funds prohibited. Because of the requirement to transfer program income to the annual CDBG grant program, grantees are prohibited from establishing revolving funds with program income generated from the use of RHP funds.

O. Reporting

General reporting requirements for grantees can be found at 24 CFR 570.507 (District of Columbia) and 24 CFR 570.491 (state).

HUD is facilitating the use of the RHP funds by implementing reporting and review requirements specific to the purpose of RHP. HUD will use grantee reports to oversee compliance with RHP grant requirements and perform risk analysis that may inform HUD's monitoring plans. The following reporting requirements apply to all RHP grants:

i. HUD requires each grantee to annually review and report on the use of RHP funds using the online DRGR system. To the extent feasible, HUD will configure DRGR performance measures to fit the purposes of the RHP program and the eligible activities described in section II.L. The annual performance report must include a comparison of the proposed versus actual outcomes for each outcome measure included in the RHP Action Plan. The grantee must explain, if applicable, why progress was not made toward meeting goals and objectives. The grantee must enter information in DRGR about the uses of RHP funds in sufficient detail to permit HUD's review of grantee data and allow HUD to assess compliance and risk. Required information includes, but is not limited to: The project name; activity; location; national objective; funds budgeted and expended; the funding source and total amount of any non-RHP funds expended for the same activity; numbers of properties and housing units; beginning and ending dates of activities; and numbers of low- and moderate-income persons or households benefiting from the activities.

ii. The annual performance report will include a financial report(s). Each grantee will enter information into DRGR on its obligations and expenditures, available cash, program income, and other financial information for the use of RHP funds as required by HUD. Grantees must use the DRGR system to generate and submit a form SF–425 federal financial report.

iii. Each RHP grantee must submit an annual performance report (including financial reports) as described in this notice no later than 30 days following the end of each federal fiscal year, beginning 30 days after the close of the first federal fiscal year in which HUD and the grantee sign the RHP grant agreement and continuing until 30 days after the end of the last fiscal year in which the grant is open or fiscal year 2027, whichever comes earlier. HUD may extend the date of the first report for grant agreements signed by HUD and the grantee within 30 days of the end of the federal fiscal year. Reports must be submitted using HUD's DRGR system. HUD will provide grantees with guidance on how to submit performance reports in DRGR.

iv. Before submitting the performance reports to HUD, the grantee must provide reasonable notice to citizens and make the full annual performance report in accordance with 24 CFR 91.105(d) and 24 CFR 91.115(d), including the SF–425 federal financial report and the Consolidated Annual Performance and Evaluation Report, available for citizen comment for a period not less than 15 days. Performance reports must be available to the public in compliance with 24 CFR 91.105(d) and 24 CFR 91.115(d), including availability in a form accessible to persons with disabilities, upon request (DRGR generates a version of the report that the grantee can download, save, and post on the grantee's website or share electronically).

v. HUD shall review the performance report and determine whether it is satisfactory. If a satisfactory report is not submitted in a timely manner, HUD may suspend access to RHP funds until a satisfactory report is submitted, or may withdraw and reallocate funding if HUD determines, after notice and opportunity for a hearing, that the grantee will not submit a satisfactory report.

P. Period of Performance and Closeout

Grantees must expend all RHP funds within the period of performance established by the RHP grant agreement. HUD is establishing a period of performance that begins on the date the grant agreement authorizes the grantee to begin to use RHP funds and ends on September 1, 2027, which is 29 days before the RHP appropriation account is cancelled in accordance with 31 U.S.C. 1552(a), 24 CFR 570.200(k), and 24 CFR 570.480(h). Grant funds are not available for obligation and expenditure after the period of performance.

HUD will close out RHP grants in accordance with the 24 CFR 570.489(o), which imposes the closeout requirements of 2 CFR 200.343. For the District of Columbia, to facilitate the use of grant funds in a timely manner, HUD is waiving the CDBG Entitlement regulation at 24 CFR 570.509 and imposing an alternative requirement that HUD will close out the RHP grant for the District of Columbia in accordance with grant closeout requirements of 2 CFR 200.343. This approach will allow for a single closeout approach for all RHP grantees.

Under the regulation at 2 CFR 200.343(a), the deadline for all grantees to submit financial, performance, and other reports is 90 calendar days after the end date of the period of performance or December 1, 2027.

Before HUD and the grantee enter a closeout agreement, the grantee must transfer all RHP program income and assets to its annual CDBG program, as discussed in section II.N. above.

III. Findings and Certifications

Paperwork Reduction Act

The information collection requirements in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2506–0165. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for RHP grants under the SUPPORT Act are 14.218 (Community Development Block Grants/Entitlement Grants), 14.225 (Community Development Block Grants/Special Purpose Grants/Insular Areas, and 14.228 (Community Development Block Grants/State's Program and Non-Entitlement Grants in Hawaii) (formerly CDBG Grant/Small Cities Program).

Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). During periods in which HUD's offices are closed to the public due to coronavirus, the FONSI will be available online at *hud.gov*. During periods when HUD's offices are open to the public, the FONSI will be available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the FONSI must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

John Gibbs,

Principal Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2020–26017 Filed 11–24–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6191–N–03]

Section 8 Housing Choice Vouchers: Implementation of the Housing Choice Voucher Mobility Demonstration, Extension of Application Due Date

AGENCY: Office of the Assistant Secretary for Public and Indian Housing (PIH), Department of Housing and Urban Development (HUD).

ACTION: Notice of extension of application due date.

SUMMARY: On July 15, 2020, HUD published a notice (''Notice'') implementing the Housing Choice Voucher (HCV) mobility demonstration (''demonstration'') authorized by the Consolidated Appropriations Act, 2019. Through this Notice, HUD is making available up to $50,000,000 to participating Public Housing Authorities (PHAs) throughout the country to implement housing mobility programs by offering mobility-related services to increase the number of voucher families with children living in opportunity areas. The Notice established October 13, 2020, as the deadline date for submission of PHA applications and a second **Federal Register** notice extended the submission deadline to December 14, 2020. Today's **Federal Register** publication further extends the deadline date for the submission of applications to February 1, 2021.

DATES: The new application deadline date for the HCV Mobility Demonstration Program is February 1, 2021.

FOR FURTHER INFORMATION CONTACT: Rebecca Primeaux, Director, Housing Voucher Management and Operations Division, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4214, Washington, DC 20410, telephone number (202) 708–1112. (This is not a toll-free number.) Individuals with hearing or speech impediments may access this number via TTY by calling the Federal Relay during working hours at 800–877–8339. (This is a toll-free number). HUD encourages submission of questions about the demonstration be sent to *HCVmobilitydemonstration@hud.gov.*

SUPPLEMENTARY INFORMATION: On July 15, 2020 (85 FR 42890), HUD published its Notice implementing the HCV Mobility Demonstration, and established October 13, 2020, as the deadline date for the submission of applications. Through the Notice, HUD is making available approximately $50,000,000 for grants to Public Housing Authorities (PHAs) under a demonstration program authorized by statute. On October 8, 2020 (85 FR 63569), HUD published a **Federal Register** notice extending the application deadline to December 14, 2020.

Today's **Federal Register** publication further extends the deadline date for the submission of applications for the HCV Mobility Demonstration program to February 1, 2021. HUD is extending the submission deadline date while HUD considers, in response to questions HUD has received from PHAs, whether and to what extent PHAs may participate in both the Mobility Demonstration program and the Moving to Work (MTW) expansion program. HUD anticipates publishing another **Federal Register** notice to address this question.

Deadline for Applications

The lead agency shall be responsible for submitting the application to HUD, no later than February 1, 2021. Applications that are submitted after midnight on February 1, 2021, or which fail to include the required elements, will be ineligible for consideration by HUD.

HUD may extend the application deadline for any program if *HUD.gov* systems are offline or not available to applicants for at least 24 hours immediately prior to the deadline date, or if the system is down for 24 hours or longer and that impacts the ability of applicants to cure a submission deficiency within the grace period. HUD may also extend the application deadline upon request if there is a presidentially-declared disaster in the applicant's area. If these events occur, HUD will post a notice on its website establishing the new, extended deadline for the affected applicants.

R. Hunter Kurtz,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2020–26092 Filed 11–24–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2020–N149; FXES11130300000–201–FF03E00000]

Endangered and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered or threatened species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before December 28, 2020.

ADDRESSES: *Document availability and comment submission:* Submit requests for copies of the applications and related documents, as well as any comments, by one of the following methods. All requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* TEXXXXXX; see table in **SUPPLEMENTARY INFORMATION**):

- *Email: permitsR3ES@fws.gov.* Please refer to the respective application number (*e.g.,* Application No. TEXXXXXX) in the subject line of your email message.
- *U.S. Mail:* Regional Director, Attn: Nathan Rathbun, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458.

FOR FURTHER INFORMATION CONTACT: Nathan Rathbun, 612–713–5343 (phone); *permitsR3ES@fws.gov* (email). Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. The ESA and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

We invite local, State, and Federal agencies; Tribes; and the public to comment on the following applications:

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE41671D	Brian Carlson, Morgantown, WV.	Add: Guyandotte River crayfish (*Cambarus veteranus*) and Big Sandy crayfish (*C. callainus*) to existing permitted species: Fanshell (*Cyprogenia stegaria*), orangefoot pimpleback (pearlymussel) (*Plethobasus cooperianus*), pink mucket (pearlymussel) (*Lampsilis orbiculata*), purple cat's paw (pearlymussel) (*Epioblasma obliquata obliquata*), rabbitsfoot (*Quadrula cylindrica cylindrica*), rayed bean (*Villosa fabalis*), ring pink (mussel) (*Obovaria retusa*), rough pigtoe (*Pleurobema plenum*), sheepnose mussel (*P. cyphyus*), snuffbox mussel (*E. triquetra*), spectaclecase (mussel) (*Cumberlandia monodonta*), white catspaw (pearlymussel) (*E. o. perobliqua*).	AL, AR, CT, DE, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, NH, NJ, NY, NC, OH, OK, PA, TN, VT, VA, WV, WI.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Collect, handle, hold, release.	Renew.
TE98298A	Ohio Environmental Protection Agency, Columbus, OH.	Clubshell (*Pleurobema clava*), fanshell (*Cyprogenia stegaria*), northern riffleshell (*Epioblasma torulosa rangiana*), pink mucket (pearlymussel) (*Lampsilis orbiculata*), purple cat's paw (pearlymussel) (*E. obliquata obliquata*), rabbitsfoot (*Quadrula cylindrica cylindrica*), rayed bean (*Villosa fabalis*), sheepnose mussel (*Plethobasus cyphyus*), snuffbox mussel (*E. triquetra*), white catspaw (pearlymussel) (*E. o. perobliqua*).	OH	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Collect, handle, hold, release.	Renew.
TE697830	U.S. Fish and Wildlife Service, Bloomington, MN.	All endangered species in the Midwest Region.	IL, IN, IA, MI, MN, MO, OH, WI.	All activities in furtherance of the U.S. Fish and Wildlife Service's mission to conserve endangered wildlife and plants and the ecosystems upon which they depend.	Conduct take of endangered species of wildlife wherever found and removal and reduction to possession of endangered species of plants from lands under Federal jurisdiction in the Midwest Region.	Renew.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Lori Nordstrom,

Assistant Regional Director, Ecological Services.

[FR Doc. 2020–26101 Filed 11–24–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

[FWS–R4–ES–2020–N145; FVHC98220410150–XXX–FF04H00000]

Louisiana Trustee Implementation Group Deepwater Horizon Oil Spill Final Restoration Plan and Environmental Assessment #7: Wetlands, Coastal, and Nearshore Habitats; and Birds; and Finding of No Significant Impact

AGENCY: Department of the Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the Oil Pollution Act of 1990 (OPA); the National Environmental Policy Act of 1969 (NEPA); the Final Programmatic Damage Assessment Restoration Plan and Final Programmatic Environmental Impact Statement (Final PDARP/PEIS) and Record of Decision; and the Consent Decree, the Federal and State natural resource trustee agencies for the Louisiana Trustee Implementation Group (LA TIG) prepared the *Louisiana Trustee Implementation Group Final Restoration Plan #7 and Environmental Assessment: Wetlands, Coastal and Nearshore Habitats; and Birds* (RP/EA #7), and Finding of No Significant Impact (FONSI). In the final RP/EA #7, the LA TIG selected projects to help restore bird habitat and marshes injured as a result of the *Deepwater Horizon* (DWH) oil spill in the Louisiana Restoration Area under the ''Wetlands, Coastal and Nearshore Habitats'' and ''Birds'' restoration types described in the Final PDARP/PEIS. The total cost to implement the LA TIG's five selected projects is approximately $234,100,000.

ADDRESSES: *Obtaining Documents:* You may download the final RP/EA #7 from either of the following websites:

- *https://www.doi.gov/deepwaterhorizon*
- *https://www.gulfspillrestoration.noaa.gov/restoration-areas/louisiana*

Alternatively, you may request a CD of the final RP/EA #7 (see **FOR FURTHER INFORMATION CONTACT**). Copies are also available for review at the locations listed in the following table:

Library	Address	City	Zip
St. Tammany Parish Library	310 W 21st Avenue	Covington	70433
Terrebonne Parish Library	151 Library Drive	Houma	70360
New Orleans Public Library, Louisiana Division.	219 Loyola Avenue	New Orleans	70112
East Baton Rouge Parish Library	7711 Goodwood Boulevard	Baton Rouge	70806
Jefferson Parish Library, East Bank Regional Library.	4747 W Napoleon Avenue	Metairie	70001
Jefferson Parish Library, West Bank Regional Library.	2751 Manhattan Boulevard	Harvey	70058
Plaquemines Parish Library	8442 Highway 23	Belle Chasse	70037
St. Bernard Parish Library	1125 E St. Bernard Highway	Chalmette	70043
St. Martin Parish Library	201 Porter Street	St. Martinville	70582
Alex P. Allain Library	206 Iberia Street	Franklin	70538
Vermilion Parish Library	405 E St. Victor Street	Abbeville	70510
Martha Sowell Utley Memorial Library	314 St. Mary Street	Thibodaux	70301
South Lafourche Public Library	16241 E Main Street	Cut Off	70345
Calcasieu Parish Public Library Central Branch.	301 W Claude Street	Lake Charles	70605
Iberia Parish Library	445 E Main Street	New Iberia	70560
Mark Shirley, LSU AgCenter	1105 West Port Street	Abbeville	70510

FOR FURTHER INFORMATION CONTACT: Nanciann Regalado, via email at *nanciann_regalado@fws.gov*, via telephone at 678–296–6805, or via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Introduction

On April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon,* which was being used to drill a well for BP Exploration and Production, Inc. (BP), in the Macondo prospect (Mississippi Canyon 252–MC252), experienced a significant explosion, fire, and subsequent sinking in the Gulf of Mexico, resulting in an unprecedented volume of oil and other discharges from the rig and from the wellhead on the seabed. The DWH oil spill is the largest offshore oil spill in U.S. history, discharging millions of barrels of oil over a period of 87 days. In addition, well over 1 million gallons of dispersants were applied to the waters of the spill area in an attempt to disperse the spilled oil. An undetermined amount of natural gas was also released into the environment as a result of the spill.

The Trustees conducted the natural resource damage assessment (NRDA) for the DWH oil spill under the Oil Pollution Act of 1990 (OPA; 33 U.S.C. 2701 *et seq.*). Pursuant to OPA, Federal and State agencies act as trustees on

behalf of the public to assess natural resource injuries and losses and to determine the actions required to compensate the public for those injuries and losses. The OPA further instructs the designated trustees to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship to baseline (the resource quality and conditions that would exist if the spill had not occurred). This includes the loss of use and services provided by those resources from the time of injury until the completion of restoration.

The DWH Trustees are:

- U.S. Department of the Interior (DOI), as represented by the National Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management;
- National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce;
- U.S. Department of Agriculture (USDA);
- U.S. Environmental Protection Agency (EPA);
- State of Louisiana Coastal Protection and Restoration Authority, Oil Spill Coordinator's Office, Department of Environmental Quality, Department of Wildlife and Fisheries, and Department of Natural Resources;
- State of Mississippi Department of Environmental Quality;
- State of Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama;
- State of Florida Department of Environmental Protection and Fish and Wildlife Conservation Commission; and
- State of Texas: Texas Parks and Wildlife Department, Texas General Land Office, and Texas Commission on Environmental Quality.

On April 4, 2016, the United States District Court for the Eastern District of Louisiana entered a Consent Decree resolving civil claims by the Trustees against BP arising from the DWH oil spill: *United States* v. *BPXP et al.,* Civ. No. 10–4536, centralized in MDL 2179, In re: Oil Spill by the Oil Rig ''Deepwater Horizon'' in the Gulf of Mexico, on April 20, 2010 (E.D. La.) (*http://www.justice.gov/enrd/deepwater-horizon*). Pursuant to the Consent Decree, restoration projects in the Louisiana Restoration Area are chosen and managed by the LA TIG. The LA TIG is composed of the following Trustees: State of Louisiana Coastal Protection and Restoration Authority; Louisiana Oil Spill Coordinator's Office; Louisiana Departments of Environmental Quality, Wildlife and Fisheries, and Natural Resources; DOI; NOAA; EPA; and USDA.

Background

As provided for in the Final PDARP/PEIS, TIGs may propose conceptual projects for funding of a planning phase (*e.g.,* initial engineering and design [E&D]) in a restoration plan. This allows the TIG to develop information needed to fully consider a subsequent implementation phase of the project in a subsequent restoration plan. In the final RP/EA #7, the LA TIG selected conceptual projects to fund for E&D and projects that have been fully developed to fund for construction.

Overview of the LA TIG Draft RP/EA #7

RP/EA #7 provides the LA TIG's analysis of alternatives under the ''Wetlands, Coastal, and Nearshore Habitats'' restoration type and the ''Birds'' restoration type. Under the ''Wetlands, Coastal, and Nearshore Habitats'' restoration type, the selected alternatives include one project for E&D and two for construction. These alternatives are: (1) Bird's Foot Delta Hydrologic Restoration project (E&D), (2) Terrebonne Basin Ridge and Marsh Creation Project: Bayou Terrebonne Increment (construction), and (3) Grande Cheniere Ridge Marsh Creation (construction). Under the ''Birds'' restoration type, the LA TIG selected two conceptual projects to undergo E&D: (1) Isle au Pitre Restoration and (2) Terrebonne Houma Navigation Canal Island Restoration.

Administrative Record

The documents comprising the Administrative Record for RP/EA #7 can be viewed electronically at *https://www.doi.gov/deepwaterhorizon/adminrecord.*

Authority

The authority for this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*), its implementing NRDA regulations found at 15 CFR 990, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and its implementing regulations found at 40 CFR 1500–1508.

Mary Josie Blanchard,

Department of the Interior, Director of Gulf of Mexico Restoration.

[FR Doc. 2020–26029 Filed 11–24–20; 8:45 am]

BILLING CODE 4333–15–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Vehicle Control Systems, Vehicles Containing the Same, and Components Thereof, DN 3508;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Jaguar Land Rover Limited and Jaguar Land Rover North America, LLC on November 19, 2020. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain vehicle control systems, vehicles containing the same, and components thereof. The complaint names as respondents: Porsche AG of Germany; Porsche Cars North America, Inc., of Atlanta, GA; Automobili Lamborghini S.p.A. of Italy; Automobili Lamborghini America, LLC of Herndon, VA; Volkswagen AG of Germany;

Volkswagen Group of America, Inc. of Herndon, VA; Audi AG of Germany; and Audi of America, LLC of Herndon, VA. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3508'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures.[1]) Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: November 20, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–26084 Filed 11–24–20; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Advisory Council on Employee Welfare and Pension Benefit Plans'

Notice of Charter Renewal

In accordance with section 512(a)(1) of the Employee Retirement Income Security Act of 1974 (ERISA) and the provisions of the Federal Advisory Committee Act and its implementing regulations issued by the General Services Administration (GSA), the charter for the Advisory Council on Employee Welfare and Pension Benefit Plans is renewed.

The Advisory Council on Employee Welfare and Pension Benefit Plans shall advise the Secretary of Labor on technical aspects of the provisions of ERISA and shall provide reports and/or recommendations each year on its findings to the Secretary of Labor. The Council shall be composed of fifteen members appointed by the Secretary. Not more than eight members of the Council shall be of the same political party. Three of the members shall be representatives of employee organizations (at least one of whom shall be a representative of any organization members of which are participants in a multiemployer plan); three of the members shall be representatives of employers (at least one of whom shall be a representative of employers maintaining or contributing to multiemployer plans); three members shall be representatives appointed from the general public (one of whom shall be a person representing those receiving benefits from a pension plan); and there shall be one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and accounting.

The Advisory Council will report to the Secretary of Labor. It will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act, and its charter will be filed under the Act. For further information, contact

Christine Donahue, Executive Secretary, Advisory Council on Employee Welfare and Pension Benefit Plans, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, telephone (202) 693–8641 or via email to *donahue.christine@dol.gov.*

Signed at Washington, DC, this 20th day of November, 2020.

Jeanne Klinefelter Wilson,

Acting Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2020–26119 Filed 11–24–20; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request;

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''DOL-only Performance Accountability, Information, and Reporting System.'' 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 Toquir Ahmed by telephone at (202) 693–3901 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *ahmed.toquir@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Office of Policy Development and Research, Room N5641, Employment and Training Administration, 200 Constitution Ave. NW, Washington, DC 20210; by email: *ahmed.toquir@dol.gov;* or by fax 202–693–2766.

FOR FURTHER INFORMATION CONTACT: Toquir Ahmed by telephone at (202) 693–3901 (this is not a toll-free number) or by email at *ahmed.toquir@dol.gov.*

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure 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 Information Collection Request (ICR) seeks to revise the Department of Labor's (DOL) Employment and Training Administration's (ETA) information collection 1205–0521, DOL-only Performance Accountability, Information, and Reporting System.

This ICR is the product of a joint effort among the DOL offices responsible for the following programs: WIOA Adult, WIOA Dislocated Worker, WIOA Youth, National Dislocated Worker Grants, Dislocated Worker Projects authorized under WIOA sec. 169(c), Wagner Peyser Employment Service, National Farmworker Jobs Program, Job Corps, YouthBuild, Indian and Native American Program, as well as non-WIOA covered programs, including Trade Adjustment Assistance (TAA), Reentry Employment Opportunities (REO), H–1B discretionary grants, Senior Community Service Employment Program (SCSEP), Apprenticeship grants, and the Jobs for Veterans' State Grants Programs. While H–1B grants, TAA, SCSEP, Apprenticeship grants and the REO programs are not authorized under WIOA, these programs will be utilizing the data element definitions and reporting templates proposed in this ICR.

As a part of this revision request, ETA has made changes to the *Participant Individual Record Layout (ETA–9172), (Program) Performance Report (ETA–9173)* that include: (1) Adding new program-specific versions of the ETA–9173 Quarterly Performance Reports (QPRs) for the REO Adult and REO Youth grants; (2) adding a column to the ETA–9172 to specify which elements may be collected by Dislocated Worker Projects (demonstrations and pilots) authorized under WIOA sec. 169(c); (3) adding data elements needed by program offices, (new elements, and checks/unchecks); and (4) revising element names, definitions/instructions, and code fields to enhance the clarity of the collection.

Section 116 of WIOA (29 U.S.C. 3141) authorizes this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB Control No. 1205–0521.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters to exclude personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (*e.g.,* permitting electronic submission of responses).

Agency: DOL–ETA.

Type of Review: Revision.

Title of Collection: DOL-only Performance Accountability, Information, and Reporting System.

Form: DOL Participant Individual Record Layout (PIRL) (ETA–9172); (Program) Performance Report (ETA–9173); and Pay-for-Performance Report (ETA–9174).

OMB Control Number: 1205–0521.

Affected Public: State, Local, and Tribal Governments and Individuals or Households.

Estimated Number of Respondents: 17,583,750.

Frequency: Varies.

Total Estimated Annual Responses: 41,064,037.

Estimated Average Time per Response: Varies.

Estimated Total Annual Burden Hours: 10,459,627 hours.

Total Estimated Annual Other Cost Burden: $245,464,843.48.

Authority: 44 U.S.C. 3506(c)(2)(A).

John Pallasch,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2020–26006 Filed 11–24–20; 8:45 am]

BILLING CODE 4510–FM–P

DEPARTMENT OF LABOR

Office of the Workers' Compensation Programs

Agency Information Collection Activities; Comment Request; Rehabilitation Action Report (OWCP–44)

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed revision for the authority to conduct the information collection request (ICR) titled, Rehabilitation Action Report (OWCP–44). 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, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Office of Workers' Compensation Programs, Room S3323, 200 Constitution Avenue NW, Washington, DC 20210; by email: *suggs.anjanette@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

Background: The Office of Workers' Compensation Programs (OWCP) is the agency responsible for administration of the Longshore and Harbor Workers' Compensation Act (LHWCA) and the Federal Employees' Compensation Act (FECA). 33 U.S.C. 939 (LHWCA) and 5 U.S.C. 8104 (FECA) authorize OWCP to pay for approved vocational rehabilitation services to eligible workers with work-related disabilities. 5 U.S.C. 8111(b) of the FECA and 33 U.S.C. 908(g) of the LHWCA provide that persons undergoing such vocational rehabilitation receive maintenance allowances as additional compensation. Form OWCP–44 is used to collect information necessary to decide if maintenance allowances should continue to be paid. Form OWCP–44 is submitted to OWCP by contractors hired to provide vocational rehabilitation services. Form OWCP–44 gives prompt notification of key events that may require OWCP action in the vocational rehabilitation process. This information collection is currently approved for use through February 28, 2021.

For LHWCA, 20 CFR 702.506 and 20 CFR 702. 507, and for FECA, 20 CFR 10.518 and 20 CFR 10.519, authorizes this information collection. This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Written comments will receive consideration, and summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB# 1240–0008.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL-Office of Workers' Compensation Programs.

Type of Review: Revision.

Title of Collection: Rehabilitation Action Report.

Agency Form Number: OWCP–44.

OMB Control Number: 1240–0008.

Affected Public: State, Local or Tribal Government, Businesses or other for-profit.

Estimated Number of Respondents: 3,299.

Frequency: Occasionally.

Total Estimated Annual Responses: 3,299.

Estimated Average Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 550 hours.

Total Estimated Annual Other Cost Burden: $296, 910.00.

Authority: 44 U.S.C. 3506(c)(2)(A).

Anjanette Suggs,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2020–26008 Filed 11–24–20; 8:45 am]

BILLING CODE 4510–CH–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–313, 50–368, 50–483, 50–317, 50–318, 50–315, 50–316, 50–416, 50–266, 50–301, 50–498, 50–499, NRC–2020–0110]

Issuance of Multiple Exemptions in Response to COVID–19 Public Health Emergency

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemptions; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) issued seven exemptions in response to requests from six licensees. The exemptions afford these licensees temporary relief from certain requirements under NRC regulations. The exemptions are in response to the licensees' requests for relief due to the coronavirus disease 2019 (COVID–19) public health emergency (PHE). The NRC is issuing a single notice to announce the issuance of the exemptions.

DATES: During the period from October 6, 2020, to October 26, 2020, the NRC granted seven exemptions in response to requests submitted by licensees from July 13, 2020, to October 8, 2020.

ADDRESSES: Please refer to Docket ID NRC–2020–0110 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–2020–0110. Address questions about NRC 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.*
- *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 the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.

FOR FURTHER INFORMATION CONTACT: James Danna, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–7422, email: *James.Danna@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

During the period from October 6, 2020, to October 26, 2020, the NRC granted seven exemptions in response to requests submitted by licensees from July 13, 2020, to October 8, 2020. These exemptions temporarily allow the licensees to deviate from certain requirements (as cited below) of various parts of chapter I of title 10 of the *Code of Federal Regulations* (10 CFR).

The exemptions from certain requirements of 10 CFR part 26, ''Fitness for Duty Programs,'' for Indiana Michigan Power Company (for Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2), and NextEra Energy Point Beach, LLC (for Point Beach Nuclear Plant, Units 1 and 2), afford these licensees temporary relief from the work-hour controls under 10 CFR 26.205(d)(1) through (d)(7). The exemptions from 10 CFR 26.205(d)(1) through (d)(7) ensure that the control of work hours and management of worker fatigue do not unduly limit licensee flexibility in using personnel resources to most effectively manage the impacts of the COVID–19 PHE on maintaining the safe operation of these facilities. Specifically, these licensees have stated that their staffing levels are affected or are expected to be affected by the COVID–19 PHE, and they can no longer meet or likely will not meet the work-hour controls of 10 CFR 26.205(d)(1) through (d)(7). These licensees have committed to effecting site-specific administrative controls for COVID–19 PHE fatigue-management for personnel specified in 10 CFR 26.4(a).

The exemptions from certain requirements of 10 CFR part 50, appendix E, ''Emergency Planning and Preparedness for Production and Utilization Facilities,'' section IV.F., ''Training,'' for Entergy Operations, Inc. (for Arkansas Nuclear One, Units 1 and 2), and STP Nuclear Operating Company (for South Texas Project, Units 1 and 2), grant temporary exemptions from the biennial emergency preparedness exercise requirement. The exemptions allow a temporary exemption from the requirements of 10 CFR part 50, appendix E, regarding the conduct of the biennial emergency preparedness exercise. These exemptions will not adversely affect the emergency response capability of the facilities because affected licensee personnel are currently qualified, and the licensees' proposed compensatory measures will enable their staff to maintain their knowledge, skills, and abilities without the conduct of the biennial emergency preparedness exercise during the exemption term.

The exemptions from certain requirements of 10 CFR part 73, appendix B, ''General Criteria for Security Personnel,'' section VI., ''Nuclear Power Reactor Training and Qualification Plan for Personnel Performing Security Program Duties,'' for Union Electric Company (for Callaway Plant, Unit No. 1); for Exelon Generation Company, LLC (for Calvert Cliffs Nuclear Power Plant, Units 1 and 2); and Entergy Operations, Inc. (for Grand Gulf Nuclear Station, Unit 1), afford these licensees temporary exemptions from certain requirements. The exemptions will help to ensure that these regulatory requirements do not unduly limit licensee flexibility in using personnel resources in a manner that most effectively manages the impacts of the COVID–19 PHE on maintaining the safe and secure operation of these facilities and the implementation of the licensees' NRC-approved security plans, protective strategy, and implementing procedures. These licensees have committed to certain security measures to ensure response readiness and for their security personnel to maintain performance capability.

The NRC is providing compiled tables of exemptions using a single **Federal Register** notice for COVID–19-related exemptions instead of issuing individual **Federal Register** notices for each exemption. The compiled tables below provide transparency regarding the number and type of exemptions the NRC has issued. Additionally, the NRC publishes tables of approved regulatory actions related to the COVID–19 PHE on its public website at *https://www.nrc.gov/about-nrc/covid-19/reactors/licensing-actions.html.*

II. Availability of Documents

The tables below provide the facility name, docket number, document description, and ADAMS accession number for each exemption issued. Additional details on each exemption issued, including the exemption request submitted by the respective licensee and the NRC's decision, are provided in each exemption approval listed in the tables below. For additional directions on accessing information in ADAMS, see the **ADDRESSES** section of this document.

Document description	ADAMS Accession No.
Arkansas Nuclear One, Units 1 and 2 Docket Nos. 50–313 and 50–368	
Arkansas Nuclear One, Units 1 and 2—Request for One-Time Exemption from 10 CFR part 50, appendix E, Biennial Emergency Preparedness Evaluated Exercise Requirements due to COVID–19 Pandemic, dated July 13, 2020.	ML20195A397.
Arkansas Nuclear One, Units 1 and 2—Response to Request for Additional Information Related to Request from Certain Emergency Preparedness and Planning Requirements of 10 CFR part 50, appendix E, dated September 1, 2020.	ML20255A117.
Arkansas Nuclear One, Units 1 and 2—Enclosure: Response to Request for Additional Information related to Exemption Request from certain Emergency Preparedness Requirements of 10 CFR part 50, appendix E, dated September 1, 2020.	ML20255A118.
Arkansas Nuclear One, Units 1 and 2—Temporary Exemption from Biennial Emergency Preparedness Exercise Frequency Requirements of 10 CFR part 50, appendix E, sections IV.F.2.b and IV.F.2.c (EPID L–2020–LLE–0113 [COVID–19]), dated October 6, 2020.	ML20265A057.
Callaway Plant, Unit No. 1 Docket No. 50–483	
Callaway Plant Unit 1—Security Training Exemption Request due to COVID–19, dated September 3, 2020	ML20247J644.
Callaway Plant, Unit No. 1—Additional Information Regarding Security Training Exemption Request due to COVID–19, dated September 18, 2020.	non-public, withheld pursuant to 10 CFR 2.390.
Callaway Plant, Unit No. 1—Exemption from Certain Requirements of 10 CFR part 73, appendix B, ''General Criteria for Security Personnel,'' section VI (EPID L 2020 LLE 0140 [COVID–19]), dated October 20, 2020.	ML20268A189.
Calvert Cliffs Nuclear Power Plant, Units 1 and 2 Docket Nos. 50–317 and 50–318	
Calvert Cliffs Nuclear Power Plant, Units 1 and 2—Request for Exemption from Certain 10 CFR part 73 Training Requirements due to COVID–19 PHE, dated September 8, 2020.	non-public, withheld pursuant to 10 CFR 2.390.
Calvert Cliffs Nuclear Power Plant, Units 1 and 2—Exemption from Certain Requirements of 10 CFR part 73, appendix B, ''General Criteria for Security Personnel,'' section VI (EPID L–2020–LLE–0141 [COVID–19]), dated October 9, 2020.	ML20264E689.
Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2 Docket Nos. 50–315 and 50–316	
Donald C. Cook Nuclear Plant, Units Nos. 1 and 2—Request for a One-Time Exemption from 10 CFR 26.205(d) due to COVID–19 Pandemic, dated October 8, 2020.	ML20283A381.
Donald C. Cook Nuclear Plant, Units 1 and 2—Exemption from Select Requirements of 10 CFR part 26 (EPID L–2020–LLE–0161) [COVID–19]), dated October 9, 2020.	ML20283A263.
Grand Gulf Nuclear Station, Unit 1 Docket No. 50–416	
Grand Gulf Nuclear Station, Unit 1—Temporary Exemption Request from 10 CFR part 73, appendix B, section VI, Requirements for Force-on-Force Exercises due to COVID–19 Pandemic, dated September 17, 2020.	non-public, withheld pursuant to 10 CFR 2.390.
Grand Gulf Nuclear Station, Unit 1—Exemption From Certain Requirements of 10 CFR part 73, appendix B, ''General Criteria for Security Personnel,'' section VI (EPID L–2020–LLE–0147 [COVID–19]), dated October 19, 2020.	ML20266G289.
Point Beach Nuclear Plant, Units 1 and 2 Docket Nos. 50–266 and 50–301	
Point Beach Nuclear Plant, Units 1 and 2—Exemption to 10 CFR part 26, Work Hour Controls, dated October 6, 2020.	ML20280A621.
Point Beach Nuclear Plant, Units 1 and 2—Response to Request for Additional Information Extension of Exemption from Certain 10 CFR part 26 Requirements, dated October 8, 2020.	ML20282A706.
Point Beach Nuclear Plant, Units 1 and 2—Extension of Exemption from Specific Requirements of 10 CFR part 26 (EPID L–2020–LLE–0159 [COVID–19]), dated October 15, 2020.	ML20282A332.
South Texas Project, Units 1 and 2 Docket Nos. 50–498 and 50–499	
South Texas Project, Units 1 and 2—Exemption Request from 10 CFR part 50 appendix E, due to COVID–19 Pandemic, dated August 11, 2020.	ML20224A211.

Document description	ADAMS Accession No.
South Texas Project, Units 1 and 2—Supplement to Exemption Request from 10 CFR part 50, appendix E, due to COVID–19 Pandemic, dated September 10, 2020.	ML20254A217.
South Texas Project, Units 1 and 2—Temporary Exemption from Certain Requirements of 10 CFR part 50, appendix E, Emergency Planning And Preparedness For Production and Utilization Facilities, Sections IV.F.2.b AND IV.F.2.c (EPID L–2020–LLE–0133), dated October 26, 2020.	ML20279A531.

Dated: November 20, 2020.

For the Nuclear Regulatory Commission.

James G. Danna,

Chief, Plant Licensing Branch I, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–26123 Filed 11–24–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Unit 4; Background Check Process for Participation in ITAAC Proceeding

AGENCY: Nuclear Regulatory Commission.

ACTION: Opportunity to initiate background check for access to safeguards information.

SUMMARY: In approximately 4 to 7 months, the U.S. Nuclear Regulatory Commission (NRC) will publish in the **Federal Register** a notice of intended operation, which will allow the public to submit requests for hearing regarding the licensee's conformance with the acceptance criteria in the combined license (COL) for Vogtle Electric Generating Plant (VEGP) Unit 4. These acceptance criteria are part of the inspections, tests, analyses, and acceptance criteria (ITAAC) included in the COL. If a member of the public believes access to Safeguards Information (SGI) is necessary to file a hearing request, then members of the public must satisfy several standards, including a determination by the NRC that they are ''trustworthy and reliable.'' Because the background checks used to support trustworthiness and reliability determinations take some time to complete, the NRC is providing this ''pre-clearance'' process, by which members of the public may initiate background checks to be completed by the Defense Counterintelligence and Security Agency (DCSA) well before the hearing process begins.

DATES: This pre-clearance process is available until publication in the **Federal Register** of the notice of intended operation for VEGP Unit 4. When the notice of intended operation is published, it will govern access to SGI for the proceeding on VEGP Unit 4.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 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–2008–0252. 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.* Refer to Section II of this document for instructions on how to submit the request for a background check.

FOR FURTHER INFORMATION CONTACT: Cayetano Santos Jr., Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–7270, email: *Cayetano.Santos@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC hereby gives notice that members of the public who believe they may need access to SGI to file a hearing request in the upcoming ITAAC proceeding for VEGP Unit 4 may initiate background checks for access to SGI before the proceeding begins. This notice describes how the required background check forms may be obtained and how the required forms and fee must be submitted. Requests to initiate background checks under this notice may be made until publication in the **Federal Register** of the notice of intended operation for VEGP Unit 4. When the notice of intended operation is published, it will govern access to SGI for the proceeding on VEGP Unit 4.

A. Requirements for Access to SGI

Safeguards Information is a special category of sensitive unclassified information defined in section 73.2 of title 10 of the *Code of Federal Regulations* (10 CFR) and protected from unauthorized disclosure under Section 147 of the Atomic Energy Act of 1954, as amended (AEA). Although SGI is unclassified information, it is handled and protected more like Classified National Security Information than like other sensitive unclassified information (*e.g.,* privacy and proprietary information). Requirements for access to SGI and requirements for SGI handling, storage, and processing are in 10 CFR part 73.

To obtain access to SGI in an adjudicatory context, persons must (1) demonstrate a ''need to know'' for the SGI, (2) be deemed ''trustworthy and reliable,'' and (3) demonstrate a likelihood of establishing standing. As relevant to adjudications, ''need to know'' is defined in 10 CFR 73.2 as a determination by the originator of the SGI that the SGI is necessary to enable the proposed recipient to proffer and/or adjudicate a specific contention in that proceeding, and the proposed recipient of the specific SGI possesses demonstrable knowledge, skill, training, or education to effectively utilize the specific SGI in the proceeding. ''Trustworthiness and reliability'' is defined in 10 CFR 73.2 as the characteristics of an individual considered dependable in judgment, character, and performance, such that disclosure of SGI to that individual does not constitute an unreasonable risk to the public health and safety or common defense and security. A determination of trustworthiness and reliability for this purpose is based upon a background check. The standing requirements are in 10 CFR 2.309.

B. Information on ITAAC Closure Process and Associated Hearing Opportunity

Southern Nuclear Operating Company, Inc., was issued a COL for VEGP Unit 4 on February 10, 2012. Appendix C of the COL includes the

ITAAC for VEGP Unit 4. The ITAAC establish the means to verify whether the facility has been constructed and will be operated in conformance with the license, the AEA, and NRC rules and regulations. Section 185b. of the AEA requires the Commission to ensure that the prescribed inspections, tests, and analyses are performed and to find, prior to operation of the facility, that the prescribed acceptance criteria are met. This AEA requirement is also set forth in 10 CFR 52.103(g), which expressly provides that operation of the facility may not begin unless and until the NRC finds that the acceptance criteria for all ITAAC are met. Once the 10 CFR 52.103(g) finding is made, the licensee may proceed to the operational phase, which begins with initial fuel load.

The NRC's finding on whether the acceptance criteria are met will be based on the licensee's submission of ITAAC notifications required by 10 CFR 52.99(c) and on the results of NRC inspections. Supporting documents pertaining to ITAAC closure for VEGP Unit 4 are available electronically at *https://www.nrc.gov/reactors/new-reactors/col-holder/vog4.html.* These supporting documents include an ITAAC status report (*https://www.nrc.gov/reactors/new-reactors/new-licensing-files/vog4-icnsr.pdf*), which provides links to (1) the licensee's ITAAC notifications submitted under 10 CFR 52.99(c); (2) NRC construction and vendor inspection reports; (3) Verification Evaluation Forms, which document the NRC staff's review of ITAAC closure notifications submitted under 10 CFR 52.99(c)(1) and ITAAC post-closure notifications submitted under 10 CFR 52.99(c)(2); and (4) Uncompleted ITAAC Notification Checklists (UINCs), which document the NRC staff's review of uncompleted ITAAC notifications submitted under 10 CFR 52.99(c)(3).[1] The NRC staff determinations made in items (3) and (4) are interim determinations that do not become final unless and until the NRC makes the 10 CFR 52.103(g) finding at the end of construction that all acceptance criteria are met. The NRC staff will periodically update these sources of information to reflect the submission of additional licensee ITAAC notifications and future NRC inspection reports and review documents.

In addition, to provide additional background information to members of the public, *https://www.nrc.gov/reactors/new-reactors/col-holder/vog4.html* includes links to other supporting documents, such as the combined license (which includes the ITAAC); the updated final safety analysis report (UFSAR) for the facility; licensee reports on departures from the UFSAR; NRC-issued licensing actions for the facility; the NRC's final safety evaluation report for the COL application review; information on the AP1000 design certification, which the facility references; and information on processes related to ITAAC. Finally, to search for documents in ADAMS using the VEGP Unit 4 docket number, 52–026, one should enter the term ''05200026'' in the ''Docket Number'' field when using the web-based search (advanced search) engine in ADAMS.

As required by Section 189a.(1)(B)(i) of the AEA and 10 CFR 52.103(a), the NRC must publish in the **Federal Register** a notice of intended operation at least 180 days before scheduled initial fuel load. This notice shall provide 60 days for any person whose interest may be affected by operation of the plant to request that the Commission hold a hearing on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria in the COL. For a hearing request in an ITAAC proceeding to be granted, the petitioner must show standing as required by 10 CFR 2.309 and must submit a contention meeting the standards of 10 CFR 2.309(f)(1)(i) through (v) and (vii).[2] In accordance with Section 189a.(1)(B)(ii) of the AEA, the contention standards include the requirement that the petitioner show, *prima facie,* that one or more of the acceptance criteria in the COL have not been, or will not be, met and that the specific operational consequences of nonconformance would be contrary to providing reasonable assurance of adequate protection of the public health and safety. Section 189a.(1)(B)(v) of the AEA requires the NRC, to the maximum possible extent, to render a decision on the issues raised by the hearing request within 180 days of the notice of intended operation or by scheduled initial fuel load, whichever is later.

The Commission published detailed generic procedures for the ITAAC hearing process in ''Final Procedures for Conducting Hearings on Conformance with the Acceptance Criteria in Combined Licenses'' (ITAAC Hearing Procedures) (81 FR 43266; July 1, 2016). The Commission intends to use these generic procedures (with appropriate modifications) in case-specific orders that will govern ITAAC proceedings. The ITAAC Hearing Procedures differ from 10 CFR part 2 in a number of ways, primarily because of the need to meet the statutory goal for timely completing the hearing. To meet this goal, the ITAAC hearing process will be conducted on a much shorter schedule than is used for other NRC hearings. Therefore, the NRC encourages interested members of the public to study the ITAAC Hearing Procedures and commence their hearing preparations well before publication of the notice of intended operation for VEGP Unit 4.

The notice of intended operation must be published at least 180 days prior to scheduled fuel load, but the NRC announced its intention in the ITAAC Hearing Procedures to publish the notice of intended operation between 210 and 285 days before scheduled fuel load.[3] Based on current projections, the NRC anticipates publishing the notice of intended operation for VEGP Unit 4 in approximately 4 to 7 months. This anticipated publication window is based on the licensee's schedule for constructing the facility and submitting ITAAC notifications required by 10 CFR 52.99(c). The notice of intended operation may be published outside this window if the licensee's schedule changes.

C. Access to SGI in ITAAC Hearings

Given the range of matters covered by the ITAAC, the NRC believes that petitioners may deem it necessary to obtain access to SGI for the purpose of submitting an admissible contention. Therefore, as discussed in the ITAAC Hearing Procedures, the notice of intended operation will set forth procedures providing such petitioners the opportunity to demonstrate they meet the requirements for access to SGI in the ITAAC hearing context. These requirements include a demonstration of ''need to know,'' a determination of ''trustworthiness and reliability,'' and a demonstration of likelihood to establish standing. If access is granted, non-

[1] The NRC staff is not required to review the licensee's uncompleted ITAAC notifications but may do so if the licensee provides them far enough in advance so that staff review of these notifications contribute to the ITAAC closure process. The staff's review of an uncompleted ITAAC notification focuses on the ITAAC completion methodology described in the notification.

[2] The requirements of 10 CFR 2.309(f)(1)(vi) do not apply to ITAAC proceedings.

[3] The NRC intends to publish the notice of intended operation 210 days before scheduled fuel load if the licensee submits its uncompleted ITAAC notifications 225 days before scheduled fuel load as required by 10 CFR 52.99(c)(2). However, if the licensee submits its uncompleted ITAAC notifications earlier than required and meets certain other prerequisites, the NRC intends to publish the notice of intended operation at a correspondingly earlier time, but not prior to 285 days before scheduled fuel load.

disclosure agreements/affidavits will need to be executed before access is provided. Also, handling, storage, and processing of SGI must satisfy the requirements of 10 CFR part 73.

The background check used to support trustworthiness and reliability determinations can take some time, and delay could occur if persons seeking access to SGI are not already cleared for access and do not seek clearance until the notice of intended operation is published.[4] To avoid delays in an already-abbreviated hearing schedule, the NRC is providing this pre-clearance process, by which members of the public may initiate background checks well before the hearing process begins. The other requirements for access to SGI (*i.e.,* need to know and likelihood of standing) would be addressed in a request for access to SGI submitted after the notice of intended operation is published. Access to SGI will only be provided if all requirements are satisfied.

There is no guarantee that early initiation of the background check will be of practical use to a petitioner. For example, the petitioner might not satisfy the other requirements for access to SGI. Consequently, it is the petitioner's choice whether to pursue the pre-clearance process. The costs for initiating the background check are not refundable even if the background check is of no practical use to a petitioner (*e.g.,* an adverse determination is made on the background check or the petitioner fails to satisfy other requirements for access such as need to know). Nevertheless, while use of the pre-clearance process is voluntary, the ITAAC Hearing Procedures (81 FR 43282) state:

> [T]he NRC will not delay its actions in completing the hearing or making the 10 CFR 52.103(g) finding because of delays from background checks for persons seeking access to SGI. In other words, members of the public will have to take the proceeding as they find it once they ultimately obtain access to SGI for contention formulation. The pre-clearance process is designed to prevent the SGI background-check process from becoming a barrier to timely public participation in the hearing process. As stated in Attachment 1 to the SUNSI–SGI Access Procedures (p. 11), ''given the strict timelines for submission of and rulings on the admissibility of contentions (including security-related contentions) . . . potential parties should not expect additional flexibility in those established time periods if they decide not to exercise the pre-clearance option.''

II. Pre-Clearance Process

The pre-clearance process in this notice is based on the pre-clearance process in the ''Procedures to Allow Potential Intervenors to Gain Access to Relevant Records that Contain Sensitive Unclassified Non-Safeguards Information or Safeguards Information,'' dated February 29, 2008 (ADAMS Accession No. ML080380626), as modified and supplemented by provisions in the ITAAC Hearing Procedures and the final rule, ''Protection of Safeguards Information'' (73 FR 63546; October 24, 2008).

A. Any potential party[5] who believes access to SGI may be necessary to formulate contentions for the upcoming ITAAC proceeding for VEGP Unit 4 may request initiation of a pre-clearance background check. Requestors should submit these requests within 20 days of publication of this pre-clearance notice. Requests may be initiated after 20 days, but a delay in submitting the request will lead to a corresponding delay in NRC action on the request. Requests for a pre-clearance background check may be made until the notice of intended operation is published for VEGP Unit 4. Once published, the notice of intended operation will govern access to SGI.

B. To request initiation of the background check to be conducted by the DCSA, the requestor must submit a background check request letter, two forms, and the fee for the background check, as discussed in Section II.C of this notice.

(1) To initiate the background check, Form FD–258 (fingerprint card) and Form SF–85, ''Questionnaire for Non-Sensitive Positions,'' must be completed and submitted. The requestor should contact the NRC's Office of Administration at 301–415–3710 to request a package containing the Form FD–258 and to obtain access to Form SF–85. To obtain access to Form SF–85, each individual for whom a background check is being requested will be asked to provide the individual's full legal name, social security number, date and place of birth, telephone number, and email address.[6] Instructions for completing these two forms will be provided directly to the individual for whom the background check is being requested. Form FD–258 and the fee must be delivered to the following address: U.S. Nuclear Regulatory Commission, Office of Administration, Personnel Security Branch, ATTN: Pre-Clearance SGI Background Check Materials for ITAAC Proceeding, Mail Stop TWFN 07–D04M, 11555 Rockville Pike, Rockville, MD 20852.

(2) The requestor must submit a background check request letter to the Office of the Secretary, U.S. Nuclear Regulatory Commission, and provide a copy to the Deputy General Counsel for Hearings and Administration, Office of the General Counsel. Email submission is preferred. The email addresses for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *RidsOgcMailCenter.Resource@nrc.gov,* respectively. The U.S. mail address for both offices is U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852.

C. Forms, Fee, and Background Check Request Letter.

(1) Required Forms: The requestor must submit the following forms:

(a) A completed Form FD–258 (fingerprint card), signed in original ink, for each individual for whom a background check is being requested. Copies of Form FD–258 will be provided in the background check request package supplied by the Office of Administration for each individual for whom a background check is being requested. The fingerprint card will be used to satisfy the requirements of 10 CFR part 2, 10 CFR 73.22(b)(1), and AEA Section 149, which mandates that all persons with access to SGI must be fingerprinted for a Federal Bureau of Investigation identification and criminal history records check;

(b) A completed Form SF–85, ''Questionnaire for Non-Sensitive Positions'' for each individual for whom a background check is being requested. The completed Form SF–85 will be used to conduct the background check required for access to SGI, as required by 10 CFR part 2, subpart C, and 10 CFR 73.22(b)(2), to determine the individual's trustworthiness and reliability. For security reasons, Form

[4] Our most recent information indicates that the average time to perform a background check that supports the NRC's trustworthiness and reliability determinations for access to SGI is 69 days. This average time is subject to change and should not be relied upon. The time needed for any particular background investigation may be more or less than the average time because of the subject's personal history or the investigating agency's work load. Also, some additional time beyond that taken by the DCSA will be needed for the NRC's Office of Administration to make a decision based on the information it has received.

[5] A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention in accordance with the instructions in the notice of intended operation.

[6] After providing this information, the individual usually should be able to obtain access to the online Form SF–85 within two business days.

SF–85 is completed electronically through a secure website that is owned and operated by the DCSA.

(2) A check or money order payable in the amount of $326.00 to the U.S. Nuclear Regulatory Commission for each individual for whom a background check is being requested.

(3) Background Check Request Letter: The background check request letter must:

(a) Request initiation of a background check for the purpose of determining trustworthiness and reliability for access to SGI that may be relevant to the upcoming ITAAC proceeding for VEGP Unit 4.

(b) Provide the name and address of the potential party and a description of the potential party's particularized interest that could be harmed by an NRC finding that the acceptance criteria in the combined license are met.[7]

(c) Identify each individual for whom access to SGI will be requested, including the identity of any expert, consultant, or assistant who will aid the petitioner in evaluating the SGI.

(d) If the requestor or any individual for whom access to SGI will be requested believes they belong to one or more of the categories of individuals that are exempt from the criminal history records check and background check requirements in 10 CFR 73.59, the requestor should provide a statement identifying which exemption the person is invoking and explaining the person's basis for believing that the exemption applies. While processing the request, the Office of Administration will make a final determination on whether the claimed exemption applies. Alternatively, the requestor may contact the Office of Administration for an evaluation of the person's exemption status prior to submission of the background check request. Persons who are exempt from the background check are not required to submit the forms and fee described in Sections II.C.(1) and II.C.(2) of this notice; however, all other requirements for access to SGI, including need to know, still apply.

(e) State that the completed forms and fee described in Sections II.C.(1) and II.C.(2) of this notice have been submitted for each individual for whom access to SGI will be requested (except for those exempted by 10 CFR 73.59).

(4) To avoid delays in processing background check requests, the requestor should review all submitted materials for completeness and accuracy (including legibility) before submitting them to the NRC. The NRC will return incomplete packages to the sender without processing.

D. Results of Background Check.

(1) If the background check results in a favorable trustworthiness and reliability determination, the NRC staff will so notify the requestor. In its discretion, the responsible NRC staff may proceed at that time with an inspection of the requestor's information protection system to confirm it is sufficient to protect SGI from inadvertent release or disclosure.[8] Once the notice of intended operation is published, an associated request for access to specified SGI will still need to address the other requirements for access, in accordance with the requirements in the notice of intended operation.

(2) If the background check results in an adverse trustworthiness and reliability determination, the NRC staff will so notify the requestor with a brief statement of the reasons for denial.

(a) Before the Office of Administration makes a final adverse determination, the individual against whom the adverse determination has been made must be provided an opportunity to correct or explain information. Specifically, the Office of Administration will (i) provide to the individual any records, including those required to be provided under 10 CFR 73.57(e)(1), that were considered in the trustworthiness and reliability determination; and (ii) resolve any challenge by the individual to the completeness or accuracy of these records. The individual may make this challenge by submitting information and/or an explanation to the Office of Administration within 10 days of the distribution of the records described previously.

(b) The requestor may challenge a final adverse determination by submitting a request for review of the adverse determination to the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel (ASLBP) in accordance with 10 CFR 2.336(f)(1)(iv) and by the method described in the final adverse determination. Because a final adverse determination is sufficient grounds for denying a subsequent request for SGI access submitted after the notice of intended operation is published, the requestor should not wait until a subsequent denial to appeal the adverse trustworthiness and reliability determination.

(3) If the notice of intended operation is published while the background check is in progress or while an appeal of an adverse determination is pending, the petitioner should still submit the other components of its request for access consistent with the requirements set forth in the notice of intended operation. Those elements of the access determination will be handled in accordance with the procedures and timelines in the notice of intended operation. The petitioner's submission of its request need not repeat the information already submitted specifically for the background check—it may simply reference the pre-clearance background check request—but it must provide all other information requested in the notice of intended operation.[9] To avoid confusion, however, the submission should identify the petitioner's contact information, the agency action, and the notice of intended operation.

Dated: November 20, 2020.

For the Nuclear Regulatory Commission.

Omar R. López-Santiago,

Chief, Vogtle Project Office, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–26103 Filed 11–24–20; 8:45 am]

BILLING CODE 7590–01–P

[7] The NRC staff will review this statement of interest for the limited purpose of determining whether to initiate the requested background check. The NRC staff will review the statement of interest only to confirm that there is some description of why the potential party's interest could be affected. A positive determination by the NRC staff is not a conclusion that the potential party has met the requirements for standing under 10 CFR 2.309.

[8] The requestor may wish to defer this inspection to a later time, but if the NRC staff decides that an inspection is necessary to confirm that the requestor's information protection system is sufficient, this inspection must be conducted before SGI is provided to the requestor. However, the requestor may opt to view SGI at an approved SGI storage location rather than establish its own SGI protection program to meet SGI protection requirements.

[9] If a background check has been initiated using the pre-clearance process and the NRC staff has made a final adverse determination, the requestor should timely appeal that determination if it intends to pursue its request for access; the staff will rely on that determination and will not initiate a second background check if the requestor submits the complete access request described in the notice of intended operation.

POSTAL SERVICE

Product Change—First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 25, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 13, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add First-Class Package Service Contract 114 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–27, CP2021–27.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–26131 Filed 11–24–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 25, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 20, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 178 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–28, CP2021–29.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–26132 Filed 11–24–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 25, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 12, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 680 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2021–26, CP2021–26.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–26130 Filed 11–24–20; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Actuarial Advisory Committee With respect to the Railroad Retirement Account; Notice of Public Meeting

Notice is hereby given in accordance with Public Law 92–463 that the Actuarial Advisory Committee will hold a virtual meeting on December 11, 2020, at 10:00 a.m. (Central Standard Time) on the conduct of the 28th Actuarial Valuation of the Railroad Retirement System. The agenda for this meeting will include a discussion of the assumptions to be used in the 28th Actuarial Valuation. A report containing recommended assumptions and the experience on which the recommendations are based will have been sent by the Acting Chief Actuary to the Committee before the meeting.

The meeting will be open to the public. Persons wishing to submit written statements, make oral presentations, or attend the meeting should address their communications or notices to Patricia Pruitt, (*Patricia.Pruitt@rrb.gov*), so that information on how to join the virtual meeting can be provided.

Dated: November 20, 2020.

Stephanie Hillyard,

Secretary to the Board.

[FR Doc. 2020–26116 Filed 11–24–20; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90464; File No. SR–OCC–2020–011]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change To Adopt a New Second Amended and Restated Cross-Margining Agreement Between The Options Clearing Corporation and The Chicago Mercantile Exchange

November 19, 2020.

I. Introduction

On September 22, 2020, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2020–011 (''Proposed Rule Change'') pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2] thereunder to provide OCC with express authority to adopt a new Second Amended and Restated Cross-Margining Agreement (''Proposed X–M Agreement'') between OCC and the Chicago Mercantile Exchange (''CME'').[3] The Proposed Rule Change was published for public comment in the **Federal Register** on October 7, 2020.[4] The Commission has received no comments regarding the Proposed Rule Change. This order approves the Proposed Rule Change.

II. Background

OCC and CME are parties to an Amended and Restated Cross-Margining Agreement dated May 28, 2008, as further amended by Amendment No. 1 dated October 23, 2008 [5] and Amendment No. 2 dated May 20, 2009 [6] (the ''Existing X–M Agreement''). OCC and CME first implemented their cross-margining program (the ''X–M Program'') in 1989. The purpose of the X–M Program is to: (1) Facilitate the cross-margining of positions in options cleared by OCC with positions in futures and commodity options cleared

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice of Filing *infra* note 4, 85 FR at 63305.

[4] Securities Exchange Act Release No. 90065 (Oct. 1, 2020), 85 FR 63305 (Oct. 7, 2020) (File No. SR–OCC–2020–011) (''Notice of Filing'').

[5] Securities Exchange Act Release No. 58258 (Jul. 30, 2008), 73 FR 46133 (Aug. 7, 2008) (File No. SR–OCC–2008–12) (amending the agreement to, among other things, permit money market fund shares as margin).

[6] Securities Exchange Act Release No. 60063 (Jun. 8, 2009), 74 FR 28738 (Jun. 17, 2009) (File No. SR–OCC–2009–10) (amending the agreement to redefine the term ''Eligible Contracts'' and deleting the list of such contracts attached as Schedule A).

by CME and (2) address the fact that Clearing Members may have been required to meet higher margin requirements at each clearinghouse than were warranted by the risk of combined positions, because each portfolio was margined separately without regard to positions held in the other portfolio.[7]

According to OCC, the Proposed X–M Agreement is designed to improve the clarity and readability by consolidating certain redundant provisions and moving certain operational details from the Existing X–M Agreement to a standalone service level agreement (''SLA'').[8] OCC has also characterized the proposed updates to the Existing X–M Agreement as bringing it into conformity with current operational procedures and eliminating provisions that are out of date.[9] Finally, according to OCC, the Proposed Rule Change is designed to streamline and consolidate certain related Clearing Member Agreements.[10]

Creation of a Separate Service Level Agreement

OCC proposes moving certain operational details from the Existing X–M Agreement to the new SLA, including: (1) Section 6 of the Existing X–M Agreement, which covers acceptable forms of collateral; (2) Section 7 of the Existing X–M Agreement, which covers the timing, methods, and forms of daily settlement in the Cross-Margining accounts; and (3) Section 15 of Existing X–M Agreement, which covers OCC and CME's information-sharing regarding Joint and Affiliated Clearing Members, banks, and their financial status.

The other changes to the Existing X–M Agreement that OCC proposes may be considered in two broad categories. The first category is modifications to conform the terms of the agreement to existing practices. The second category is modifications to the X–M Program (*i.e.,* changes to both the Existing X–M Agreement and related processes) designed to improve existing practices.

Changes Conforming to Existing Practices

The first category, modifications to conform the terms of the agreement to existing practices, includes various new or updated definitions: (1) The newly-defined terms ''FSOC,'' ''Dodd Frank Act,'' ''DCO,'' ''Exchange Act,'' and ''SEC'' to reflect OCC and CME's registration statuses and designations as systemically important by the Financial Stability Oversight Counsel; [11] (2) ''Eligible Contracts,'' to conform with the substance of the definition that was adopted in 2009 as part of Amendment No. 2 to the Existing X–M Agreement, by including any contracts that have been ''jointly designated'' by OCC and CME as eligible for inclusion in the list of eligible contracts jointly maintained by OCC and CME; (3) ''Accepted Transaction,'' to provide certainty and clarity regarding the specific transactions for which OCC and CME would be jointly responsible, and would include all positions that are Eligible Contracts and have been included on the ''daily margin detail report'' generated by OCC and transmitted to CME; (4) added and updated terms to describe the accounts related to the X–M Program and their purpose more accurately, including ''Proprietary Joint Margin Cash Account'' (in place of ''Proprietary Joint Margin Account''), ''Segregated Joint Margin Cash Account'' (in place of ''Segregated Joint Margin Account''), ''Proprietary Joint Margin Custody Account'' (in place of ''Proprietary Joint Custody Account''), ''Segregated Joint Margin Custody Account'' (in place of ''Segregated Joint Custody Account''), ''Proprietary Bank Account,'' ''Segregated Funds Bank Account,'' and ''Liquidating Accounts;'' (5) updated terminology to more accurately characterize the margin requirement set by OCC's System for Theoretical Analysis and Numerical Simulations (''STANS''), such as ''Posted Collateral'' (in place of ''Margin'' and ''Initial Margin'') and the terms ''Collateral Requirement,'' ''Collateral Deficit,'' and ''Collateral Excess'' to replace references to margin requirements and deficits or surpluses in respect to such requirements; and (6) defined terms that are already used and defined elsewhere in the Existing X–M Agreement but that are not currently listed in Section 1, including the defined terms ''AAA,'' ''Affiliated Clearing Member,'' ''CME Clearing Member,'' ''CME Rules,'' ''Confidential Information,'' ''Indemnitor,'' ''Indemnified Party,'' ''Losses,'' ''OCC Clearing Member,'' and ''OCC Rules.''

The non-definitional changes or additions reflecting already-existing practices include the following: (1) Removing references to X–M Pledge Accounts and Section 3 of the Existing X–M Agreement, entitled ''Establishment of X–M Pledge Accounts,'' as these accounts are no longer in use; (2) revising Section 5 of the Existing X–M Agreement to reflect that the amount of collateral to be deposited with regard to an X–M Account would be determined using OCC's approved margin methodology, because CME already elects to use the margin requirements calculated by OCC; (3) stating that OCC and CME would each be permitted to invest any cash deposited as collateral in their joint margin cash accounts overnight in certain eligible investments and with certain custodians, depositories, and counterparties, as OCC and CME may mutually agree, with each clearinghouse sharing equally in any proceeds received or losses incurred from such overnight investments, to formalize the existing practice of equally sharing proceeds or losses from the investment of X–M cash margin; (4) modifying Section 7 and the relevant definitions in Section 1 to reflect that the ''Margin and Settlement Report'' would become the ''Account Summary by Clearing Corporation Report'' provided by OCC to Clearing Members, as only OCC has provided the current Margin and Settlement Report to Clearing Members in practice; (5) revising Section 8 of the X–M Agreement to clarify that each clearinghouse will follow its own rules for the default of a Clearing Member, while using best efforts to coordinate with the other clearinghouse regarding liquidation or transfer of accepted transactions; (6) clarifying the requirement that one clearinghouse must notify the other when subjected to a court order to disclose confidential information, only to the extent permitted by law; (7) clarifying that while OCC and CME are not permitted to reject any transaction effected in an X–M Account without the other's express consent, this condition would not interfere with their respective abilities to implement recovery and orderly wind-down plans under their own rules; (8) adding electronic mail and removing facsimiles as acceptable forms of communication for notice requirements, in conformance with current communication standards; and (9) adding Section 17 to clarify that each clearinghouse is responsible for obtaining its own regulatory approval in connection with the implementation of the Proposed X–M Agreement.

Changes to the X–M Program

The second category, modifications to the X–M Program (*i.e.,* changes to both the Existing X–M Agreement and related processes), includes the following

[7] Securities Exchange Act Release Nos. 26607 (Mar. 7, 1989), 48 FR 10608 (Mar. 14, 1989) (File No. SR–OCC–89–1); 27296 (Sep. 26, 1989) (File No. SR–OCC–89–11).

[8] *See* Notice of Filing, 85 FR at 63306.

[9] *Id.*

[10] *Id.*

[11] *See* Financial Stability Oversight Council (''FSOC'') 2012 Annual Report, Appendix A, available at *https://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf.*

updated definitions: (1) ''Losses,'' which is revised to include claims and other potential loss events; (2) ''Affiliate,'' which is revised to no longer state that 10% ownership of common stock would be deemed *prima facie* control of that entity for purposes of determining whether an entity is under direct or indirect control of a Clearing Member, but rather that the clearinghouses would make a facts-and-circumstances determination; and (3) ''Business Day,'' which is revised to state that when one or more markets on which cleared contracts trade are closed but banks are open, OCC and CME would each make their own determination regarding whether and to what extent to treat any such day as a Business Day for purposes of Section 7 of the Proposed X–M Agreement regarding daily settlements.

The non-definitional modifications to the cross-margining arrangement include the following: (1) In Section 5 of the Proposed X–M Agreement, adding a requirement for OCC to provide 30 calendar days' prior notice to CME of any proposed changes to OCC's margin methodology, and any changes to the way collateral requirements are calculated with respect to X–M Accounts would be required to be agreed upon in writing in advance by OCC and CME; (2) in Section 5, requiring OCC and CME to each determine net amount of premiums, exercise settlement amounts, and variation margin due for its respective products (newly defined as ''Net Pay/Collect'') because the determination is made based upon the products cleared by OCC and CME, and to notify each other of the Net Pay/Collect amount in accordance with the SLA; (3) to the extent the two clearinghouses impose different concentration limits for eligible margin, requiring the use of the more conservative limits; (4) amending Section 7 to permit 30 minutes, rather than 15 minutes, for OCC and CME to approve or disapprove of revised Settlement Instructions to all for a full review of such instructions, to provide additional time during the process of performing a full review of such instructions; (5) amending Section 7 to provide for the communication of intra-day instructions to X–M clearing banks to facilitate the deposit of collateral in response to an intra-day margin call from CME or OCC, and amending Section 1 to include the term ''Intra-day Instruction;'' (6) amending Section 8 to include new language regarding the manner in which OCC and CME would prepare for and manage a Clearing Member default, including the establishment of liquidation plan for the transfer or liquidation of the Clearing Member's Accepted Transactions, the execution of liquidity agreements to ensure that the clearinghouses can obtain liquidity during a default scenario and will be jointly and equally responsible for providing liquidity, the potential use of a joint liquidating auction with respect to X–M Accounts during a Clearing Member default scenario, and joint default management testing for the X–M accounts at least annually; (7) amending Section 13 to change the process and timing related to termination of the agreement because OCC and CME believe the revised language would reduce risk in the event of a termination; [12] and (8) streamlining and consolidating six current Clearing Member template agreements into three templates, so that Joint Clearing Members and Affiliated Clearing Members would use the same template agreement for the appropriate account type (*i.e.,* proprietary, non-proprietary, or market professional).

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.[13] After carefully considering the Proposed Rule Change, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the proposal is consistent with Section 17A(b)(3)(F) of the Exchange Act [14] and Rules 17Ad–22(e)(20) and (13) thereunder.[15]

A. Consistency With Section 17A(b)(3)(F) of the Exchange Act

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that the rules of a clearing agency be designed to remove impediments to and help perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions; and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.[16] Based on its review of the record, and for the reasons described below, the Commission believes that the rule proposal as described above is consistent with the requirements of Section 17A(b)(3)(F).

The Commission continues to view cross-margining programs as consistent with clearing agency responsibilities under Section 17A of the Exchange Act. Cross-margining programs enhance clearing member liquidity and systemic liquidity both in times of normal trading and in times of market stress by reducing margin requirements for clearing members, which could prove crucial in maintaining Clearing Member liquidity during periods of market volatility, and enhancing market liquidity as a whole. By enhancing market liquidity, cross-margining arrangements remove impediments to and help perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.[17]

The Commission believes that the proposed updates to the Existing X–M Agreement to conform to current practices provide additional clarity and certainty around the X–M Program to the relevant clearance and settlement topics, including the determination of the collateral requirement for the X–M Program, daily settlement, and suspension and liquidation. For example, replacing ''Margin'' or ''Initial Margin'' with ''Posted Collateral'' clarifies that STANS is the methodology used to determine the collateral requirement for the X–M Program and does not produce a separate initial margin requirement. This conforming change ensures that both clearinghouses are like-minded regarding the characterization of the margin requirement. Similarly, by updating the agreement to reflect that the amount of collateral to be deposited with regard to an X–M Account would be determined using OCC's margin methodology, the change confirms the already-existing practice of CME using OCC's margin calculation. Moreover, the proposed streamlining and consolidation of the Clearing Member Agreements would provide Joint Clearing Members and Affiliated Clearing Members with additional clarity with respect to the X–M Program. Reducing the number of available templates from six to three by having both Joint Clearing Members and Affiliated Clearing Members use the same three templates eliminates redundancy and makes the preparation

[12] *See* Notice of Filing, 85 FR at 63310.

[13] 15 U.S.C. 78s(b)(2)(C).

[14] 15 U.S.C. 78q–1(b)(3)(F).

[15] 17 CFR 240.17Ad–22(e)(20) and 17 CFR 240.17Ad–22(e)(13).

[16] 15 U.S.C. 78q–1(b)(3)(F).

[17] Securities Exchange Act Release No. 38584 (May 8, 1997), 62 FR 26602, 26604–05 (May 14, 1997) (File No. SR–OCC–97–04) (establishing a cross-margining agreement with OCC, CME, and the Commodity Clearing Corporation).

of Clearing Member Agreements more efficient. In this manner, the proposed changes to conform the terms of the Existing X–M Agreement to already-existing practices and to consolidate the Clearing Member Agreements would be consistent with the removal of impediments to and help perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

The Commission believes that the Proposed Rule Change is also consistent with the fostering of cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. Based on a review of the documents provided by OCC, the Commission believes that the SLA presents operational details, such as those related to daily settlement procedures, more clearly than the Existing X–M Agreement. By moving Sections 6, 7, and 15 of the Existing X–M Agreement to a separate and newly-created SLA, OCC will be able to modify specific terms regarding forms of collateral, daily settlement, and information-sharing provisions without having to modify the language of the Proposed X–M Agreement. The Commission believes that clarifying operational details and reducing the cost of updating such details would foster cooperation and coordination between OCC and CME.

Similarly, the proposed changes to the X–M Program reflected in the Proposed X–M Agreement would modify certain program details that would augment the existing cooperation and coordination between OCC and CME. For example, OCC has proposed to amend Section 7 to facilitate the deposit of collateral in response to an intra-day margin call from CME or OCC by providing for the communication of intra-day instructions to X–M clearing banks with respect to the X–M Account. The non-definitional modifications that are new to the X–M Program would also serve to enhance the already existing cooperation between the two clearinghouses. For example, the proposed addition of the 30-calendar day notice period for changes to OCC's margin methodology would provide CME with additional time to understand and address the implications of the methodology changes. The Commission believes, therefore, that the proposed changes to the X–M Program reflected in the Proposed X–M Agreement would be consistent with the fostering of cooperation and coordination between OCC and CME in the settlement of securities transactions.

For the above reasons, the Commission believes that the Proposed Rule Change is designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts and transactions; and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. The Commission believes, therefore, that the Proposed Rule Change is consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act.[18]

B. Consistency With Rule 17Ad–22(e)(20) Under the Exchange Act

Rule 17Ad–22(e)(20) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify, monitor, and manage risks related to any link the covered clearing agency establishes with one or more other clearing agencies, financial market utilities, or trading markets.[19]

One of the primary objectives of the Proposed Rule Change is to update the Existing X–M Agreement to bring it into conformity with current operational procedures and eliminate provisions that are out of date. Updating the terms of the X–M Program to reflect existing operational procedures ensures that the two clearinghouses may incorporate the latest considerations and any resulting updated practices for identifying, monitoring, and managing risks associated with the link between OCC and CME. Moreover, the Proposed Rule Change also includes changes to the Existing X–M Agreement to reflect changes in the X–M Program. Regardless of whether the additions or changes in the Proposed X–M Agreement conform to already-existing practices or if they are new to the X–M Program, the terms of the Proposed X–M Agreement are, as discussed above, clearer than those in the Existing X–M Agreement. This greater clarity serves to reduce risk related to the link between the two clearinghouses; specifically, the increased clarity reduces potential operational risks by promoting a common understanding between the two clearinghouses of the terms governing the X–M Program.

Further, the transfer of certain sections of the Existing X–M Agreement to a separate SLA would streamline the Proposed X–M Agreement and more clearly present operational details, such as those related to daily settlement procedures. The clearinghouses would also have the ability to review the service level details separately and modify them without requiring changes to the full agreement. Simplifying the presentation and maintenance of such operational details would serve to reduce risks associated with the link between OCC and CME.

The Commission believes, therefore, that the Proposed Rule Change is consistent with the requirements of Rule 17Ad–22(e)(20) under the Exchange Act.

C. Consistency With Rule 17Ad–22(e)(13) Under the Exchange Act

Rule 17Ad–22(e)(13) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to ensure the covered clearing agency has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations by, at a minimum, requiring the covered clearing agency's participants to participate in the testing and review of its default procedures at least annually.[20] In recognizing that there may be a number of ways to address compliance with Rule 17Ad–22(e)(13), the Commission has stated that a covered clearing agency generally should consider, when establishing and maintaining policies and procedures that address participant-default rules and procedures: (1) Whether it involves its participants and other stakeholders in the testing and review of its default procedures; and (2) whether such testing and review is conducted at least annually or following material changes to the rules and procedures to ensure that the testing and review are practical and effective.[21]

The Proposed X–M Agreement would require OCC and CME to conduct joint default management drills for the cross-margin accounts at least annually. The Commission believes that the adoption of rules requiring such joint default management tests on an at-least-annual basis is consistent with the involvement of stakeholders in default management testing as well as ensuring that such tests are conducted at least annually.

The Commission believes, therefore, that the Proposed Rule Change is consistent with the requirements of Rule 17Ad–22(e)(13) under the Exchange Act.

[18] 15 U.S.C. 78q–1(b)(3)(F).

[19] 17 CFR 240.17Ad–22(e)(20). For the purposes of Rule 17Ad–22(e)(20), the Commission defines a link, in part, as a set of contractual and operational arrangements between two clearing agencies that connect them for the purpose of cross-margining. 17 CFR 240.17Ad–22(a)(8).

[20] 17 CFR 240.17Ad–22(e)(13).

[21] *See* Securities Exchange Act Release 78961, 81 FR 70786, 70830 (Oct. 13, 2016) (File No. S7–03–14).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act [22] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[23] that the Proposed Rule Change (SR–OCC–2020–011) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–26012 Filed 11–24–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90458; File No. SR–NYSE–2020–97]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Shorten the Time Period Before a Letter of Acceptance, Waiver, and Consent Under Rule 9216 and an Uncontested Offer of Settlement Under Rule 9270(f)

November 19, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 16, 2020, New York Stock Exchange LLC (''NYSE'' or the ''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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to shorten the time period before a letter of acceptance, waiver, and consent under Rule 9216 and an uncontested offer of settlement under Rule 9270(f) becomes final and the corresponding time period to request review of these settlements under Rule 9310 from 25 days to 10 days. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to shorten the time period before a letter of acceptance, waiver, and consent (''AWC'') under Rule 9216 and an uncontested offer of settlement under Rule 9270(f) becomes final and the corresponding time period to request review of these settlements under Rule 9310 from 25 days to 10 days.

In 2013, the NYSE adopted disciplinary rules that are, with certain exceptions, substantially the same as the FINRA Rule 8000 Series and Rule 9000 Series, and which set forth rules for conducting investigations and enforcement actions.[4] The NYSE disciplinary rules were implemented on July 1, 2013.[5]

In adopting disciplinary rules modeled on FINRA's rules, the NYSE established processes for settling disciplinary matters both before and after issuance of a complaint.[6] At the time, the Exchange retained a 25 day call for review process only for determinations or penalties imposed by a Hearing Panel or Extended Hearing Panel. In 2015, the Exchange amended Rules 9216, 9270 and 9310 to permit a Director and any member of the Committee for Review (''CFR'') to require a review by the Board of any AWC letter under Rule 9216 and any offer of settlement under Rule 9270 within 25 days after the AWC letter or offer of settlement was sent to each Director and each member of the CFR.[7]

Proposed Rule Change

Rule 9216 (Acceptance, Waiver, and Consent; Procedure for Imposition of Fines for Minor Violation(s) of Rules) establishes AWC procedures by which a member organization or covered person, prior to the issuance of a complaint, may execute a letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member organization's or covered person's right to a hearing, appeal and certain other procedures. The rule also establishes procedures for executing a minor rule violation plan letter.

Under Rule 9216(a)(4), an AWC accepted by the Chief Regulatory Officer (''CRO'') must be sent to each Director and each member of the CFR and would be deemed final and constitute the complaint, answer, and decision in the matter 25 days after being sent to each Director and each member of the CFR, unless review by the Exchange Board of Directors is requested pursuant to Rule 9310(a)(1)(B).[8]

The Exchange proposes that an AWC accepted by the CRO would be deemed final and constitute the complaint, answer, and decision in a matter 10 days after being sent to each Director and each member of the CFR, unless review is requested pursuant to Rule 9310(a)(1)(B)(i). As described below, the time period to request review under Rule 9310(a)(1)(B)(i) would also be shortened to 10 days.

Rule 9270 (Settlement Procedure) provides a settlement procedure for a Respondent who has been notified of the initiation of a proceeding. Specifically, Rule 9270(f) provides that uncontested settlement offers accepted by the CRO, the Hearing Panel or, if applicable, Extended Hearing Panel must be issued and sent to each Director and each member of the CFR and

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[22] In approving this Proposed Rule Change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release Nos. 68678 (January 16, 2013), 78 FR 5213 (January 24, 2013) (SR–NYSE–2013–02) (''2013 Notice''), 69045 (March 5, 2013), 78 FR 15394 (March 11, 2013) (SR–NYSE–2013–02) (''2013 Approval Order''), and 69963 (July 10, 2013), 78 FR 42573 (July 16, 2013) (SR–NYSE–2013–49).

[5] *See* NYSE Information Memorandum 13–8 (May 24, 2013).

[6] *See* 2013 Approval Order, 78 FR at 15396–98.

[7] *See* Securities Exchange Act Release Nos. 76436 (November 13, 2015), 80 FR 72460, 72462–63 (November 19, 2015) (SR–NYSE–2015–35).

[8] Requests for review of an AWC accepted by the CRO are governed by Rule 9310(a)(1)(B)(i). For the sake of clarity and transparency, the Exchange proposes the non-substantive change of including the omitted reference to subsection (B)(i) of Rule 9310(a)(1) in both in the current and proposed text of Rule 9216(a)(4).

becomes final 25 days after being sent to each Director and each member of the CFR, unless review by the Exchange Board of Directors is requested pursuant to Rule 9310(a)(1).

The Exchange proposes that uncontested settlement offers accepted by the CRO, the Hearing Panel or, if applicable, Extended Hearing Panel (together, a ''Panel'') under Rule 9270(f) would become final 10 days after being sent to each Director and each member of the CFR, unless review by the Exchange Board of Directors is requested pursuant to Rule 9310(a)(1). As noted, the time to request review of an uncontested settlement under Rule 9310(a)(1) would also be shortened to 10 days.

Finally, under Rule 9310(a)(1)(B)(i), any Director and any member of the CFR may require a review by the Board of any determination or penalty, or both, imposed in connection with an AWC letter under Rule 9216 or an offer of settlement determined to be uncontested before a hearing on the merits has begun under Rule 9270(f), except that none of those persons could request Board review of a determination or penalty concerning an affiliate of the Exchange as such term is defined in Rule 12b–2 under the Exchange Act. A request for review under this provision is made by filing with the Secretary of the Exchange a written request stating the basis and reasons for such review, within 25 days after an AWC letter or an offer of settlement has been sent to each Director and each member of the CFR pursuant to Rule 9216(a)(4) or Rule 9270(f)(3).

To permit AWC letters and uncontested settlements to become final within 10 days as proposed, the Exchange would amend Rule 9310(a)(1)(B)(i) to provide that a request for review of these settlements as permitted by the rule must be made by filing the requisite written request with the Secretary of the Exchange within 10 days after the AWC letter or an offer of settlement is sent to each Director and each member of the CFR pursuant to Rule 9216(a)(4) or Rule 9270(f)(3).[9]

The Exchange believes maintaining a 25 day waiting period for negotiated settlements under Rule 9216 and uncontested settlements pursuant to 9270(f) unnecessarily delays final resolution of matters that have been resolved by the parties and accepted by the CRO or a Panel. Shortening the waiting period to 10 days, and requiring requests for Board of Directors review to be made within that same 10 day period, would significantly expedite the settlement process in situations where member organizations, covered persons and Respondents have entered into a consensual, negotiated settlement with Enforcement or made settlement offers that Enforcement does not oppose, while continuing to ensure the independence and integrity of the regulatory process by preserving the ability of Directors and CFR members to call those settlements for review.

Further, the Exchange believes that the proposed 10 day period to call a settlement for review under Rule 9310(a)(1)(B)(i) is reasonable and sufficient. Like the current 25 day period, the time to call a settlement for review would begin when the AWC or uncontested settlement is sent to each Director and member of the CFR. Rules 9216 and 9270 specify that an AWC or uncontested settlement accepted by the CRO or a Panel can be sent to each Director and each CFR member via courier, express delivery or electronic means. As a practical matter, AWCs and settlements are sent to the Directors and CFR members by email, which ensures prompt and instantaneous communication. As a result, the Directors and members of the CFR will have the full 10 day period to determine whether to call these settlements for review. Moreover, the requirement in Rule 9310(a)(1)(B)(i) that a request for review be in writing and state the basis and reasons for such review can similarly be satisfied by a Director or CFR member sending an email to the Secretary of the Exchange requesting that a specific matter be reviewed within the proposed 10 day period. The Director or CFR member would need to take no additional steps nor include any additional information in order to call a matter for review under Rule 9310(a)(1)(B)(i). In light of these facts, and the relative infrequency of calls for review of AWCs and uncontested settlements,[10] the Exchange believes that 10 days are more than sufficient for a Director or member of the CFR to determine whether to call a settlement for review. Once accepted by the CRO or Panel, the proposed 10 day period for negotiated settlements to be called for review or become final would expedite disciplinary proceedings and provide finality to the disciplinary process sooner, to the benefit of the parties and the investing public.

Finally, the Exchange also believes that shortening these time periods would further promote efficiency in connection with cross-market settlements involving multiple self-regulatory organizations (''SROs''). Often such settlements are contingent upon the acceptance of a settlement by all of the SROs involved in the matter. In these situations, a settlement with the Exchange would not be final until the end of the time period specified in Rules 9216 and 9270 while a settlement with other SROs could be final once accepted.[11] Thus by reducing the amount of time these settlements are outstanding at the Exchange, the proposed change could speed up the settlement process for cross-market settlements involving multiple SROs, to the benefit of the parties and the investing public.

The Exchange intends to announce the operative date of the amended time periods in Rules 9216(a)(4), 9270(f)(3) and 9310(a)(1) at least 30 days in advance via regulatory notice to its members and member organizations.[12] To further facilitate an orderly transition from the current rules to the new rules, the Exchange proposes that matters already initiated under the current rules would be completed under such rules. Specifically, the Exchange proposes to apply the current 25 day period for AWCs prepared and submitted to a member organization or covered persons under Rule 9216(a)(1) prior to the operative date and to uncontested settlement offers in proceedings where a Party was served with a complaint by Enforcement pursuant to Rule 9131 prior to the operative date. Rules

[9] The time period for requesting review pursuant to Rule 9310(a)(1)(B)(ii) of any rejection by the CRO of any AWC letter under Rule 9216 or of an uncontested offer of settlement under Rule 9270(f), would remain unchanged as would the time period to request for review of any determination or penalty, or both, imposed by a Panel under the Rule 9310(a)(1)(A) other than an offer of settlement determined to be uncontested after a hearing on the merits have begun under Rule 9270(f). For the avoidance of doubt, the Exchange would add text to Rule 9310(a)(1)(A) providing that any request for review of an offer of settlement determined to be uncontested after a hearing on the merits has begun under Rule 9270(f) that has been accepted by a Panel shall be governed by Rule 9310((a)(1)(B)(i).

[10] For example, no AWC letter or uncontested settlement has been called for review in the past year.

[11] *See, e.g.,* FINRA Rule 9216(a)(4) (''If the [AWC] letter is accepted by the National Adjudicatory Council, the Review Subcommittee, or the Office of Disciplinary Affairs, it shall be deemed final and shall constitute the complaint, answer, and decision in the matter.''); FINRA Rule 9270(e)(3) (''If the offer of settlement and order of acceptance are accepted by the National Adjudicatory Council, the Review Subcommittee, or the Office of Disciplinary Affairs, they shall become final and the Director of the Office of Disciplinary Affairs shall issue the order and notify the Office of Hearing Officers. The Department of Enforcement shall provide a copy of an issued order of acceptance to each FINRA member with which a Respondent is associated.''). *See also e.g.,* Nasdaq Rule 9216(a)(4) & 9270(e)(3); Cboe BZX Exchange, Inc. Rule 8.8(a); Cboe EDGA Exchange, Inc. Rule 8.8(a).

[12] The effective date of the new time periods would be simultaneously communicated to the Directors and to the members of the CFR.

9216(a)(4), 9270(f)(3) and 9310(a)(1)(B)(i) would be amended to reflect the transition process. When the transition is complete, the Exchange intends to submit a proposed rule change that would delete the unnecessary transition provisions of 9216(a)(4), 9270(f)(3) and 9310(a)(1)(B)(i).

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5),[14] in particular, because it is 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 facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [15] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that shortening the waiting period for negotiated settlements and uncontested offers of settlement would serve to expedite the final resolution of both Exchange and cross-market matters that have been resolved by the parties and accepted by the CRO or Panel, thereby protecting investors and the public interest by addressing rule violations and achieving finality in disciplinary matters sooner. The proposed rule change to shorten the waiting period before an AWC letter and offer of settlement becomes final and the member of CFR or Board's time to call such settlements for review will therefore provide for a more efficient, streamlined disciplinary process.

The Exchange further believes that the proposed amendments are consistent with Section 6(b)(6) of the Act,[16] which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of an exchange by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. As noted, the proposed changes will not affect the ability of Enforcement to enter into negotiated settlements or accepting uncontested settlement offers when appropriate, and will not alter the requirement that settlements be scrutinized by the CRO or Panel, who will continue to approve them, or the Directors and members of the CFR, whose right to call both types of voluntary settlements for review will not change.

For the same reasons, the Exchange believes that the proposed changes are designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[17] Moreover, as noted, the Exchange believes that the proposed 10 day period to call a settlement for review under Rules 9310(a)(1)(B)(i) is reasonable and sufficient, and provides an appropriate balance between the procedural safeguards of the call for review process and the benefits of expediting the resolution of disciplinary matters and providing finality to the disciplinary process sooner. Reducing the period for review would also mean that AWCs and uncontested settlements would be published two weeks earlier, thereby allowing members and the investing public to be educated about the issues they addressed sooner. Finally, the Exchange believes that the proposed transition plan is designed to provide a fair procedure for the disciplining of members and persons associated with members by providing for a clearly demarcated and orderly transition from the current 25 day period to the proposed 10 day period.

Finally, the Exchange believes that the non-substantive changes to clarify the cross-reference to Rule 9310 in Rules 9216 would remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest because the proposed non-substantive changes would add clarity, transparency and consistency to the Exchange's disciplinary rules. The Exchange believes that market participants would benefit from the increased clarity, thereby reducing potential confusion and ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's 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 change is not intended to address competitive issues but is rather concerned with facilitating less burdensome regulatory compliance and processes and enhancing the quality of the regulatory process. The Exchange believes the proposed rule changes would reduce the burdens within the disciplinary process, as well as move matters through the process expeditiously by providing for more efficient finality of negotiated settlements and offers of settlement, to the benefit of all members and member organizations and the investing public.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[19]

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.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] *Id.*

[16] 15 U.S.C. 78f(b)(6).

[17] 15 U.S.C. 78f(b)(7) and 78f(d).

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

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–NYSE–2020–97 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–NYSE–2020–97. 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–NYSE–2020–97, and should be submitted on or before December 16, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–26011 Filed 11–24–20; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Investor Advisory Committee will hold a public meeting on Thursday, December 3, 2020.

PLACE: The meeting will begin at 10:00 a.m. (ET) and will be open to the public. The meeting will be conducted by remote means and/or at the Commission's headquarters, 100 F St. NE, Washington, DC 20549. Members of the public may watch the webcast of the meeting on the Commission's website at *www.sec.gov.*

STATUS: This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting. On November 4, 2020, the Commission published notice of the Committee meeting (Release Nos. 33–10885; 34–90338), indicating that the meeting is open to the public and inviting the public to submit written comments to the Committee.

MATTER TO BE CONSIDERED: The agenda for the meeting includes: Welcome remarks; announcement of results of officers election; approval of previous meeting minutes; a panel discussion regarding corporate disclosure during COVID–19; a panel discussion regarding COVID–19 implications for next proxy season; subcommittee reports; and a non-public administrative session.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: November 23, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–26196 Filed 11–23–20; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–5633]

Notice of Intention To Cancel Registration Pursuant to Section 203(H) of the Investment Advisers Act of 1940

November 20, 2020.

Notice is given that the Securities and Exchange Commission (the ''Commission'') intends to issue an order, pursuant to section 203(h) of the Investment Advisers Act of 1940 (the ''Act''), cancelling the registration of Trevor Stewart Burton & Jacobsen Inc [File No. 801–10369], hereinafter referred to as the ''*registrant.*''

Section 203(h) provides, in pertinent part, that if the Commission finds that any person registered under section 203, or who has pending an application for registration filed under that section, is no longer in existence, is not engaged in business as an investment adviser, or is prohibited from registering as an investment adviser under section 203A, the Commission shall, by order, cancel the registration of such person.

The registrant has not filed a Form ADV amendment with the Commission as required by rule 204–1 under the Act and appears to be no longer in business as an investment adviser or is otherwise not engaged in business as an investment adviser.[1] Accordingly, the Commission believes that reasonable grounds exist for a finding that this registrant is no longer eligible to be registered with the Commission as an investment adviser and that the registration should be cancelled pursuant to section 203(h) of the Act.

Notice is also given that any interested person may, by December 15, 2020, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the cancellation, accompanied by a statement as to the nature of his or her interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, and he or she may request that he or she be notified if the Commission should order a hearing thereon. Any such communication should be emailed to the Commission's Secretary at *Secretarys-Office@sec.gov.*

At any time after December 15, 2020, the Commission may issue an order cancelling the registration, upon the basis of the information stated above,

[1] Rule 204–1 under the Act requires any adviser that is required to complete Form ADV to amend the form at least annually and to submit the amendments electronically through the Investment Adviser Registration Depository.

unless an order for a hearing on the cancellation shall be issued upon request or upon the Commission's own motion. Persons who requested a hearing, or who requested to be advised as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. Any adviser whose registration is cancelled under delegated authority may appeal that decision directly to the Commission in accordance with rules 430 and 431 of the Commission's rules of practice (17 CFR 201.430 and 431).

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.*

FOR FURTHER INFORMATION CONTACT: Christine Ayako Schleppegrell, Senior Counsel, at 202–551–6727; SEC, Division of Investment Management, Investment Adviser Regulation Office, 100 F Street NE, Washington, DC 20549–8549.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.[2]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–26113 Filed 11–24–20; 8:45 am]

BILLING CODE 8011–01–P

[2] 17 CFR 200.30–5(e)(2).

DEPARTMENT OF STATE

[Public Notice 11215]

30-Day Notice of Proposed Information Collection: PEPFAR Program Expenditures

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments up to December 28, 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: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Irum Zaidi, 1800 G St. NW, Suite 10300, SA–22, Washington, DC 20006, who may be reached on 202–663–2588 or at *ZaidiIF@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* PEPFAR Program Expenditures.
- *OMB Control Number:* 1405–0208.
- *Type of Request:* Revision to a Currently Approved Collection.
- *Originating Office:* Office of the U.S. Global AIDS Coordinator and Health Diplomacy (S/GAC).
- *Form Number:* DS–4213.
- *Respondents:* Recipients of U.S. government funds appropriated to carry out the President's Emergency Plan for AIDS Relief (PEPFAR).
- *Estimated Number of Respondents:* 4,045.
- *Estimated Number of Responses:* 4,045.
- *Average Time Per Response:* 16 hours.
- *Total Estimated Burden Time:* 64,720 hours.
- *Frequency:* Annually.
- *Obligation to Respond:* Mandatory.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The U.S. President's Emergency Plan for AIDS Relief (PEPFAR) was established through enactment of the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act (Pub. L. 108–25), as amended by the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act (Pub. L. 110–293) (HIV/AIDS Leadership Act), as amended by the PEPFAR Stewardship and Oversight Act (Pub. L. 113–56), and as amended and reauthorized for a third time by the PEPFAR Extension Act (Pub. L. 115–305) to support the global response to HIV/AIDS. In order to improve program monitoring, PEPFAR added reporting of expenditures by program area to the current routine reporting of program results for the annual report. Data are collected from implementing partners in countries with PEPFAR programs using a standard tool (DS–4213) via an electronic web-based interface into which users upload data. These expenditures are analyzed by partner for all PEPFAR program areas. These analyses then feed into partner and program reviews at the country level for monitoring and evaluation on an ongoing basis. Summaries of these data provide key information about program costs under PEPFAR on a global level. Applying expenditure results will improve strategic budgeting, identification of efficient means of delivering services, and accuracy in defining program targets; and will inform allocation of resources to ensure the program is accountable and using public funds for maximum impact.

Methodology

Data will continue to be collected in a web-based interface available to all partners receiving funds under PEPFAR. After implementing Expenditure Reporting since 2012, we learned that implementing partners (IPs) prefer the Microsoft Excel template based data collection process. The requirements in the Excel template have been reduced with IP input to only request critical information. By being able to download a template, prime IPs responsible to complete the submission are more effectively able to collaborate quickly with other key personnel and coordinate with their subrecipients to enter the data for the full amount of PEPFAR funding expended during the prior fiscal year. This approach also proves helpful where internet connectivity is not strong. After completing the Excel template, IPs upload the data to an automated system that further checks the data entered for quality and completeness. Automated checks reduce the time needed by IPs to complete the data cleaning process. Aggregate data is

available in a central system for analysis.

Brendan Garvin,

Director of Management and Budget.

[FR Doc. 2020–26071 Filed 11–24–20; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice:11268]

Notice of Public Meeting in Preparation for International Maritime Organization Meeting

The Department of State will conduct a public meeting at 10:00 a.m. on Thursday, December 3, 2020, by way of teleconference. Members of the public may participate up to the capacity of the teleconference phone line, which will handle 500 participants. To access the teleconference line, participants should call (202) 475–4000 and use Participant Code: 415 533 25#. This is not a meeting of the Shipping Coordinating Committee.

The primary purpose of the public meeting is to prepare for the 70th session of the International Maritime Organization's (IMO) Technical Cooperation Committee to be held remotely, December 7 to 11, 2020.

The agenda items to be considered include:

—Adoption of the agenda
—Work of other bodies and organizations
—Integrated Technical Cooperation Programme: Annual report for 2019
—Resource mobilization and partnerships
—The 2030 Agenda for Sustainable Development
—Regional presence and coordination
—IMO Member State Audit Scheme
—Capacity-building: Strengthening the impact of women in the maritime sector
—Global maritime training institutions
—Application of the document on the *Organization and method of work of the Technical Cooperation Committee*
—Work programme
—Election of Chair and Vice-Chair for 2021
— Any other business
—Consideration of the report of the Committee on its seventieth session

Please note: the Committee may, on short notice, adjust the TC 70 agenda to accommodate the constraints associated with the virtual meeting format. The meeting coordinator will notify those who RSVP of any announced changes.

Those who plan to participate may contact the meeting coordinator, LT Jessica Anderson, by email at *Jessica.P.Anderson@uscg.mil,* by phone at (202) 372–1376, or in writing at 2703 Martin Luther King Jr. Ave. SE Stop 7509, Washington, DC 20593–7509.

Additional information regarding this and other IMO public meetings may be found at: *https://www.dco.uscg.mil/IMO*

Jeremy M. Greenwood,

Coast Guard Liaison Officer, Office of Ocean and Polar Affairs, Department of State.

[FR Doc. 2020–26002 Filed 11–24–20; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 11263]

Imposition of Nonproliferation Measures Against Foreign Persons, Including a Ban on U.S. Government Procurement

AGENCY: Bureau of International Security and Nonproliferation, Department of State.

ACTION: Notice.

SUMMARY: A determination has been made that a number of foreign persons have engaged in activities that warrant the imposition of measures pursuant to Section 3 of the Iran, North Korea, and Syria Nonproliferation Act. The Act provides for penalties on foreign entities and individuals for the transfer to or acquisition from Iran since January 1, 1999; the transfer to or acquisition from Syria since January 1, 2005; or the transfer to or acquisition from North Korea since January 1, 2006, of goods, services, or technology controlled under multilateral control lists (Missile Technology Control Regime, Australia Group, Chemical Weapons Convention, Nuclear Suppliers Group, Wassenaar Arrangement) or otherwise having the potential to make a material contribution to the development of weapons of mass destruction (WMD) or cruise or ballistic missile systems. The latter category includes (a) items of the same kind as those on multilateral lists but falling below the control list parameters when it is determined that such items have the potential of making a material contribution to WMD or cruise or ballistic missile systems, (b) items on U.S. national control lists for WMD/missile reasons that are not on multilateral lists, and (c) other items with the potential of making such a material contribution when added through case-by-case decisions.

DATES: Applicable November 6, 2020.

FOR FURTHER INFORMATION CONTACT: On general issues: Pam Durham, Office of Missile, Biological, and Chemical Nonproliferation, Bureau of International Security and Nonproliferation, Department of State, Telephone (202) 647–4930. For U.S. government procurement ban issues: Eric Moore, Office of the Procurement Executive, Department of State, Telephone: (703) 875–4079.

SUPPLEMENTARY INFORMATION: On November 6, 2020, the U.S. government applied the measures authorized in Section 3 of the Iran, North Korea, and Syria Nonproliferation Act (Pub. L. 109–353) against the following foreign persons identified in the report submitted pursuant to Section 2(a) of the Act:

Chengdu Best New Materials Co Ltd. (China) and any successor, sub-unit, or subsidiary thereof;

Zibo Elim Trade Company, Ltd. (China) and any successor, sub-unit, or subsidiary thereof;

Aviazapchast (Russia) and any successor, sub-unit, or subsidiary thereof;

Joint Stock Company Elecon (Russia) and any successor, sub-unit, or subsidiary thereof;

Nilco Group (aka Nil Fam Khazar Company; aka Santers Holding) (Russia) and any successor, sub-unit, or subsidiary thereof.

Accordingly, pursuant to Section 3 of the Act, the following measures are imposed on these persons:

1. No department or agency of the U.S. government may procure or enter into any contract for the procurement of any goods, technology, or services from these foreign persons, except to the extent that the Secretary of State otherwise may determine;

2. No department or agency of the U.S government may provide any assistance to these foreign persons, and these persons shall not be eligible to participate in any assistance program of the U. S. government, except to the extent that the Secretary of State otherwise may determine;

3. No U.S. government sales to these foreign persons of any item on the United States Munitions List are permitted, and all sales to these persons of any defense articles, defense services, or design and construction services under the Arms Export Control Act are terminated; and

4. No new individual licenses shall be granted for the transfer to these foreign persons of items the export of which is controlled under the Export Control Reform Act of 2018 or the Export Administration Regulations, and any existing such licenses are suspended.

These measures shall be implemented by the responsible departments and agencies of the U.S. government and

will remain in place for two years from the effective date, except to the extent that the Secretary of State may subsequently determine otherwise.

Gonzalo O. Suarez,

Acting Deputy Assistant Secretary, International Security and Nonproliferation.

[FR Doc. 2020–26000 Filed 11–24–20; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF STATE

[Public Notice 11219]

30-Day Notice of Proposed Information Collection: Passport Demand Forecasting Survey

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments up to December 28, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Passport Demand Forecasting Survey.
- *OMB Control Number:* 1405–0177.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services Directorate.
- *Form Number:* SV2012–0006.
- *Respondents:* A national representative sample of U.S. citizens, nationals, and any other categories of individuals that are entitled to a U.S. passport product.
- *Estimated Number of Respondents:* 30,000.
- *Estimated Number of Responses:* 30,000.
- *Average Time per Response:* 10 minutes.
- *Total Estimated Burden Time:* 5,000 hours.
- *Frequency:* Monthly.
- *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Secretary of State is authorized to issue U.S. passports under 22 U.S.C. 211a. The Department of State, Passport Services administers the U.S. passport issuance program and operates passport agencies and application adjudication centers throughout the United States. As part of the Intelligence Reform and Terrorism Prevention Act of 2004, the Western Hemisphere Travel Initiative required the Secretary of Homeland Security and the Secretary of State to implement a plan to require all U.S. citizen and non-citizen nationals to present a passport and/or other sufficient documentation when entering the U.S. from abroad. This resulted in an increase in demand for U.S. passports.

The Passport Demand Forecasting Survey requests information from the general public about the demand for U.S. passports, anticipated travel, and the demographic profile of the respondent. This voluntary survey is conducted on a monthly basis using responses from a randomly selected but nationally representative sample of U.S. nationals ages 18 and older. The information obtained from the survey is used to monitor and project the demand for U.S. passport books and U.S. passport cards. The Passport Demand Forecasting Survey aids the Department of State, Passport Services in making decisions about staffing, resource allocation, and budget planning.

Methodology

The Passport Demand Forecasting Study uses monthly surveys that will gather data from a national representative sample of U.S. nationals. Survey delivery methodologies can include mail, internet/web, telephone, and mix-mode surveys to ensure the CA/PPT reaches the appropriate audience and leverages the best research method to obtain valid responses.

Zachary Parker,

Director.

[FR Doc. 2020–26068 Filed 11–24–20; 8:45 am]

BILLING CODE 4710–06–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 55 (Sub-No. 802X)]

CSX Transportation, Inc.—Discontinuance of Service Exemption—in Pike County, Ky.

CSX Transportation, Inc. (CSXT), has filed a verified notice of exemption under 49 CFR. part 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over an approximately 7.0-mile rail line on its Louisville Division, Big Sandy Subdivision, from milepost CMP 24.0 to milepost CMP 31.0, in Pike County, Ky. (the Line). The Line traverses U.S. Postal Service Zip Codes 41539 and 41554.

CSXT has certified that: (1) No local traffic has moved over the Line for at least two years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board or any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial

assistance (OFA) [1] to subsidize continued rail service has been received, this exemption will be effective on December 25, 2020, unless stayed pending reconsideration.[2] Petitions to stay that do not involve environmental issues must be filed by December 4, 2020, and formal expressions of intent to file an OFA to subsidize continued rail service under 49 CFR 1152.27(c)(2) [3] must be filed by December 7, 2020.[4] Petitions for reconsideration must be filed by December 15, 2020.

A copy of any petition filed with Board should be sent to CSXT's representative, Louis E. Gitomer, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

If the verified notice contains false or misleading information, the exemption is void ab initio.

Board decisions and notices are available at *www.stb.gov.*

Decided: November 19, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2020–26075 Filed 11–24–20; 8:45 am]

BILLING CODE 4915–01–P

[1] Persons interested in submitting an OFA to subsidize continued rail service must first file a formal expression of intent to file an offer, indicating the intent to file an OFA for subsidy and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

[2] CSXT states that it intends to consummate the discontinuance of the Line on December 25, 2020.

[3] The filing fee for OFAs can be found at 49 CFR 1002.2(f)(25).

[4] Because this is a discontinuance proceeding and not an abandonment, interim trail use/rail banking and public use conditions are not appropriate. Because there will be an environmental review during abandonment, this discontinuance does not require environmental review.

TENNESSEE VALLEY AUTHORITY

Sugar Camp Energy, LLC Mine No. 1 Environmental Impact Statement

AGENCY: Tennessee Valley Authority.

ACTION: Record of decision.

SUMMARY: The Tennessee Valley Authority (TVA) has decided to adopt the preferred alternative identified in the Sugar Camp Energy, LLC Mine No. 1 Boundary Revision 6 Final Environmental Impact Statement (EIS), which was made available to the public on October 2, 2020. A Notice of Availability of the Final EIS was published in the **Federal Register** on October 9, 2020. The purpose and need of the Proposed Action is to recover TVA's investment by approving the proposed SBR No. 6 mining plan under the terms of the coal lease agreement made with Sugar Camp in 2002. TVA's preferred alternative, analyzed in the EIS as the Action Alternative, consists of TVA approving the plan to extract TVA-owned coal reserves within a 12,125-acre portion of the overall Significant Boundary Revision No. 6 shadow area.

FOR FURTHER INFORMATION CONTACT: Elizabeth Smith, Tennessee Valley Authority, 400 West Summit Hill Drive, WT11B–K, Knoxville, Tennessee 37902; telephone (865) 638–2252, or by email *esmith14@tva.gov.* The Final EIS, this Record of Decision (ROD) and other project documents are available on TVA's website at *https://www.tva.gov/nepa.*

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the Council on Environmental Quality's regulations and TVA's procedures for implementing the National Environmental Policy Act (NEPA).

TVA is a corporate agency and instrumentality of the United States that, among several mission responsibilities, provides electricity for business customers and local power distributors serving more than 10 million people in a roughly 80,000 square mile area comprised of most of Tennessee and parts of Virginia, North Carolina, Georgia, Alabama, Mississippi, and Kentucky. TVA receives no taxpayer funding, deriving virtually all of its revenues from sales of electricity. In addition to operation of its power system, TVA provides flood control, navigation and land management for the Tennessee River system and assists local power companies and state and local governments with economic development and job creation.

In 2002, TVA leased its Illinois Basin coal reserves to Sugar Camp, under condition that any proposed mining plan must be subject to environmental review and TVA approval. The proposed mining plan is subject to review and approval by the State of Illinois, which has regulatory authority delegated by the U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement under the Surface Mining Control and Reclamation Act of 1977. TVA has prepared an EIS pursuant to NEPA to assess the potential environmental impacts of the proposed action to approve the plan to extract TVA-owned coal reserves within a 12,125-acre portion of the overall Significant Boundary Revision No. 6 shadow area.

In 2008, Sugar Camp obtained Underground Coal Mine Permit No. 382 from the Illinois Department of Natural Resources (IDNR), Office of Mines and Minerals (OMM), Land Reclamation Division, referenced hereafter as IDNR–OMM, for Sugar Camp Mine No. 1. Underground Coal Mine Permit No. 382 originally authorized underground longwall mining operations under approximately 12,125 acres in Franklin and Hamilton counties. UCM Permit No. 382 also included a surface effects area to process, store and transport the coal, where the existing Coal Preparation Plant is located. Since then, Sugar Camp has received authorization from the state for permit revisions to expand underground longwall mining operations for Sugar Camp Mine No. 1, and TVA has prepared multiple environmental assessments for the extraction of TVA-owned coal in these additional areas.

Alternatives Considered

TVA considered two alternatives in the Draft EIS and Final EIS. These alternatives are:

No Action Alternative. Under the No Action Alternative, TVA assumes that Sugar Camp would continue the previously approved mining of approximately 25,847 acres of TVA-owned coal and privately owned coal. In addition, Sugar Camp would continue processing, storing, and transporting the previously approved TVA-owned and privately owned coal.

Action Alternative—The Action Alternative would consist of TVA approving the plan to extract TVA-owned coal reserves within a 12,125-acre portion of the overall SBR No. 6 shadow area (hereafter, the Shadow Area). The Action Alternative would involve the associated construction and operation of five Bleeder Shaft Facilities in different locations within the Shadow Area, together totaling approximately 27 acres. Planned subsidence (controlled sinking of the ground at the surface) of approximately 10,549 acres within the Shadow Area would result. Connected actions include processing of the extracted TVA-owned coal at an existing Coal Preparation Plant within an existing 2,420-acre surface effects area; treatment of the byproducts at both existing facilities and one new facility, known as the East Refuse Disposal Area; surface storage of coal; and offsite transport of processed coal via an existing rail loop. These facilities also process, store, and transport privately owned coal mined without TVA approval. Together, the 12,125-acre Shadow Area and the 2,420-acre surface effects area compose the Project Area.

TVA's analysis of the Action Alternative takes into account the proposed mining plan in addition to the effects associated with ongoing mining operations.

The purpose and need of the Proposed Action is to recover TVA's investment by approving the proposed SBR No. 6 mining plan under the terms of the coal lease agreement made with Sugar Camp in 2002. TVA's Preferred Alternative is the Action Alternative, which consists of TVA approving the plan to extract TVA-owned coal reserves within a 12,125-acre portion of the overall SBR No. 6 shadow area. The Action Alternative is preferred because it is the most economical way to meet TVA's purpose and need. Other alternatives are not economically feasible, are expected to have similar environmental impacts, and do not meet the purpose and need.

Coal mining activities would occur under either the No Action Alternative or the Action Alternative. Reasonably foreseeable greenhouse gas emissions, including downstream emissions, are quantified. Other environmental consequences associated with either alternative, including the Action Alternative, have been deemed not significant and, for the most part, would be temporary due to minimization and mitigation efforts required in IDNR permit conditions.

Minor, temporary impacts to soils, groundwater, floodplains, surface waters and wetlands, vegetation, wildlife, and aquatic life would occur with either alternative. Other resources that would be temporarily affected under either alternative include prime farmland, water quality and supply, natural areas, land use, transportation, utilities, noise, and visual. These impacts would be minimized or mitigated per IDNR permit requirements.

Under either alternative, permanent changes to geology would occur due to the removal of a portion of the Herrin No. 6 coal seam. Construction of the East Refuse Disposal Area, which constitutes an expansion of the existing surface effects area under either alternative, would result in permanent impacts to utilities, North Bobtail Road, wetlands, and land use. These impacts would be offset through required minimization and mitigation efforts.

Solid and hazardous waste and human health and safety impacts would be avoided due to compliance with relevant regulations and avoidance and mitigation measures under either alternative. Relative beneficial effects on socioeconomics would occur with either alternative. Environmental justice impacts would be avoided due to compliance with IDNR permit requirements to avoid, minimize, or mitigate the adverse effects of mining operations.

Under the Action Alternative, TVA would require appropriate consultations with the pertinent federal and state agencies to ensure impacts associated with the Bleeder Shaft Facilities to cultural resources and to federally and state-listed species are avoided, minimized, or mitigated, once siting locations for the Bleeder Shaft Facilities are determined. Generally, these consultations are also required under the No Action Alternative, per IDNR permit conditions.

Under the Action Alternative, TVA would require appropriate consultations with the pertinent federal and state agencies to ensure impacts associated with the Bleeder Shaft Facilities to cultural resources and to federally and state-listed species are avoided, minimized, or mitigated, once siting locations for the Bleeder Shaft Facilities are determined. Generally, these consultations are also required under the No Action Alternative, per IDNR permit conditions.

Decision

TVA has decided to implement the preferred alternative of the EIS and approve the plan to extract TVA-owned coal reserves within a 12,125-acre portion of the overall SBR No. 6 shadow area. This alternative would achieve the purpose and need of the project. The Proposed Action would implement the terms of the existing coal lease agreement and recoup TVA's investment. Minor, temporary impacts to soils, groundwater, floodplains, surface waters and wetlands, vegetation, wildlife, and aquatic life would occur with either alternative. Other resources that would be temporarily affected under either alternative include prime farmland, water quality and supply, natural areas, land use, transportation, utilities, noise, and visual. These impacts would be minimized or mitigated per IDNR permit requirements.

Public Involvement

On August 12, 2019, TVA published a Notice of Intent (NOI) in the **Federal Register** announcing that it planned to prepare an EIS to address the potential environmental effects associated with mining 12,125 acres of TVA-owned coal in the Project Area located in Franklin and Hamilton counties, Illinois. The NOI initiated a 30-day public scoping period, which concluded on September 11, 2019. In the NOI, TVA solicited public input on other reasonable alternatives and environmental resources that should be considered in the EIS.

During the public scoping period, TVA received comments from the U.S. Environmental Protection Agency (EPA), the Sierra Club, and one private citizen. Comments were received regarding permits and agency coordination, alternatives analysis, the action alternative, and several resource categories, including water resources, air quality and greenhouse gases, human health and safety, and socioeconomics and environmental justice. In their comments, EPA requested to participate in the NEPA process as a cooperating agency.

TVA released the Draft EIS for public review in April 2020. A Notice of Availability (NOA) for the Draft EIS was published in the **Federal Register** on April 13, 2020. Publication of the NOA in the **Federal Register** opened the 45-day comment period, which ended on May 27, 2020. To solicit public input, the availability of the Draft EIS was announced in regional and local newspapers serving the Project Area and on TVA's social media accounts. A news release was issued to the media and posted on TVA's website. The Draft EIS was posted on TVA's website, and hard copies were made available by request. TVA accepted comments submitted through mail, email and a comment form on TVA's public website. TVA received comments from the EPA, Sierra Club and one private citizen. Some of the comments warranted changes in the Final EIS.

The NOA for the Final EIS was published in the **Federal Register** on October 9, 2020. TVA received additional comments from the EPA on the Final EIS on November 9, 2020. The EPA commented that the site-specific analysis of impacts to wetlands and aquatic life in the Final EIS could have been more detailed. TVA notes that in the Final EIS information and analyses about water resources in the project area were compiled based on topographic maps, aerial photographs, soil surveys, the National Wetland Inventory, literature, mail surveys, and onsite observations during field surveys. This information was the basis for TVA's analysis of potential impacts anticipated by the proposed action and alternatives. The information and analysis about water resources and aquatic life in the proposed project area was and is adequate to support TVA's decisionmaking process, the underlying purpose of NEPA's procedural requirements.

TVA notes that the U.S. Army Corps of Engineers (Army Corps) will also

review available resource data and information when considering permit applications associated with the mine plan under Sections 401 and 404 of the Clean Water Act. During their review, the Army Corps will identify impacts to the Waters of the U.S. and require that they be mitigated. The discharge of dredged or fill material into Waters of the U.S. is prohibited unless authorized by the Army Corps, the IDNR-Office of Water Resources, and the Illinois Environmental Protection Agency (IEPA).

In addition, impacts to aquatic life, streams or other waterbodies would be subject to Sugar Camp's integrated fish and wildlife habitat reclamation plan. Per the IDNR–OMM permit requirements, implementation of the plan would avoid or mitigate permanent impacts to biological resources associated with the Action Alternative and other mining actions within 20 miles of the Project, including the activities associated with the No Action Alternative. TVA anticipates that these permit requirements will be sufficiently detailed to mitigate anticipated impacts to the watershed and associated aquatic life. As acknowledged in the Final EIS, certain site-specific information is currently unknown, pending final mine component design. Bleeder shaft facilities would be located to avoid Waters of the U.S. to the maximum extent practicable. Construction on the site of the East Refuse Disposal Area would potentially impact 27,806 linear feet of ephemeral and intermittent streams, 1.4 acres of wetlands, and one pond totaling 0.2 acres. These waterbodies likely contain aquatic life, which has been or would be temporarily disturbed by surface disturbances and coal extraction-related effects. However, displaced species would likely return with completion of reclamation activities. Such effects to aquatic life resulting from mining operations are subject to mitigation under integrated fish and wildlife habitat reclamation plans.

The EPA identified a typographical error in TVA's response to Comment 18 in Appendix C of the Final EIS. In the response, TVA incorrectly identified IDNR as the state agency with authority for enforcement of the National Pollutant Discharge Elimination System (NPDES) permit for the mine. In fact, the IEPA is the authorized agency. TVA notes that IEPA was correctly identified as the authorized agency in section 1.5.1 of the Final EIS. The EPA also commented that TVA's response to Comment 18 in Appendix C should have noted that NPDES permit limits for categorical standards cannot allow for instream mixing for achieving effluent limits and that the description of the instream dissipation of chloride is not relevant to the discussion about effluent exceedances because the mixing zone and receiving water conditions are taken into account when the effluent limit is established. TVA agrees that the current permit does not contain authorizations for discharges in exceedance of the NPDES permit effluent limits. Finally, as pointed out by EPA, TVA acknowledges that the current permit (IL0078565) does not authorize acid mine drainage.

Mitigation Measures

Permit conditions would be enforced by the State of Illinois; TVA does not regulate the mining activities of Sugar Camp. State of Illinois mitigation measures include:

1. The implementation of sediment and erosion control practices (*e.g.,* silt fences, straw, mulch, or vegetative cover) and fugitive dust minimization (*e.g.,* wetting roads prior to heavy use).

2. The implementation of water quality protection measures (*e.g.,* sediment pond treatment, water quality monitoring, or establishment of riparian zone buffer zones).

3. The repair or compensation of any damage to buildings or other structures caused by subsidence.

4. The minimization of invasive species transmission per the requirements of the Illinois Noxious Weed Law.

5. Compensation for any interruption to well water quality or quantity caused by subsidence until the groundwater is restored.

6. The repair of any damage to roads caused by subsidence.

7. The repair of any drainage alteration caused by subsidence.

8. The compensatory mitigation of wetlands and streams impacted by subsidence, if necessary. This condition would also be enforced by the United States Army Corps of Engineers.

9. The repair of any damage to utilities caused by subsidence.

Robert M. Deacy, Sr.,

Senior Vice President, Generation Construction, Projects and Services.

[FR Doc. 2020–25972 Filed 11–24–20; 8:45 am]

BILLING CODE 8120–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2020–0037]

Notice of Public Hearing in Section 301 Investigation of Vietnam's Acts, Policies, and Practices Related to Currency Valuation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) will convene a virtual public hearing and accept rebuttal comments in the Section 301 investigation concerning Vietnam's acts, policies, and practices related to the valuation of its currency.

DATES:

December 10, 2020, at 11:59 p.m.: To be assured of consideration, you must submit requests to appear at the hearing by this date. The request to appear must include a summary of the testimony.

December 29, 2020, at 9:30 a.m.: Hearing will be held virtually.

January 7, 2021, at 11:59 p.m.: To be assured of consideration, post-hearing rebuttal comments must be submitted by this date.

ADDRESSES: You should submit requests to appear at the hearing, hearing testimony, and written rebuttal comments through the Federal eRulemaking Portal: *www.regulations.gov* (*Regulations.gov*). Follow the instructions for submitting comments in section III. The docket number is USTR2020–0–037. For issues with on-line submissions, contact the Section 301 line at (202) 395–5725.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning the submission of documents, contact the Section 301 line at (202) 395–5725. For questions concerning the public hearing, contact Michael Gagain, Assistant General Counsel, (202) 395–9529.

SUPPLEMENTARY INFORMATION:

I. Background

On October 2, 2020, the U.S. Trade Representative initiated an investigation pursuant to Section 301 of the Trade Act of 1974, of whether Vietnam's acts, policies, and practices related to the valuation of its currency are unreasonable or discriminatory and burden or restrict U.S. commerce. *See* 85 FR 63637. USTR invited interested persons to submit written comments by November 12, 2020, regarding the issues in the investigation.

II. Hearing and Rebuttal Comments

USTR will hold a virtual public hearing in this investigation on Tuesday, December 29, 2020. To be assured of consideration, you must submit requests to testify at the virtual hearing, and summaries of your testimony, by December 10, 2020, at 11:59 p.m. Because the hearing will be public, your testimony should not include any confidential information.

USTR will post information regarding access to the virtual public hearing at *https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-vietnam.* In addition, USTR will contact persons who are testifying at the hearing regarding the procedures for participation.

You may request to testify on the issues covered by the investigation. *See* 85 FR 63637. In particular, USTR invites hearing testimony regarding:

- Whether Vietnam's currency is undervalued, and the level of the undervaluation.
- Vietnam's acts, policies, or practices that contribute to undervaluation of its currency.
- The extent to which Vietnam's acts, policies, or practices contribute to the undervaluation.
- Whether Vietnam's acts, policies and practices are unreasonable or discriminatory.
- The nature and level of burden or restriction on U.S. commerce caused by the undervaluation of Vietnam's currency.
- The determinations required under section 304 of the Trade Act, including what action, if any, should be taken.

USTR will offer a further opportunity for public comment in the event actions affecting specific products or services are considered in the investigation. Accordingly, the upcoming hearing will not involve testimony regarding specific products or services that might be affected by an action in the investigation.

USTR will consider rebuttal comments submitted by January 7, 2021. Rebuttal comments should be strictly limited to demonstrating errors of fact or analysis not pointed out in the written submissions or hearing testimony and should be as concise as possible.

III. Submission Procedures

Requests to appear and summaries of testimony, as well as rebuttal comments, must be submitted on *Regulations.gov.* To make a submission via *Regulations.gov*, enter docket number USTR–2020–0037 in the 'search for' field on the home page and click 'search.' The site will provide a search results page listing all documents associated with this docket. Find a reference to this notice by selecting 'notice' under 'document type' in the 'filter results by' section on the left side of the screen and click on the link entitled 'comment now.'

When submitting a request to appear and a summary of your testimony, provide in the 'comment' field on the next page the full name, address, email address, and telephone number of the person who wishes to present the testimony. To submit a written statement or summary, *Regulations.gov* allows users to provide comments by filling in a 'type comment' field or by attaching a document using the 'upload file(s)' field. USTR prefers that you provide submissions in an attached document. The file name should include the name of the person who will be presenting the testimony, or if not testifying, the name of the person submitting the statement. The name of the presenter also should be clear in the content of the file itself. All submissions must be in English and be prepared in (or be compatible with) Microsoft Word (.doc) or Adobe Acrobat (.pdf) formats. Include any data attachments to the submission in the same file as the submission itself, and not as separate files. For additional information on using *Regulations.gov,* please consult the resources provided on the website by clicking on 'how to use this site' on the left side of the home page.

For any rebuttal comments that contain business confidential information (BCI), the file name of the business confidential version should begin with the characters 'BCI.' You must clearly mark any page containing BCI by including 'BUSINESS CONFIDENTIAL' on the top of that page and clearly indicating, via brackets, highlighting, or other means, the specific information that is BCI. If you request business confidential treatment, you must certify in writing that disclosure of the information would endanger trade secrets or profitability, and that you would not customarily release the information to the public. Filers of submissions containing BCI also must submit a public version of their comments. The file name of the public version should begin with the character 'P.' Follow the 'BCI' and 'P' with the name of the person or entity submitting the comments. If these procedures are not sufficient to protect BCI or otherwise protect business interests, please contact the Section 301 line at (202) 395–5725 to discuss whether alternative arrangements are possible.

USTR will post submissions in the docket for public inspection, except for submissions properly designated as BCI. You can view submissions on *Regulations.gov* by entering docket number USTR–2020–0037 in the search field on the home page.

Joseph Barloon,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2020–26063 Filed 11–24–20; 8:45 am]

BILLING CODE 3290–F0–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2020–0036]

Notice of Public Hearing in Section 301 Investigation of Vietnam's Acts, Policies, and Practices Related to the Import and Use of Illegal Timber

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) will convene a virtual public hearing and accept rebuttal comments in the Section 301 investigation concerning Vietnam's acts, policies, and practices related to the import and use of illegally harvested or traded timber.

DATES:

December 10, 2020, at 11:59 p.m.: To be assured of consideration, you must submit requests to appear at the hearing by this date. The request to appear must include a summary of the testimony.

December 28, 2020, at 9:30 a.m.: Hearing will be held virtually.

January 6, 2021, at 11:59 p.m.: To be assured of consideration, post-hearing rebuttal comments must be submitted by this date.

ADDRESSES: You should submit requests to appear at the hearing, hearing testimony, and written rebuttal comments through the Federal eRulemaking Portal: *www.regulations.gov* (*Regulations.gov*). Follow the instructions for submitting comments in section III. The docket number is USTR–2020–0036. For issues with on-line submissions, contact the Section 301 line at (202) 395–5725.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning the submission of documents, contact the Section 301 line at (202) 395–5725. For questions concerning the public hearing, contact Assistant General Counsels David Lyons at (202) 395–9446, or Kimberly Reynolds at (202) 395–6336.

SUPPLEMENTARY INFORMATION:

I. Background

On October 2, 2020 the U.S. Trade Representative initiated an investigation pursuant to Section 301 of the Trade Act of 1974, of whether Vietnam's acts, policies, and practices related to the import and use of illegal timber are unreasonable or discriminatory and burden or restrict U.S. commerce. *See* 85 FR 63639. USTR invited interested persons to submit written comments by November 12, 2020, regarding the issues in the investigation.

II. Hearing and Rebuttal Comments

USTR will hold a virtual public hearing in this investigation on Monday, December 28, 2020. To be assured of consideration, you must submit requests to testify at the virtual hearing, and summaries of your testimony, by December 10, 2020, at 11:59 p.m. Because the hearing will be public, your testimony should not include any confidential information.

USTR will post information regarding access to the virtual public hearing at *https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-vietnam.* In addition, USTR will contact persons who are testifying at the hearing regarding the procedures for participation.

You may request to testify on the issues covered by the investigation. *See* 85 FR 63639. In particular, USTR invites hearing testimony regarding:

- The extent to which illegal timber is imported into Vietnam.
- The extent to which Vietnamese producers, including producers of wooden furniture, use illegal timber.
- The extent to which products of Vietnam made from illegal timber, including wooden furniture, are imported into the United States.
- Vietnam's acts, policies, or practices relating to the import and use of illegal timber.
- The nature and level of the burden or restriction on U.S. commerce caused by Vietnam's import and use of illegal timber.
- The determinations required under section 304 of the Trade Act, including what action, if any, should be taken in the investigation.

USTR will offer a further opportunity for public comment in the event actions affecting specific products or services are considered in the investigation. Accordingly, the upcoming hearing will not involve testimony regarding specific products or services that might be affected by an action in the investigation.

USTR will consider rebuttal comments submitted by January 6, 2021. Rebuttal comments should be strictly limited to demonstrating errors of fact or analysis not pointed out in the written submissions or hearing testimony and should be as concise as possible.

III. Submission Procedures

Requests to appear and summaries of testimony, as well as rebuttal comments, must be submitted on *Regulations.gov*. To make a submission via *Regulations.gov*, enter docket number USTR–2020–0036 in the 'search for' field on the home page and click 'search.' The site will provide a search results page listing all documents associated with this docket. Find a reference to this notice by selecting 'notice' under 'document type' in the 'filter results by' section on the left side of the screen and click on the link entitled 'comment now.'

When submitting a request to appear and a summary of your testimony, provide in the 'comment' field on the next page the full name, address, email address, and telephone number of the person who wishes to present the testimony. To submit a written statement or summary, *Regulations.gov* allows users to provide comments by filling in a 'type comment' field or by attaching a document using the 'upload file(s)' field. USTR prefers that you provide submissions in an attached document. The file name should include the name of the person who will be presenting the testimony, or if not testifying, the name of the person submitting the statement. The name of the presenter also should be clear in the content of the file itself. All submissions must be in English and be prepared in (or be compatible with) Microsoft Word (.doc) or Adobe Acrobat (.pdf) formats. Include any data attachments to the submission in the same file as the submission itself, and not as separate files. For additional information on using *Regulations.gov*, please consult the resources provided on the website by clicking on 'how to use this site' on the left side of the home page.

For any rebuttal comments that contain business confidential information (BCI), the file name of the business confidential version should begin with the characters 'BCI.' You must clearly mark any page containing BCI by including 'BUSINESS CONFIDENTIAL' on the top of that page and clearly indicating, via brackets, highlighting, or other means, the specific information that is BCI. If you request business confidential treatment, you must certify in writing that disclosure of the information would endanger trade secrets or profitability, and that you would not customarily release the information to the public. Filers of submissions containing BCI also must submit a public version of their comments. The file name of the public version should begin with the character 'P.' Follow the 'BCI' and 'P' with the name of the person or entity submitting the comments. If these procedures are not sufficient to protect BCI or otherwise protect business interests, please contact the Section 301 line at (202) 395–5725 to discuss whether alternative arrangements are possible.

USTR will post submissions in the docket for public inspection, except for submissions properly designated BCI. You can view submissions on *Regulations.gov* by entering docket number USTR–2020–0036 in the search field on the home page.

Joseph Barloon,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2020–26061 Filed 11–24–20; 8:45 am]

BILLING CODE 3290–F0–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2020–0030]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for extension of currently approved information collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for renewal of an existing information collection that is summarized below under **SUPPLEMENTARY INFORMATION.** We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by January 25, 2021.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 2020–0030 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.*

Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael Dougherty 202–366–9234, Department of Transportation, Federal Highway Administration, Office of Highway Policy Information, 1200 New Jersey Avenue SE, Washington, DC 20590, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Certification of Enforcement of the Heavy Vehicle Use Tax.

OMB Control #: 2125–0541.

Background: Title 23 United States Code, Section 141(c), provides that a State's apportionment of funds under 23 U.S.C. 104(b)(1) shall be reduced in an amount up to 8 percent of the amount to be apportioned during any fiscal year beginning after September 30, 1984, if vehicles subject to the Federal heavy vehicle use tax are lawfully registered in the State without having presented proof of payment of the tax. The annual certification by the State Governor or designated official regarding the collection of the heavy vehicle use tax serves as the FHWA's primary means of determining State compliance. The FHWA has determined that an annual certification of compliance by each State is the least obtrusive means of administering the provisions of the legislative mandate. In addition, States are required to retain for 1 year a Schedule 1, IRS Form 2290, Heavy Vehicle Use Tax Return (or other suitable alternative provided by regulation). The FHWA conducts compliance reviews at least once every 3 years to determine if the annual certification is adequate to ensure effective administration of 23 U.S.C. 141(c).

The estimated annual reporting burden is 102 hours; the estimated recordkeeping burden is 510 hours for a total of 612 hours. The 50 States and the District of Columbia share this burden. Preparing and processing the annual certification is estimated to require 2 hours per State. Recordkeeping is estimated to require an average of 10 hours per State.

Respondents: 50 State Transportation Departments, and the District of Columbia for a total of 51 respondents.

Frequency: Annually.

Estimated Average Annual Burden per Response: The average burden to submit the certification and to retain required records is 12 hours per respondent.

Estimated Total Annual Burden Hours: Total estimated average annual burden is 612 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection of information is necessary for the U.S. DOT's performance, including whether the information will have practical utility; (2) the accuracy of the U.S. DOT's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: November 20, 2020.

Michael Howell,

Information Collection Officer.

[FR Doc. 2020–26125 Filed 11–24–20; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2020–0028]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by January 25, 2021.

ADDRESSES: You may submit comments identified by DOT Docket ID 2020–0028 by any of the following methods:

Website: For access to the docket to read background documents or comments received; go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Moulden, 202–493–3470, Turner-Fairbank Highway Research Center, Office of Corporate Research, Technology, and Innovation Management, Federal Highway Administration, Department of Transportation, 6300 Georgetown Pike, McLean, VA 22101. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Federal Highway Administration Research, Development and Technology Portfolio website.

Background: Title 23, United States Code, Section 502(a)(5) requires that Federal surface transportation research and development activities address the needs of stakeholders, including ''States, metropolitan planning organizations, local governments, the private sector, researchers, research sponsors, and other affected parties, including public interest groups.'' As part of its effort to ensure that Federal research, development and technology (RD&T) activities are addressing the most critical national challenges, the Federal Highway Administration (FHWA) is developing the RD&T Agenda website. This website will communicate FHWA's RD&T goals, objectives and strategies to its stakeholders and highlight notable initiatives or projects that illustrate FHWA's RD&T approach. The website will include an electronic mechanism for stakeholders to provide feedback on the overall RD&T Agenda, FHWA's approach to addressing national transportation challenges, and potential opportunities for FHWA to collaborate with stakeholders to address them.

Respondents: Approximately 1,000 annual respondents.

Frequency: Annually.

Estimated Average Burden per Response: Approximately 10 minutes per respondent per year.

Estimated Total Annual Burden Hours: Approximately 167 hours per year.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of computer technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: November 20, 2020.

Michael Howell,

Information Collection Coordinator.

[FR Doc. 2020–26127 Filed 11–24–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2020–0027]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of

Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by January 25, 2021.

ADDRESSES: You may submit comments identified by DOT Docket ID 2020–0027 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Ferroni, 202–366–3233, Office of Planning, Environment, and Realty, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 6:00 a.m. to 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Noise Barrier Inventory.

Background: The basis of the Federal-aid highway program is a strong federal-state partnership. At the core of that partnership is a philosophy of trust and flexibility, and a belief that the states are in the best position to make investment decisions and that states base these decisions on the needs and priorities of their citizens. The FHWA noise regulation (23 CFR 772) gives each state department of transportation (SDOT) flexibility to determine the feasibility and reasonableness of noise abatement by balancing of the benefits of noise abatement against the overall adverse social, economic, and environmental effects and costs of the noise abatement measures. The SDOT must base its determination on the interest of the overall public good, keeping in mind all the elements of the highway program (need, funding, environmental impacts, public involvement, etc.).

Reduction of highway traffic noise should occur through a program of shared responsibility with the most effective strategy being implementation of noise compatible planning and land use control strategies by state and local governments. Local governments can use their power to regulate land development to prohibit noise-sensitive land use development adjacent to a highway, or to require that developers plan, design, and construct development in ways that minimize noise impacts. The FHWA noise regulations limit Federal participation in the construction of noise barriers along existing highways to those projects proposed along lands where land development or substantial construction predated the existence of any highway.

The data reflects the flexibility in noise abatement decision-making. Some states have built many noise barriers while a few have built none. Through the end of 2010, 47 SDOTs and the Commonwealth of Puerto Rico have constructed over 2,748 linear miles of barriers at a cost of over $4.05 billion ($5.44 billion in 2010 dollars). Three states and the District of Columbia have not constructed noise barriers. Ten SDOTs account for approximately sixty-two percent (62%) of total barrier length and sixty-nine percent (69%) of total barrier cost. The type of information requested can be found in 23CFR772.13(f).

The previously distributed listing can be found at *http://www.fhwa.dot.gov/environment/noise/noise_barriers/inventory/summary/sintro7.cfm.* This listing continues to be extremely useful in the management of the highway traffic noise program, in our technical assistance efforts for State highway agencies, and in responding to inquiries from congressional sources, Federal, State, and local agencies, and the general public.

An updated listing of noise barriers will be distributed nationally for use in the highway traffic noise program. It is anticipated that this information will be requested in 2014 (for noise barriers constructed in 2011, 2012 and 2013) and then again in 2017 (for noise barriers constructed in 2014, 2015 and 2016). After review of the ''Summary of Noise Barriers Constructed by December 31, 2004'' document, a SDOT may request to delete, modify or add information to any calendar year.

Respondents: Each of the 50 SDOTs, the District of Columbia, and the Commonwealth of Puerto Rico.

Frequency: Every 3 years.

Estimated Average Burden per Response: It is estimated that on average it would take 8 hours to respond to this request.

Estimated Total Annual Burden Hours: It is estimated that the estimated total annual burden is 139 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: November 20, 2020.

Michael Howell,

Information Collection Officer.

[FR Doc. 2020–26128 Filed 11–24–20; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2020–0029]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of

Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by January 25, 2021.

ADDRESSES: You may submit comments identified by DOT Docket ID 2020–0029 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Carolyn Winborne-James, 202–493–0353, Department of Transportation, Federal Highway Administration, Office of Real Estate Services, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: FHWA Excellence in Right-of-Way Awards.

Background: In 1995, the Federal Highway Administration established the biennial Excellence in Right-of-Way Awards Program to recognize partners, projects, and processes that use FHWA funding sources to go beyond regulatory compliance and achieve Right-of-Way excellence. Excellence in Right-of-Way awardees have contributed to outstanding innovations that enhance the right-of-way professional's ability to meet the challenges associated with acquiring real property for Federal-aid projects.

Similarly, FHWA established the Excellence in Right-of-Way Awards Program to honor the use of innovative practices and outstanding achievements associated with highway improvement projects as it relates to the Right-of-Way program. The goal of the program is to showcase exemplary and innovative projects, programs, initiatives, and practices that successfully integrate the consideration of the Right-of-Way program along with the association of the acquisition of land required to construct transportation facilities.

Award: Anyone can nominate a project, process, person or group that has used Federal Highway Administration funding sources to make an outstanding contribution to transportation and the Right-of-Way field. The nominator is responsible for submitting an application form that summarizes the outstanding accomplishments of the entry. FHWA will use the collected information to evaluate, showcase, and enhance the public's knowledge on addressing right-of-way challenges on transportation projects. Nominations will be reviewed by an independent panel of judges from varying backgrounds. It is anticipated that awards will be given every two years. The winners will be presented awards at the completion of the process.

Respondents: Anyone who has used Federal Highway funding sources in the fifty states, the District of Columbia and Puerto Rico.

Frequency: The information will be collected biennially.

Estimated Average Burden per Response: 6 hours per respondent per application.

Estimated Total Annual Burden Hours: It is expected that the respondents will complete approximately 50 applications for an estimated total of 600 annual burden hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: November 20, 2020.

Michael Howell,

Information Collection Officer.

[FR Doc. 2020–26126 Filed 11–24–20; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2020–0202]

Agency Information Collection Activities; Revision of an Approved Information Collection: Motor Carrier Records Change Form

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. The purpose of this ICR titled, ''Motor Carrier Records Change Form,'' is to collect information required by the Office of Registration (MC–RS) to process name changes, address changes, and reinstatements of operating authority for motor carriers, freight forwarders, and brokers.

DATES: We must receive your comments on or before January 25, 2021.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Docket Number FMCSA–2020–0202 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building,

Ground Floor, Room W12–140, 20590–0001.

• *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov,* and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008. (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdfE8-794.pdf.*

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal website. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Jeff Secrist, Chief, Office of Registration & Safety Information, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: (202) 385–2367; email *jeff.secrist@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Federal Motor Carrier Safety Administration (FMCSA) registers for-hire motor carriers under 49 U.S.C. 13902, surface freight forwarders under 49 U.S.C. 13903, and property brokers under 49 U.S.C. 13904. Each registration is effective from the date specified under 49 U.S.C. 13905(c). 49 CFR part 365.413, ''Procedures for changing the name or business form of a motor carrier, freight forwarder, or property broker,'' states that motor carriers, forwarders, and brokers must submit the required information to FMCSA's Office of Registration (MC–RS) requesting the change. 49 CFR 360.3(f) mentions fees that FMCSA collects for ''petition for reinstatement of revoked operating authority,'' but does not provide any specifics for the content that petition should take.

Motor carriers, freight forwarders, and property brokers are required to use Form MCSA–5889 to request a name or address change and to request reinstatement of a revoked operating authority. Respondents can submit the form online through the Licensing and Insurance (L&I) website, by fax, or by mail. According to data collected between 2017 and 2019, annually, 1% of forms are submitted by mail; 32% are submitted by fax; and 67% are submitted online. The information collected is then entered in the L&I database by FMCSA staff.

Form MCSA–5889 enables FMCSA to maintain up-to-date records so that the Agency can recognize the entity in question in case of enforcement actions or other procedures required to ensure that the carrier is fit, willing, and able to provide for-hire transportation services, and so that entities whose operating authority has been revoked can resume operation if they are not otherwise blocked from doing so. This multi-purpose form, filed by registrants on a voluntary, as-needed basis, simplifies the process of gathering the information needed to process the entities' requests in a timely manner, with the least amount of effort for all parties involved.

To reduce burden on respondents, increase consistency among FMCSA forms, and to ensure regulatory compliance, FMCSA removed and added the following questions from the currently approved Form MCSA–5889:

1. Added a Yes/No question: ''Do you currently have, or have you had within the last three years of the date of this application, relationships involving common stock, common ownership, common management, common control or familial relationships with any FMCSA-regulated entities?'' The purpose of this is to close the affiliation disclosure loophole. If the respondent answers ''Yes'', they must then report the affiliate's USDOT number, MC/FF/MX number, legal name, doing business as name (if applicable), and current safety rating.

2. Added the Applicant's Oath. The applicant must read the oath, print their name and title, and sign the form. The purpose of this addition is to increase accountability and make Form MCSA–5889 consistent with similar FMCSA forms.

3. Removed one question asking whether the applicant or its representative completed the form. This was removed because the information is not necessary.

4. Removed three questions: Name, title, and signature. This was done because, with the addition of the Applicant's Oath, these questions became redundant.

The form prompts users to report the following data points (whichever are relevant to their records change request):

1. Requestor's fax number, email address, and applicant's oath.

2. Entity's legal/doing business as names, USDOT number, docket MC/MX/FX number, current street address, and phone numbers.

3. Affiliations with FMCSA-licensed entities.

4. Requested changes to the entity's address.

5. Requested changes to the entity's name and/or ownership, management or control.

6. Type(s) of operating authority the entity wishes to reinstate.

7. Credit card information (name, number, expiration date, address, date) if filing a name change or reinstatement.

Title: Motor Carrier Records Change Form.

OMB Control Number: 2126–0060.

Type of Request: Revision.

Respondents: For-hire motor carriers, brokers, and freight forwarders.

Estimated Number of Respondents: 27,122.

Estimated Time per Response: 15 minutes per response.

Expiration Date: August 31, 2021.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 6,781 hours [27,122 responses × 0.25 hours per response].

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will

summarize or include your comments in the request for OMB's clearance of this information collection.

Issued under the authority delegated in 49 CFR 1.87.

Tom Keane,

Associate Administrator, Office of Research and Registration.

[FR Doc. 2020–26058 Filed 11–24–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

[DOT–OST–2020–0237]

Workshop on GPS Jamming and Spoofing in the Maritime Environment

AGENCY: Office of the Assistant Secretary of Transportation for Research and Technology (OST–R), U.S. Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: The purpose of this notice is to inform the public that DOT, through the Office of the Assistant Secretary for Research and Technology (OST–R) and the Maritime Administration (MARAD), will host a workshop on Global Positioning System (GPS) jamming and spoofing in the maritime environment on December 3, 2020. The workshop will focus on:

- How positioning, navigation, and timing (PNT) supports maritime applications;
- What happens when PNT is denied, disrupted, or manipulated in a maritime environment; and
- Options to reduce operational impact and increase PNT resiliency.

This DOT Workshop will be held virtually and is open to the general public by registration only. For those who would like to attend the workshop, we request that you register no later than November 30, 2020. Please use the following link to register: *https://volpe-events.webex.com/volpe-events/onstage/g.php?MTID=e8d794472bbf3089c77da9ac1c31efdc2.*

You must include:

- Name
- Organization
- Telephone number
- Mailing and email addresses
- Country of citizenship

Several days before the workshop, an email containing the agenda, dial-in number, and WebEx information will be provided. DOT is committed to providing equal access to this workshop for all participants. If you need alternative formats or services because of a disability, please contact Elliott Baskerville (contact information listed below) with your request by the close of business on November 27, 2020.

Date and Time: December 3, 2020, from 1:00–5:00 p.m. (EST).

Location: This workshop will be held virtually.

FOR FURTHER INFORMATION CONTACT: Elliott Baskerville, Office of Positioning, Navigation, and Timing & Spectrum Management, Office of the Assistant Secretary for Research and Technology, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, 202–366–5284, *Elliott.Baskerville@dot.gov.*

SUPPLEMENTARY INFORMATION:

1. Overview

Accurate and reliable PNT capabilities are essential for the safety for all modes of transportation and will become increasingly important for automated vessels. The primary and most recognizable PNT service supporting critical infrastructure is GPS. However, because GPS relies on signals broadcast from the satellite constellation, its signals are low power at the receiver and are thus vulnerable to intentional and unintentional disruption, such as jamming and spoofing. GPS ''jamming'' involves the use of a device to block or interfere with GPS signals; ''spoofing'' is deceiving a GPS device through fake signals. Both phenomena undermine the reliability of GPS and may have adverse consequences for maritime safety and commerce.

Jamming has long been a threat to GPS due to the weak signal power from the GPS satellites. North Atlantic Treaty Organization (NATO) military drills in the Baltic Sea last year, with 40,000 troops and all 29 Nations participating, experienced GPS jamming. Spoofing was considered an unrealistic threat for many years because it is complicated to perform. However, high-profile demonstrations at the University of Texas that spoofed a drone and a sophisticated yacht brought spoofing into the public eye in 2012–2013, a little more than a decade after DOT's Volpe National Transportation Systems Center (Volpe Center) issued its report, ''Vulnerability Assessment of the Transportation Infrastructure Relying on the Global Positioning System'' (August 2001; available at: *https://rosap.ntl.bts.gov/view/dot/8435*).

A likely GPS spoofing attack occurred in the Black Sea in 2017, where over 20 ships erroneously reported their GPS positions as being inland at an airport. The number of separate vessels that reported the same false position and the characteristic jumping between the false and true position of the ships is strong evidence of a large-scale spoofing attack. More recently, incidents of GPS spoofing have been occurring around the world, particularly in maritime environments. The U.S. Government provides advisories of GPS interference through the Maritime Security Communications with Industry (MSCI) portal, at *https://www.maritime.dot.gov/msci/2020-016-various-gps-interference.*

Much of global trade is conducted by waterways, where ports are often congested and visibility is variable. In a maritime environment, GPS not only provides positioning information, but also provides inputs to speed, heading, steering, radar and target information, Electronic Chart Display Information System (ECDIS), Under Keel Clearance (UKC), and the Automatic Identification System (AIS). Being able to detect when spoofing is occurring is vital, since over 50% of all casualties at sea occur due to navigation issues. When GPS jamming and spoofing is detected, the goal is for ships to immediately switch to other navigation tools. It is therefore critical to use complementary PNT technologies to ensure PNT resiliency.

Consistent with these concerns, on February 12, 2020, President Trump issued Executive Order (E.O.) 13905, *Strengthening National Resilience through Responsible Use of Positioning, Navigation, and Timing Services.* The goal is to foster the responsible use of PNT services by critical infrastructure owners and operators (including the transportation sector) to strengthen national resilience. E.O. 13905 seeks to ensure that disruption or manipulation of PNT services does not undermine the reliability or efficiency of critical infrastructure by:

- Raising awareness of the extent to which critical infrastructure depends on PNT services;
- Ensuring that critical infrastructure can withstand disruption or manipulation of PNT services; and
- Engaging the public and private sectors to promote responsible use of PNT services.

In accordance with Section 4(g) of E.O. 13905, DOT is conducting a pilot program to inform the development of the relevant PNT profile and research and development (R&D) opportunities. The DOT pilot program, led by OST–R and MARAD, is focused on addressing GPS jamming and spoofing impacts to maritime vessels through stakeholder engagement and evaluating complementary PNT technologies that can be adopted to mitigate the impacts during these threat scenarios. The DOT pilot program will be conducted through stakeholder engagement and evaluation of complementary PNT technologies that can be adopted to

mitigate the impacts during these threat scenarios.

The purpose of the workshop, which is a key component of stakeholder engagement of the DOT pilot program, is to increase public awareness of real-world incidents of the GPS signal being jammed or spoofed in a maritime environment and to discuss potential options to detect this interference, as well as use of complementary PNT technologies to provide a resilient PNT capability in the maritime environment.

Issued this 20th day of November, 2020, in Washington, DC.

Diana Furchtgott-Roth,

Deputy Assistant Secretary for Research and Technology, U.S. Department of Transportation.

[FR Doc. 2020–26120 Filed 11–24–20; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning the monthly tax return for wagers.

DATES: Written comments should be received on or before January 25, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to LaNita Van Dyke, at (202) 317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Monthly Tax Return for Wagers.

OMB Number: 1545–0235.

Regulation Project Number: Form 730.

Abstract: Form 730 is used to identify taxable wagers under Internal Revenue Code section 4401 and collect the tax monthly. The information is used to determine if persons accepting wagers are correctly reporting the amount of wagers and paying the required tax.

Current Actions: There is no change to this existing form.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations and individuals.

Estimated Number of Respondents: 51,082.

Estimated Time per Respondent: 8 hours, 11 minutes.

Estimated Total Annual Burden Hours: 418,362.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 18, 2020.

Chakinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2020–25998 Filed 11–24–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its effort to reduce paperwork and respondent burden, invites the general public and Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Treatment of Gain from the Disposition of Interest in Certain Natural Resource Recapture Property by S Corporations and Their Shareholders.

DATES: Written comments should be received on or before January 25, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Paul D. Adams, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the information collection should be directed to Sara Covington, (737) 800–6149, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Treatment of Gain From the Disposition of Interest in Certain Natural Resource Recapture Property by S Corporations and Their Shareholders.

OMB Number: 1545–1493.

Regulation Project Number: T.D. 8684.

Abstract: This regulation prescribes rules under Code section 1254 relating to the treatment by S corporations and their shareholders of gain from the disposition of natural resource recapture property and from the sale or exchange of S corporation stock. Section 1.1254–4(c)(2) of the regulation provides that gain recognized on the sale or exchange of S corporation stock is not treated as ordinary income if the shareholder attaches a statement to his or her return containing information establishing that the gain is not attributable to section 1254 costs.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 19, 2020.

Sara L. Covington,

IRS Tax Analyst.

[FR Doc. 2020–26018 Filed 11–24–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 8609 and 8609A.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 8609, Low-Income Housing Credit Allocation and Certification, and Form 8609–A, Annual Statement for Low-Income Housing Credit.

DATES: Written comments should be received on or before January 25, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to LaNita Van Dyke, at (202) 317–6009 or Internal Revenue Service, room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Low-Income Housing Credit Allocation and Certification.

OMB Number: 1545–0988.

Form Number: Form 8609 and Form 8609A.

Abstract: Owners of residential low-income rental buildings are allowed a low-income housing credit for each qualified building over a 10-year credit period. Form 8609 can be used to obtain a housing credit allocation from the housing credit agency. A separate Form 8609 must be issued for each building in a multiple building project. Form 8609 is also used to certify certain information. Form 8609–A is filed by a building owner to report compliance with the low-income housing provisions and calculate the low-income housing credit. Form 8609–A must be filed by the building owner for each year of the 15-year compliance period. File one Form 8609–A for the allocation(s) for the acquisition of an existing building and a separate Form 8609–A for the allocation(s) for rehabilitation expenditures.

Current Actions: There is no change to this existing regulation. However, the agency has updated the number of respondents to reflect the most recent data available.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, not-for-profit institutions, and farms.

Estimated Number of Respondents: 30,000.

Estimated Time per Respondent: 18 hours, 16 minutes.

Estimated Total Annual Burden Hours: 414,915.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 18, 2020.

Chakinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2020–25996 Filed 11–24–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning product liability losses and

accumulations for product liability losses.

DATES: Written comments should be received on or before January 25, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to LaNita Van Dyke, at (202) 317–6009, or Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Discharge of Liens.

OMB Number: 1545–0854.

Regulation Project Number: T.D. 9410, Form 14497 and Form 14498.

Abstract: The Internal Revenue Service needs this information in processing a request to sell property subject to a tax lien to determine if the taxpayer has equity in the property. This information will be used to determine the amount, if any, to which the tax lien attaches.

Current Actions: There is no change to this existing regulation or to the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations and farms.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 7.67.

Estimated Total Annual Burden Hours: 3,833.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 18, 2020.

Chakinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2020–25997 Filed 11–24–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to comment on the proposed information collections listed below, in accordance with the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before December 28, 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: Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 1505–0231.

Type of Review: Extension without change of a currently approved collection.

Description: The collection of information is necessary for the Department to solicit customer and stakeholder feedback with respect to 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.

Form: None.

Affected Public: Businesses or other for-profits; Non-profit institutions, State and Local Governments; Individuals and Households.

Estimated Number of Respondents: 14,000.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 14,000.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 3,500 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: November 20, 2020.

Molly Stasko,

Treasury PRA Clearance Officer.

[FR Doc. 2020–26089 Filed 11–24–20; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Financial Crimes Enforcement Network Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests 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. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before December 28, 2020 to be assured of consideration.

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: Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Financial Crimes Enforcement Network (FinCEN)

1. Title: Customer identification programs (CIP) for certain financial institutions (31 CFR 1020.220, 1023.220, 1024.220, and 1026.220).

OMB Control Number: 1506–0022, 1506–0026, 1506–0033, and 1506–0034.

Type of Review: Extension without change of a currently approved collection.

Description: The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of the Currency and Financial Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) (Pub. L. 107–56) and other legislation. The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, 31 U.S.C. 5311–5314 and 5316–5332, and notes thereto, with implementing regulations at 31 CFR Chapter X.

The BSA authorizes the Secretary of the Treasury, inter alia, to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement anti-money laundering (AML) programs and compliance procedures. Regulations implementing Title II of the BSA appear at 31 CFR Chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

31 U.S.C. 5318(l) requires FinCEN to issue regulations prescribing minimum standards for customer identification programs (CIP) for financial institutions. Regulations implementing section 5318(l) are as follows: (i) Banks, savings associations, credit unions, and certain non-federally regulated banks (31 CFR 1020.220); (ii) brokers or dealers in securities (31 CFR 1023.220); (iii) mutual funds (31 CFR 1024.220); and (iv) futures commission merchants and introducing brokers in commodities (31 CFR 1026.220).

Form: Not applicable.

Affected Public: Businesses or other for-profit institutions; Not-for-profit institutions.

Estimated Number of Respondents: 16,938.

Frequency of Response: As required.

Estimated Total Number of Annual Responses: 29,000,000.

Estimated Total Annual Burden Hours: 1,152,985 hours.

2. Title: Information Collection Requirements in Connection With the Imposition of a Special Measure Against Bank of Dandong, a Financial Institution of Primary Money Laundering Concern.

OMB Control Number: 1506–0072.

Type of Review: Extension without change of a currently approved collection.

Description: The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of the Currency and Financial Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) (Pub. L. 107–56) and other legislation. The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, 31 U.S.C. 5311–5314 and 5316–5332, and notes thereto, with implementing regulations at 31 CFR Chapter X.

The BSA authorizes the Secretary of the Treasury, inter alia, to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement anti-money laundering (AML) programs and compliance procedures. Regulations implementing Title II of the BSA appear at 31 CFR Chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

Section 311 of the USA PATRIOT Act (Section 311), codified at 31 U.S.C. 5318A, grants FinCEN the authority, upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, financial institution, class of transactions, or type of account is of primary money laundering concern, to require domestic financial institutions and financial agencies to take certain special measures to address the primary money laundering concern.

FinCEN may impose one or more of these special measures in order to protect the U.S. financial system from these threats. Special measures one through four, codified at 31 U.S.C. 5318A(b)(1)–(b)(4), impose additional recordkeeping, information collection, and reporting requirements on covered U.S. financial institutions. The fifth special measure, codified at 31 U.S.C. 5318A(b)(5), allows FinCEN to impose prohibitions or conditions on the opening or maintenance of certain correspondent accounts.

FinCEN issued a final rule on November 8, 2017, imposing the fifth special measure to prohibit covered U.S. financial institutions from opening or maintaining a correspondent account for, or on behalf of, Bank of Dandong.[3] The rule further requires covered U.S. financial institutions to apply due diligence to their correspondent accounts that is reasonably designed to guard against their use by Bank of Dandong.[4] It also requires covered institutions to apply special due diligence to their foreign correspondent accounts that is reasonably designed to guard against their use to process transactions involving Bank of Dandong.

The notification requirement in 31 CFR 1010.660(b)(3)(i)(A) is intended to enhance cooperation from correspondent account holders in preventing Bank of Dandong from accessing to the U.S. financial system. The information financial institutions are required to maintain pursuant to section 1010.660(b)(4)(i) will be used by federal agencies and certain self-regulatory organizations to verify compliance by covered financial

institutions with the provisions of 31 CFR 1010.660.

Form: Not applicable.

Affected Public: Businesses or other for-profit institutions; Not-for-profit institutions.

Estimated Number of Respondents: 17,063.

Frequency of Response: Once.

Estimated Total Number of Annual Responses: 17,063.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 17,063 hours.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: November 20, 2020.

Molly Stasko,

Treasury PRA Clearance Officer.

[FR Doc. 2020–26093 Filed 11–24–20; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Fiscal Service Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests 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. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before December 28, 2020 to be assured of consideration.

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: Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Fiscal Service (FS)

1. Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 1530–0023.

Type of Review: Extension without change of a currently approved collection.

Description: The Bureau of the Fiscal Service conducts various surveys, focus groups, and interviews to assess the effectiveness and efficiency of existing products and services; to obtain knowledge about the potential public audiences attracted to new products being introduced; and to measure awareness and appeal of efforts to reach audiences and customers.

Form: None.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 75,000.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 75,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 12,000 hours.

2. Title: U.S. Treasury Auction Submitter Agreement.

OMB Control Number: 1530–0056.

Type of Review: Revision of a currently approved collection.

Description: The information is requested from entities wishing to participate in U.S. Treasury Securities auctions via the Treasury Automated Auction Processing System (TAAPS).

Form: FS Form 5441 and FS Form 5441–2.

Affected Public: Businesses or other for-profit institutions.

Estimated Number of Respondents: 1,050.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 1,050.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 88 hours.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: November 20, 2020.

Molly Stasko,

Treasury PRA Clearance Officer.

[FR Doc. 2020–26085 Filed 11–24–20; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Alcohol and Tobacco Tax and Trade Bureau Information Collection Requests

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests 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. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before December 28, 2020 to be assured of consideration.

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: Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Alcohol and Tobacco Tax and Trade Bureau (TTB)

1. Title: Application to Establish and Operate Wine Premises, and Wine Bond.

OMB Control Number: 1513–0009.

Type of Review: Extension of a currently approved collection.

Description: The Internal Revenue Code (IRC) at 26 U.S.C. 5351–5357 requires a person wishing to establish a bonded winery, bonded wine cellar, or taxpaid wine bottling house to make application and, in the case of a winery or wine cellar, file a bond in conformity with regulations issued by the Secretary of the Treasury (the Secretary). Under those IRC authorities, TTB regulations provide that respondents file TTB F 5120.25, Application to Establish and Operate Wine Premises, to apply for wine premises permits. Proprietors of established wine premises also use TTB F 5120.25 to report certain changes to previously submitted information. In addition, respondents use TTB F 5120.36, Wine Bond, to file a bond with TTB unless specifically exempted from the bond requirement by the IRC at 26 U.S.C. 5551(d). Respondents may obtain a surety bond or they may provide a collateral bond secured with cash, Treasury Bonds, or Treasury Notes. TTB uses the information collected on the application form to determine if the

respondent is qualified under the IRC for a permit, while the information collected through the bond form is intended to ensure payment of any delinquent excise tax liabilities.

Form: TTB F 5120.25 and TTB F 5120.36.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 7,350.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 7,350.

Estimated Time per Response: 0.75 hour.

Estimated Total Annual Burden Hours: 5,513 hours.

2. Title: Brewer's Bond and Brewer's Bond Continuation Certificate; Brewer's Collateral Bond and Brewer's Collateral Bond Continuation Certificate.

OMB Control Number: 1513–0015.

Type of Review: Extension of a currently approved collection.

Description: The IRC at 26 U.S.C. 5401(b) generally requires brewers to provide a bond at the time of filing a notice of the intent to operate, unless they are exempt from such bond requirement under 26 U.S.C. 5551(d), which exempts brewers eligible to pay excise taxes on an annual or quarterly basis. To meet the bond requirement, brewers may file a surety bond using TTB F 5130.22, Brewer's Bond, or, under 26 U.S.C. 7101, brewers may deposit cash or certain U.S. securities as collateral using TTB F 5130.25, Brewer's Collateral Bond. Also under the IRC at 26 U.S.C. 5401(b), such bonds expire every four years. Instead of filing a new bond, a brewer may furnish a continuation certificate to extend the term of a surety bond using TTB F 5130.23, Brewer's Bond Continuation Certificate, or a collateral bond using TTB F 5130.27, Brewer's Collateral Bond Continuation Certificate, TTB F 5130.27, as appropriate. The collected information is necessary to protect the revenue as the required bonds ensure payment of any delinquent excise tax liabilities.

Form: TTB F 5130.22, TTB F 5130.23, TTB F 5130.25, and TTB F 5130.27.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 220.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 225.

Estimated Time per Response: 0.65 hour.

Estimated Total Annual Burden Hours: 143 hours.

3. Title: Drawback on Beer Exported.

OMB Control Number: 1513–0017.

Type of Review: Extension of a currently approved collection.

Description: Under the IRC at 26 U.S.C. 5055, brewers may claim drawback (refund) of Federal excise taxes paid on beer produced in the United States when they export such beer or deliver it for use as supplies on vessels or aircraft, if the claimant provides proof of export as the Secretary requires by regulation. Under that authority, the TTB regulations require respondents to file such drawback claims using TTB F 5130.6, Drawback on Beer Exported. This form documents the beer's export to a foreign country, receipt by the U.S. Armed Forces for overseas delivery, use as supplies on vessels or aircraft, or its transfer to a foreign trade zone for subsequent export. The collected information is necessary to protect the revenue as it allows TTB to determine if beer is eligible for export drawback.

Form: TTB F 5130.6.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 100.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 2,000.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 2,000 hours.

4. Title: Notice of Release of Tobacco Products, Cigarette Papers, or Cigarette Tubes.

OMB Control Number: 1513–0025.

Type of Review: Extension of a currently approved collection.

Description: The IRC at 26 U.S.C. 5704 provides for, among other things, the release of imported or returned tobacco products and cigarette papers and tubes from customs custody, without payment of tax, for delivery to an export warehouse proprietor or a manufacturer of tobacco products or cigarette papers and tubes, in accordance with regulations issued by the Secretary. Under the TTB regulations, industry members use TTB F 5200.11 in cases where the industry member does not electronically file its import entries with U.S. Customs and Border Protection. Using that form, the industry member, TTB, and customs bonded warehouse proprietors or government officials, respectively, request, authorize, and document the release of tobacco products and cigarette papers and tubes from customs custody, without payment of tax, to a manufacturer or export warehouse proprietor authorized to receive such articles. The collected information is necessary to protect the revenue as it allows TTB to account for and detect diversion of untaxpaid articles. (TTB accounts for electronic filing of import entries under OMB Control No. 1513–0064.)

Form: TTB F 5200.11.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 10.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 60.

Estimated Time per Response: 0.25 hour.

Estimated Total Annual Burden Hours: 15 hours.

5. Title: Inventory—Manufacturer of Tobacco Products or Processed Tobacco.

OMB Control Number: 1513–0032.

Type of Review: Extension of a currently approved collection.

Description: The IRC at 26 U.S.C. 5721 requires manufacturers of tobacco products and processed tobacco to complete an inventory at the commencement of business, the conclusion of business, and at any other time the Secretary by regulation prescribes. The IRC at 26 U.S.C. 5741 also requires those manufacturers to keep records, which they must make available for inspection in the manner the Secretary by regulation prescribes. Under these authorities, the TTB regulations require manufacturers of tobacco products and processed tobacco to provide inventories on TTB F 5210.9 at the commencement of business, the conclusion of business, when changes in business ownership or location occur, and at any other time directed to do so by the appropriate TTB officer. TTB F 5210.9 provides a uniform format for recording those inventories, which TTB uses to ensure that a manufacturer's Federal excise tax is correctly determined. The required records document the operations regulated under the IRC and provide the basis for determining the industry member's tax liability and conformance with IRC requirements.

Form: TTB F 5210.9.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 100.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 100.

Estimated Time per Response: 5 hours.

Estimated Total Annual Burden Hours: 500 hours.

6. Title: Withdrawal of Spirits, Specially Denatured Spirits, or Wines for Exportation.

OMB Control Number: 1513–0037.

Type of Review: Extension of a currently approved collection.

Description: The IRC, at 26 U.S.C. 5066, 5214, and 5362, provides that persons may withdraw distilled spirits, denatured spirits, and wines from bonded premises without payment of Federal excise tax for export. These IRC sections also state that such withdrawals are subject to regulations prescribed by the Secretary. Under the TTB regulations, such export includes direct export to a foreign country, export to U.S. armed forces stationed overseas, transfer to a foreign trade zone or a customs bonded warehouse for subsequent export, or for use as supplies on vessels or aircraft. Under that IRC authority, the TTB regulations in 27 CFR part 28 require exporters use TTB F 5100.11 to report such removals. The collected information is necessary to protect the revenue as it allows TTB to account for and detect diversion of untaxpaid alcohol products.

Form: TTB F 5100.11.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 150.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 3,000.

Estimated Time per Response: 0.5 hour.

Estimated Total Annual Burden Hours: 1,500 hours.

7. Title: Application for Transfer of Spirits and/or Denatured Spirits in Bond.

OMB Control Number: 1513–0038.

Type of Review: Extension of a currently approved collection.

Description: Under the IRC at 26 U.S.C. 5005(c), when a proprietor of a distilled spirits plant (DSP) or an alcohol fuel plant (AFP, a type of DSP) desires to have spirits or denatured spirits transferred to its plant from another domestic plant, the proprietor must make an application to receive such spirits in bond. Under that IRC authority, the TTB regulations in 27 CFR part 19 require the receiving proprietor to file an application for the transfer on TTB F 5100.16, Application for Transfer of Spirits and/or Denatured Spirits in Bond. TTB must approve the application before the transfer may occur. The collected information is necessary to protect the revenue as it allows TTB to ensure that the receiving plant has adequate bond coverage or, for certain small alcohol excise taxpayers, is exempt from such bond coverage.

Form: TTB F 5100.16.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 250.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 1,500.

Estimated Time per Response: 0.152 hour.

Estimated Total Annual Burden Hours: 228 hours.

8. Title: Distilled Spirits Plants—Notices of Alternations and Changes in Production Status, and Alternating Premises Records.

OMB Control Number: 1513–0044.

Type of Review: Extension of a currently approved collection.

Description: Under the IRC at 26 U.S.C. 5178(a), a distilled spirits plant (DSP) is a delineated place on which proprietors can only conduct certain authorized activities. However, under section 5178(b), the Secretary may authorize other businesses on a DSP's premises under certain circumstances upon application. Further, under the IRC at 26 U.S.C. 5221, DSP proprietors must give written notification, in the form and manner prescribed by regulation, when they begin, suspend, or resume production of spirits. In addition, the IRC at 26 U.S.C. 5555 requires those liable for any tax imposed by chapter 51 of the IRC to keep such records, submit such returns and statements, and comply with such rules and regulations as the Secretary may prescribe. Under these authorities, TTB has issued regulations in 27 CFR part 19 requiring that DSP proprietors provide written notification regarding alternation of a DSP between proprietors or for customs purposes, and regarding changes to the production status of spirits. TTB also has issued regulations requiring that DSP proprietors keep records regarding alternations of their premises, including alternations with an adjacent bonded wine cellar, taxpaid wine bottling house, or brewery, and alternations as a manufacturer of eligible flavors or as general premises.

Form: None.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 1,250.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 6,250.

Estimated Time per Response: 0.5 hour.

Estimated Total Annual Burden Hours: 3,125 hours.

9. Title: Registration of Distilled Spirits Plants and Miscellaneous Requests and Notices and Distilled Spirits Plans.

OMB Control Number: 1513–0048.

Type of Review: Extension of a currently approved collection.

Description: The IRC, at 26 U.S.C. 5171 and 5172, provides that an applicant must register a distilled spirits plant (DSP) in conformity with regulations issued by the Secretary, while 26 U.S.C. 5201 requires DSP proprietors to operate their premises in conformity with such regulations. Under those IRC authorities, the TTB regulations in 27 CFR part 19 prescribe the use of TTB F 5110.41 to register a DSP or to make certain amendments to an existing DSP registration. Those regulations also require DSP proprietors to submit various notices or requests to vary their operations from the requirements of that part. In addition, those TTB regulations require non-DSP proprietors to submit applications or notices related to certain distilled spirits activities, such as establishment of an experimental DSP or use of spirits for research purposes. The required information is necessary to protect the revenue as it assists TTB in determining a person's eligibility to establish and operate a DSP, whether TTB should approve a variance from its regulatory requirements, and whether non-DSP entities are eligible to engage in certain activities involving distilled spirits.

Form: TTB F 5110.41.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 3,520.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 3,830.

Estimated Time per Response: 2.573 hours.

Estimated Total Annual Burden Hours: 9,855 hours.

10. Title: Tax Deferral Bond—Distilled Spirits (Puerto Rico).

OMB Control Number: 1513–0050.

Type of Review: Extension of a currently approved collection.

Description: Under the IRC at 26 U.S.C. 7652, beverage distilled spirits and nonbeverage products containing spirits subject to tax manufactured in Puerto Rico and brought into the United States are subject to a tax equal to that imposed on domestically produced spirits under 26 U.S.C. 5001. Additionally, that section authorizes the Secretary to prescribe regulations regarding the mode and time for payment and collection of such taxes. Under that IRC authority, the TTB regulations allow respondents who ship such products from Puerto Rico to the United States to choose either (1) to pay the required tax prior to shipment or (2) to file a bond to defer payment of the tax until the submission of the respondent's next excise tax return and payment. The TTB regulations require respondents who elect to defer payment of tax to file a tax deferral bond on TTB

F 5110.50. The required surety bond is necessary to protect the revenue as it ensures payment of the applicable excise tax.

Form: TTB F 5110.50

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 10.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 10.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 10 hours.

11. Title: Report of Wine Premises Operations.

OMB Control Number: 1513–0053.

Type of Review: Extension of a currently approved collection.

Description: The IRC at 26 U.S.C. 5367 authorizes regulations requiring the keeping of records and the filing of returns related to wine cellar and bottling house operations. Section 5555 of the IRC also generally requires any person liable for tax under chapter 51 of the IRC to keep records, provide statements, and make returns as prescribed by regulation. Under those authorities, the TTB wine regulations in 27 CFR part 24 require wine premises proprietors to file periodic operations reports on form TTB F 5120.17. TTB uses the collected information to determine excise tax liabilities and to ensure that respondents operate in accordance with applicable Federal law and regulations. TTB also uses this report to collect raw data on wine premises activity for its generalized monthly statistical report on wine operations, which TTB makes public on its website.

Form: TTB F 5120.17.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 12,200.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 52,870.

Estimated Time per Response: 1.10 hours.

Estimated Total Annual Burden Hours: 58,157 hours.

12. Title: Excise Tax Return.

OMB Control Number: 1513–0083.

Type of Review: Extension of a currently approved collection.

Description: Under the IRC at 26 U.S.C. 5061(a) and 5703(b), the Federal alcohol and tobacco excise tax is collected on the basis of a return. Such excise taxpayers, other than those in Puerto Rico, report their alcohol or tobacco excise tax liability using TTB F 5000.24, Excise Tax Return. Tobacco taxpayers and large alcohol producers file their returns and pay their excise taxes on a semi-monthly basis, while certain small alcohol producers file returns and pay taxes on a quarterly or annual basis, depending on certain circumstances. The collected information is necessary to protect the revenue as it allows TTB to establish a taxpayer's identity, the amount and type of taxes due, and the amount of payments made.

Form: TTB F 5000.24.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 18,825.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 116,715.

Estimated Time per Response: 0.75 hour.

Estimated Total Annual Burden Hours: 87,536 hours.

13. Title: Marks on Wine Containers (TTB REC 5120/3).

OMB Control Number: 1513–0092.

Type of Review: Extension of a currently approved collection.

Description: The IRC at 26 U.S.C. 5041 imposes a Federal excise tax of varying rates on six classes of wine—three classes of still wines (based on alcohol content), two classes of effervescent wines, and one class of hard cider. Under the authority of the IRC at 26 U.S.C. 5357, 5368, 5388, and 5662, the TTB regulations in 27 CFR part 24, Wine, require wine premises proprietors to correctly identify wines kept on or removed from their premises by placing certain marks and labels on all production, storage, and consumer containers of wine. Because there are six excise tax classes of wine, and different classes of wine may be produced at the same facility, the required information is necessary to protect the revenue as it helps ensure the appropriate tax is collected. TTB notes, however, that the marking and labeling of wine containers is a usual and customary practice carried out by wine premises proprietors during the normal course of business, regardless of any regulatory requirement to do so, in order to track production and inventory and inform the public of the content of their products.

Recordkeeping Number: TTB REC 5120/3.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 14,340.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 14,340.

Estimated Time per Response: None. (Under the OMB regulations 5 CFR 1320.3(b)(2), regulatory requirements to maintain usual and customary records kept during the normal course of business place no burden on respondents as defined in the Paperwork Reduction Act.).

Estimated Total Annual Burden Hours: None.

14. Title: Special Tax ''Renewal'' Registration and Return/Special Tax Location Registration Listing.

OMB Control Number: 1513–0113.

Type of Review: Extension of a currently approved collection.

Description: The IRC at 26 U.S.C. 5731 and 5732 requires manufacturers of tobacco products, manufacturers of cigarette papers and tubes, and export warehouse proprietors to pay an annual special (occupational) tax (SOT) for each such premises that they operate. In addition, the IRC at 26 U.S.C. 5732 requires such proprietors to pay SOT on the basis of a return under regulations issued by the Secretary. Form TTB F 5630.5R, which TTB sends out annually to tobacco industry members that have previously paid the special tax, meets this purpose. TTB's use of TTB F 5630.5R protects the revenue by facilitating the registration of premises subject to SOT and the timely payment of that tax by the businesses subject to it. The information collected on the form is essential to TTB's collecting, processing, and accounting for these special occupational taxes.

Form: TTB F 5630.5R.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 220.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 220.

Estimated Time per Response: 0.25 hour.

Estimated Total Annual Burden Hours: 55 hours.

15. Title: Usual and Customary Business Records Relating to Wine, TTB REC 5120/1.

OMB Control Number: 1513–0115.

Type of Review: Extension of a currently approved collection.

Description: Under the authority of the IRC at 26 U.S.C. 5362, 5367, 5369, 5370, and 5555, the TTB regulations require wineries, taxpaid wine bottling houses, and vinegar plants to keep usual and customary business records. These records include purchase invoices, sales invoices, and internal records related to their production and processing, packaging, storing, and shipping operations. TTB routinely inspects these records to ensure proper payment of wine excise taxes, and, to ensure that proprietors produce, package, store,

ship, and transfer wine in compliance with statutory and regulatory requirements.

Recordkeeping Number: TTB REC 5120/1.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 14,340.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 14,340.

Estimated Time per Response: None. (Under the OMB regulations 5 CFR 1320.3(b)(2), regulatory requirements to maintain usual and customary records kept during the normal course of business place no burden on respondents as defined in the Paperwork Reduction Act.).

Estimated Total Annual Burden Hours: None.

16. Title: Pay.gov User Agreement.

OMB Control Number: 1513–0117.

Type of Review: Extension of a currently approved collection.

Description: The Federal Government's *Pay.gov* system allows businesses and members of the public to pay various taxes and fees, and submit various reports and requests, electronically. The TTB portion of the *Pay.gov* system provides qualified alcohol and tobacco proprietors with a means to file tax returns and pay taxes, and submit operations and production reports, electronically rather than submitting paper checks and documents by postal mail or delivery service. TTB uses the *Pay.gov* User Agreement, TTB F 5000.31, to identify, validate, approve, and register qualified users of its portion of the *Pay.gov* system in order to prevent misuse of that system.

Form: TTB F 5000.31.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 2,000.

Frequency of Response: Once.

Estimated Total Number of Annual Responses: 2,000.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 500 hours.

17. Title: Application, Permit, and Report—Wine and Beer (Puerto Rico); and Application, Permit, and Report—Distilled Spirits Products (Puerto Rico).

OMB Control Number: 1513–0123.

Type of Review: Extension of a currently approved collection.

Description: In general, under the IRC at 26 U.S.C. 7652(a)(1), merchandise manufactured in Puerto Rico and shipped to the United States for consumption or sale is subject to a tax equal to the internal revenue tax imposed in the United States upon like articles of merchandise of domestic manufacture. Under that authority, the TTB regulations require persons file an application and permit to compute the tax on, tax-pay, and withdraw certain alcohol products for shipment to the United States. To do so, the regulations prescribe the use of TTB F 5100.21 for beer or wine products, and TTB F 5110.51 for distilled spirits products. In cases where the respondent is eligible to defer the tax payment, TTB uses the required information to verify that the respondent's bond coverage is adequate to cover the taxes due. In cases where the respondent makes the shipment taxpaid, TTB uses the required information to ensure that the respondent has paid the correct amount of tax. If necessary, TTB also uses the collected information to enforce collection of any alcohol excise tax owed to the Federal government.

Form: TTB F 5110.21 and TTB F 5110.51.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 35.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 35.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 35 hours.

18. Title: Distilled Spirits Bond.

OMB Control Number: 1513–0125.

Type of Review: Extension of a currently approved collection.

Description: The IRC at 26 U.S.C. 5173 and 5181 requires distilled spirits plants (DSPs) and alcohol fuel plants (AFPs) to furnish a bond, unless exempted from doing so under the IRC at 26 U.S.C. 5551(d) and 5181(c)(3). Proprietors of such plants use TTB F 5110.56 to file with TTB either a surety bond or a collateral bond using cash or U.S. securities. Using that same form, proprietors also may withdraw coverage for one or more plants, and DSP proprietors may provide operations coverage for adjacent wine cellars. The collected information is necessary to protect the revenue as the required bonds ensure payment of any delinquent excise tax liabilities.

Form: TTB F 5110.56.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 310.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 310.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 310 hours.

19. Title: Records to Support Tax Free and Tax Overpayment Sales of Firearms and Ammunition.

OMB Control Number: 1513–0128.

Type of Review: Extension of a currently approved collection.

Description: The IRC at 26 U.S.C. 4181 imposes excise taxes on the sale of firearms and ammunition. However, under the IRC at 26 U.S.C. 4221(a), certain sales may be made tax-free, including those made for further manufacture, export, and those made to a State or local government or a nonprofit educational organization for its exclusive use. In cases of sales where the excise tax has already been paid, the tax is considered an overpayment subject to credit or refund under the IRC at 26 U.S.C. 6416(b)(2) and (b)(3). To protect the revenue, the TTB regulations in 27 CFR part 53 prescribe that a respondent otherwise subject to the firearms or ammunition excise tax must maintain records, including statements or certificates containing specified information, documenting the tax-free or tax-overpaid nature of such sales. Respondents may use commercial records or self-generated supporting statement or certificates, or, for certain transactions, respondents may use TTB-provided forms, which, when completed, document the required supporting information. Respondents maintain the required information at their business premises, and TTB may examine the records during tax audits.

Form: TTB F 5600.33, TTB F 5600.34, TTB F 5600.35, TTB F 5600.36, and TTB F 5600.37.

Affected Public: State, Local, or Tribal governments; and Business or other for-profits.

Estimated Number of Respondents: 3,500.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 42,000.

Estimated Time per Response: 0.375 hours.

Estimated Total Annual Burden Hours: 15,750 hours.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: November 20, 2020.

Molly Stasko,

Treasury PRA Clearance Officer.

[FR Doc. 2020–26097 Filed 11–24–20; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to comment on the proposed information collections listed below, in accordance with the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before January 25, 2021.

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: Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 1505–0231.

Type of Review: Extension without change of a currently approved collection.

Description: The collection of information is necessary for the Department to solicit customer and stakeholder feedback with respect to 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.

Form: None.

Affected Public: Businesses or other for-profits; Non-profit institutions, State and Local Governments; Individuals and Households.

Estimated Number of Respondents: 14,000.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 14,000.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 3,500 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: November 20, 2020.

Molly Stasko,

Treasury PRA Clearance Officer.

[FR Doc. 2020–26073 Filed 11–24–20; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Internal Revenue Service Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests 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. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before December 28, 2020 to be assured of consideration.

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: Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

1. Title: Investment Interest Expense Deduction.

OMB Control Number: 1545–0191.

Type of Review: Extension of a currently approved collection.

Description: Interest expense paid by an individual, estate, or trust on a loan allocable to property held for investment may not be fully deductible in the current year. Form 4952 is used to compute the amount of investment interest expense deductible for the current year and the amount, if any, to carry forward to future years.

Form: IRS Form 4952.

Affected Public: Individuals or Households; and Businesses or other for-profit organizations.

Estimated Number of Respondents: 734,263.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 734,263.

Estimated Time per Response: 1 hour, 30 minutes.

Estimated Total Annual Burden Hours: 1,101,395 hours.

2. Title: Application for Award for Original Information.

OMB Control Number: 1545–0409.

Type of Review: Extension of a currently approved collection.

Description: Form 211 is the official application form used by persons requesting rewards for submitting information concerning alleged violations of the tax laws by other persons. Such rewards are authorized by Internal Revenue Code Section 7623. The data is used to determine and pay rewards to those persons who voluntarily submit information.

Form: IRS Form 211.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 15,000.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 15,000.

Estimated Time per Response: 45 minutes.

Estimated Total Annual Burden Hours: 11,250 hours.

3. Title: Proceeds From Broker and Barter Exchange Transactions.

OMB Control Number: 1545–0715.

Type of Review: Extension of a currently approved collection.

Description: Internal Revenue Code section 6045 requires the filing of an information return by brokers to report the gross proceeds from transactions and by barter exchanges to report exchanges of property or services. Form 1099–B is used to report proceeds from these transactions to the Internal Revenue Service.

Form: IRS Form 1099–B.

Affected Public: Individuals or Households; and Businesses or other for-profit organizations.

Estimated Number of Respondents: 1,434,809,803.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 1,434,809,803.

Estimated Time per Response: 47 minutes.

Estimated Total Annual Burden Hours: 674,360,608 hours.

4. Title: Certain Elections Under the Technical and Miscellaneous Revenue Act of 1988 and the Redesignation of Certain Other Temporary Elections Regulations.

OMB Control Number: 1545–1112.

Type of Review: Extension of a currently approved collection.

Description: Regulation section 301.9100–8 provides final income, estate and gift, and employment tax regulations relating to elections made under the Technical and Miscellaneous Revenue Act of 1988. This regulation enables taxpayers to take advantage of various benefits provided by the Internal Revenue Code.

Regulation Project Number: TD 8435.

Affected Public: Individuals or Households; Businesses or other for-profit organizations; Not-for-profit institutions; and State, Local, or Tribal Governments.

Estimated Number of Respondents: 21,740.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 21,740.

Estimated Time per Response: 17 minutes.

Estimated Total Annual Burden Hours: 6,010 hours.

5. Title: Disabled Access Credit.

OMB Control Number: 1545–1205.

Type of Review: Extension of a currently approved collection.

Description: Internal Revenue Code section 44 allows eligible small businesses to claim a credit of 50% of the eligible access expenditures that exceeds $250 but do not exceed $10,000. Form 8826, Disabled Access Credit, is used by eligible small businesses to claim the 50 percent credit eligible access expenditures to comply with the requirements under the Americans with Disabilities Act of 1990. The credit is part of the general business credit. Form 8826 is used to figure the credit and the tax liability limit.

Form: IRS Form 8826.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 17,422.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 17,422.

Estimated Time per Response: 5 hours, 7 minutes.

Estimated Total Annual Burden Hours: 89,027 hours.

6. Title: Income, Gift and Estate Tax.

OMB Control Number: 1545–1360.

Type of Review: Extension of a currently approved collection.

Description: This regulation concerns the availability of the gift and estate tax marital deduction when the donee spouse or the surviving spouse is not a United States citizen. The regulation provides guidance to individuals or fiduciaries: (1) For making a qualified domestic trust election on the estate tax return of a decedent whose surviving spouse is not a United States citizen in order that the estate may obtain the marital deduction, and (2) for filing the annual returns that such an election may require.

Regulation Project Number: TD 8612.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 2,300.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 2,300.

Estimated Time per Response: 2 hours, 40 minutes.

Estimated Total Annual Burden Hours: 6,150 hours.

7. Title: Taxpayer Statement Regarding Refund.

OMB Control Number: 1545–1384.

Type of Review: Extension of a currently approved collection.

Description: Form 3911 is used by taxpayers to notify the IRS that a tax refund previously claimed has not been received. The form is normally completed by the taxpayer as the result of an inquiry in which the taxpayer claims non-receipt, loss, theft, or destruction of a tax refund and IRS research shows that the refund has been issued. The information on the form is needed to clearly identify the refund to be traced.

Form: IRS Form 3911.

Affected Public: Individuals or Households; Businesses or other for-profit organizations; and Not-for-profit institutions.

Estimated Number of Respondents: 200,000.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 200,000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 16,600 hours.

8. Title: Certain Transfers of Domestic Stock or Securities by U.S. Persons to Foreign Corporations.

OMB Control Number: 1545–1478.

Type of Review: Extension of a currently approved collection.

Description: This regulation relates to certain transfers of stock or securities of domestic corporations pursuant to the corporate organization, reorganization, or liquidation provisions of the internal Revenue Code. Transfers of stock or securities by U.S. persons in tax-free transactions are treated as taxable transactions when the acquirer is a foreign corporation, unless an exception applies under Code section 367(a). This regulation provides that no U.S. person will qualify for an exception unless the U.S. target company complies with certain reporting requirements.

Regulation Project Number: TD 8702.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 100.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 100.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 1,000 hours.

9. Title: New Technologies in Retirement Plans.

OMB Control Number: 1545–1632.

Type of Review: Extension of a currently approved collection.

Description: Treasury Decision 8873 contains amendments to the regulations governing certain notices and consents required in connection with distributions from retirement plans. Specifically, these regulations set forth applicable standards for the transmission of those notices and consents through electronic media and modify the timing requirements for providing certain distribution-related notices. The regulations provide guidance to plan sponsors and administrators by interpreting the notice and consent requirements in the context of the electronic administration of retirement plans. The regulations affect retirement plan sponsors, administrators, and participants.

On March 13, 2020, the President of the United States issued an emergency declaration under the Robert T. Stafford

Disaster Relief and Emergency Assistance Act in response to the ongoing Coronavirus Disease 2019 (COVID–19) pandemic, beginning March 1, 2020 (COVID–19 Emergency). In response to this unprecedented public health emergency, and the related social distancing that has been implemented, Notice 2020–42 provides temporary relief from the physical presence requirement in § 1.401(a)–21(d)(6) of the Income Tax Regulations for participant elections required to be witnessed by a plan representative or a notary public, such as a spousal consent required under § 417 of the Internal Revenue Code (the Code). While this temporary relief, which covers the period from January 1, 2020, through December 31, 2020, is intended to facilitate the use of coronavirus-related distributions and plan loans to qualified individuals, as permitted by section 2202 of the Coronavirus Aid, Relief, and Economic Security Act, Public Law 116–136, 134 Stat. 281 (2020) (CARES Act), the temporary relief applies to any participant election that requires the signature of the individual making the election to be witnessed in the physical presence of a plan representative or notary.

Regulation Project Number: TD 8873/Notice 2020–42.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 455,625.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 11,700,000.

Estimated Time per Response: 2 minutes.

Estimated Total Annual Burden Hours: 477,563 hours.

10. Title: Disclosure of Returns and Return Information by Other Agencies.

OMB Control Number: 1545–1757.

Type of Review: Extension of a currently approved collection.

Description: In general, under the regulations, the IRS is permitted to authorize agencies with access to returns and return information under section 6103 of the Internal Revenue Code to re-disclose returns and return information based on a written request and the Commissioner's approval, to any authorized recipient set forth in Code section 6103, subject to the same conditions and restrictions, and for the same purposes, as if the recipient had received the information from the IRS directly.

Regulation Project Number: TD 9036.

Affected Public: Federal, State, Local or Tribal Governments.

Estimated Number of Respondents: 11.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 11.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 11 hours.

11. Title: Application to Participate in the IRS Acceptance Agent Program.

OMB Control Number: 1545–1896.

Type of Review: Extension of a currently approved collection.

Description: Form 13551 is used by all parsons who wish to participate in the TIN (Taxpayer Identification Number) Acceptance Agent Program must apply by completing this application. Acceptance Agents are individuals or entities (colleges, financial institutions, accounting firms, etc.) that have entered into formal agreements with IRS that permit them to assist alien individuals and other foreign persons with obtaining TINs.

Form: IRS Form 13551.

Affected Public: Businesses or other for-profit organizations; Not-for-profit institutions, and Federal, State, Local or Tribal Governments.

Estimated Number of Respondents: 4,422.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 4,422.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 2,211 hours.

12. Title: Entry of Taxable Fuel.

OMB Control Number: 1545–1897.

Type of Review: Extension of a currently approved collection.

Description: The regulation imposes joint and several liabilities on the importer of record for the tax imposed on the entry of taxable fuel into the U.S. and revises definition of ''enterer''.

Regulation Project Number: TD 9346.

Affected Public: Individuals or Households; Businesses or other for-profit organizations; Not-for-profit institutions; and Federal, State, Local, or Tribal Governments.

Estimated Number of Respondents: 225.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 1,125.

Estimated Time per Response: 0.25 hours.

Estimated Total Annual Burden Hours: 281 hours.

13. Title: Modification of Notice 2005–04; Biodiesel and Aviation-Grade Kerosene.

OMB Control Number: 1545–1915.

Type of Review: Extension of a currently approved collection.

Description: Notice 2005–04 provides guidance on certain excise tax Code provisions that were added or effected by the American Jobs Creation Act of 2004. The information will be used by the IRS to verify that the proper amount of tax is reported, excluded, refunded, or credited. This notice is modified and expanded by Notices 2005–24, 2005–62, and 2005–80.

Notice Number: Notice 2005–62.

Affected Public: Businesses or other for-profit organizations; Not-for-profit institutions; and Federal, State, Local or Tribal Governments.

Estimated Number of Respondents: 157,963.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 157,963.

Estimated Time per Response: 0.48 hour.

Estimated Total Annual Burden Hours: 76,190 hours.

14. Title: Procedures for Requesting Competent Authority Assistance Under Tax Treaties.

OMB Control Number: 1545–2044.

Type of Review: Extension of a currently approved collection.

Description: Taxpayers who believe that the actions of the United States, a treaty, or both, result or will result in taxation that is contrary to the provisions of an applicable tax treaty are required to submit the requested information in order to receive assistance from the IRS official acting as the U.S. competent authority. The information is used to assist the taxpayer in reaching a mutual agreement with the IRS and the appropriate foreign competent authority.

Revenue Procedure Number: 2015–40.

Affected Public: Individuals or Households; and Businesses or other for-profit organizations.

Estimated Number of Respondents: 300

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 300.

Estimated Time per Response: 30 hours.

Estimated Total Annual Burden Hours: 9000 hours.

15. Title: Late Filing of Certification or Notices.

OMB Control Number: 1545–2098.

Type of Review: Extension of a currently approved collection.

Description: The IRS needs certain information to determine whether a taxpayer should be granted permission to make late filings of certain statements or notices under sections 897 and 1445. The information submitted will include a statement by the taxpayer demonstrating reasonable cause for the failure to timely make relevant filings

under sections 897 and 1445. This revenue procedure provides a simplified method for taxpayers to request relief for late filings under sections 1.897–2(g)(1)(ii)(A), 1.897–2(h)(2), 1.1445–2(d)(2), 1.1445–5(b)(2), and 1.1445–5(b)(4) of the Income Tax Regulations.

Regulation Project Number: Revenue Procedure 2008–27.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 250.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 250.

Estimated Time per Response: 4 hours.

Estimated Total Annual Burden Hours: 1,000 hours.

16. Title: Form 8946, PTIN Supplemental Application for Foreign Persons Without a Social Security Number.

OMB Control Number: 1545–2189.

Type of Review: Extension of a currently approved collection.

Description: Form 8946 is used by foreign persons without a social security number (SSN) who want to prepare tax returns for compensation. Foreign persons who are tax return preparers must obtain a preparer tax identification number (PTIN) to prepare tax returns for compensation. Generally, the IRS requires an individual to provide an SSN to get a PTIN. Because foreign persons cannot get an SSN, they must file Form 8946 to establish their identity and status as a foreign person.

Form: IRS Form 8946.

Affected Public: Individuals or Households; and Businesses or other for-profit organizations.

Estimated Number of Respondents: 4,466.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 4,466.

Estimated Time per Response: 5.27 hours.

Estimated Total Annual Burden Hours: 23,536 hours.

17. Title: Credit for Small Employer Health Insurance Premiums.

OMB Control Number: 1545–2198.

Type of Review: Extension of a currently approved collection.

Description: Section 1421 of the Patient Protection and Affordable Care Act, Public Law 111–148, allows qualified small employers to elect, beginning in 2010, a tax credit for 50% of their employee health care coverage expenses. Form 8941, Credit for Small Employer Health Insurance Premiums, has been developed to help employers compute the tax credit.

Form: IRS Form 8941.

Affected Public: Individuals or Households; Businesses or other for-profit organizations; Not-for-profit institutions; and Federal, State, Local or Tribal Governments.

Estimated Number of Respondents: 3,046,964.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 3,046,964.

Estimated Time per Response: 11 hours, 15 minutes.

Estimated Total Annual Burden Hours: 34,278,346 hours.

18. Title: Foreclosure Sale Purchaser Contact Information Request.

OMB Control Number: 1545–2199.

Type of Review: Extension of a currently approved collection.

Description: Form 15597, Foreclosure Sale Purchaser Contact Information Request, is information requested of individuals or businesses that have purchased real property at a third-party foreclosure sale. If the IRS has filed a ''Notice of Federal Tax Lien'' publically notifying a taxpayer's creditors that the taxpayer owes the IRS a tax debt, AND a creditor senior to the IRS position later forecloses on their creditor note (such as the mortgage holder of a taxpayers primary residence) THEN the IRS tax claim is discharged or removed from the property (if the appropriate foreclosure rules are followed) and the foreclosure sale purchaser buys the property free and clear of the IRS claim EXCEPT that the IRS retains the right to ''redeem'' or buy back the property from the foreclosure sale purchaser w/in 120 days after the foreclosure sale. Collection of this information is authorized by 28 U.S.C. 2410 and IRC 7425.

Form: IRS Form 15597.

Affected Public: Individuals or Households; Businesses or other for-profit organizations; Not-for-profit institutions; and Federal, State, Local, or Tribal Governments.

Estimated Number of Respondents: 150.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 150.

Estimated Time per Response: 4.08 hour.

Estimated Total Annual Burden Hours: 613 hours.

19. Title: Request for Miscellaneous Determination.

OMB Control Number: 1545–2211.

Type of Review: Extension of a currently approved collection.

Description: Organizations exempt under section 501(c)(3) may file Form 8940 for miscellaneous determinations under sections 507, 509(a), 4940, 4942, 4945, and 6033. Nonexempt charitable trusts may also file a Form 8940 for an initial determination under section 509(a)(3).

Form: IRS Form 8940.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 2,100.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 2,100.

Estimated Time per Response: 13 hours, 47 minutes.

Estimated Total Annual Burden Hours: 28,959 hours.

20. Title: Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) Programs.

OMB Control Number: 1545–2222.

Type of Review: Extension of a currently approved collection.

Description: The Internal Revenue Service offers free assistance with tax return preparation and tax counseling using specially trained volunteers. The Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) programs assist seniors and individuals with low to moderate incomes, those with disabilities, and those for whom English is a second language.

Form: IRS Form 8653, IRS Form 8654, IRS Form 14204, IRS Form 13715, IRS Form 13206, and IRS Form 14310.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 47,300.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 47,300.

Estimated Time per Response: 21 minutes.

Estimated Total Annual Burden Hours: 16,134 hours.

21. Title: Report of Health Insurance Provider Information.

OMB Control Number: 1545–2249.

Type of Review: Extension of a currently approved collection.

Description: Form 8963 established under Section 9010 of the Patient Protection and Affordable Care Act (PPACA), and Public Law 111–148 (124 Stat. 119 (2010)), as amended by section 10905 of PPACA, and as further amended by section 1406 of the Health Care and Education Reconciliation Act of 2010, Public Law 111–152 (124 Stat. 1029 (2010)), which requires any covered entity engaged in the business of providing health insurance related to United States health risks to annually report its net premiums written.

Form: IRS Form 8963.

Affected Public: Businesses or other for-profit organizations; and Not-for-profit institutions.

Estimated Number of Respondents: 3,200.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 3,200.

Estimated Time per Response: 7.92 hours.

Estimated Total Annual Burden Hours: 18,208 hours.

22. Title: Certificate of Foreign Contracting Party Receiving Federal Procurement Payments.

OMB Control Number: 1545–2263.

Type of Review: Extension of a currently approved collection.

Description: Tax on Certain Foreign Procurement, Notice of Purposed Rulemaking, contains proposed regulations under section 5000C of the Internal Revenue Code. The proposed regulations affect U.S. government acquiring agencies and foreign persons providing certain goods or services to the U.S. government pursuant to a contract. This document also contains proposed regulations under section 6114, with respect to foreign persons claiming an exemption from the tax under an income tax treaty. Section 5000C imposes a 2% tax on foreign persons (as defined in section 7701(a)(30)), that are parties to specified Federal procurement contracts with the U.S. government entered into on and after January 2, 2011. This tax is imposed on the gross amount of specified Federal procurement payments and is generally collected by increasing the amount withheld under chapter 3. A Form W–14 must be provided to the acquiring agency (U.S. government department, agency, independent establishment, or corporation) to: Establish that they are a foreign contracting party; and If applicable, claim an exemption from withholding based on an international agreement (such as a tax treaty); or Claim an exemption from withholding, in whole or in part, based on an international procurement agreement or because goods are produced, or services are performed in the United States. A Form W–14 must be provided to the acquiring agency if a foreign contracting party has been paid a specified Federal procurement payment and the foreign contracting party is seeking to claim an exemption (in whole or in part) from the tax imposed by section 5000C. Form W–14 must be submitted when requested by the acquiring agency, whether or not an exemption (in whole or in part) is claimed from withholding under section 5000C.

Form: Form W–14.

Affected Public: Federal Government.

Estimated Number of Respondents: 2,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 2,000.

Estimated Time per Response: 5 hours, 55 minutes.

Estimated Total Annual Burden Hours: 11,840 hours.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: November 20, 2020.

Molly Stasko,

Treasury PRA Clearance Officer.

[FR Doc. 2020–26099 Filed 11–24–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0872]

Agency Information Collection Activity Under OMB Review: Expanded Access to Non-VA Care Through the MISSION Program: Establishing a Process for Certification, Discontinuance, and Disputes for Veterans Care Agreements (VCAs)

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden, and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0872.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, Office of Quality, Performance and Risk (OQPR), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 421–1354 or email *danny.green2@va.gov* Please refer to ''OMB Control No. 2900–0872'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Expanded Access to Non-VA Care Through the MISSION Program: Establishing a Process for Certification, Discontinuance, and Disputes for Veterans Care Agreements (VCAs)

OMB Control Number: 2900–0872.

Type of Review: Extension of a currently approved collection.

Abstract: Section 102 of the VA Maintaining Internal Systems and Strengthening Integrated Outside Networks (MISSION) Act of 2018 (Pub. L. 115–182) authorizes VA to enter into Veterans Care Agreements (VCAs) to furnish required care and services when such care and services are not feasibly available to certain individuals through a VA facility, a contract, or a sharing agreement. VA seeks to establish a new collection to implement three requirements under section 102 of the MISSION Act:

a. *Certification:* Eligible entities and providers will be required to submit to VA information concerning relevant credentials, licenses, and other information as requested by VA to evaluate eligibility for certification. The information to be collected is authorized by 38 U.S.C. 1703A(c).

b. *Discontinuation:* Eligible entities and providers would be required to submit to VA a written notice of intent to discontinue a Veterans Care Agreement prior to the date of such discontinuation. The information to be collected is authorized by 38 U.S.C. 1703A(f)(1).

c. *Disputes:* Eligible entities and providers would be required to submit to VA written notices of dispute that contain specific information to allow VA to assess and resolve the matter in dispute. The information to be collected is authorized by 38 U.S.C. 1703A(h).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 84 FR 205 on October 23, 2019, pages 56890 and 56891.

Certification

Affected Public: Private Sector.

Estimated Annual Burden: 1,263 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 15,152.

Discontinuation

Affected Public: Private Sector.
Estimated Annual Burden: 25 hours.
Estimated Average Burden per Respondent: 10 minutes.
Frequency of Response: Once annually.
Estimated Number of Respondents: 152.

Disputes

Affected Public: Private Sector.
Estimated Annual Burden: 268 hours.
Estimated Average Burden per Respondent: 20 minutes.
Frequency of Response: Once annually.
Estimated Number of Respondents: 803.

By direction of the Secretary.

Danny S. Green,

Interim VA Clearance Officer, Office of Quality, Performance and Risk (OQPR), Department of Veterans Affairs.

[FR Doc. 2020–26065 Filed 11–24–20; 8:45 am]

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Part II

Commodity Futures Trading Commission

17 CFR Parts 43, 45, 46, et al.

Real-Time Public Reporting Requirements; Swap Data Recordkeeping and Reporting Requirements; Certain Swap Data Repository and Data Reporting Requirements; Final Rules

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 43

RIN 3038–AE60

Real-Time Public Reporting Requirements

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is amending certain regulations setting forth the real-time public swap reporting and dissemination requirements for swap data repositories (''SDRs''), derivatives clearing organizations (''DCOs''), swap execution facilities (''SEFs''), designated contract markets (''DCMs''), swap dealers (''SDs''), major swap participants (''MSPs''), and swap counterparties that are neither SDs nor MSPs. The amendments, among other things, address certain issues related to reporting post-priced swaps (''PPS'') and disseminating swaps associated with prime brokerage arrangements. In addition, the Commission is adopting technical amendments to certain provisions in other parts of its regulations.

DATES:

Effective date: The effective date for this final rule is January 25, 2021.

Compliance Date: SDRs, SEFs, DCMs, and reporting counterparties must comply with the amendments to the rules by May 25, 2022; provided, however, that SDRs, SEFs, DCMs, and reporting counterparties must comply with the amendments to §§ 43.4(h) and 43.6 of this final rule by May 25, 2023.

FOR FURTHER INFORMATION CONTACT: Thomas Guerin, Special Counsel, (202) 734–4194, *tguerin@cftc.gov;* Matthew Jones, Special Counsel, (202) 418–6710, *majones@cftc.gov;* David E. Aron, Special Counsel, (202) 418–6621, *daron@cftc.gov;* Meghan Tente, Acting Deputy Director, (202) 418–5785, *mtente@cftc.gov,* each in the Division of Market Oversight; John Roberts, Senior Research Analyst, (202) 418–5943, *jroberts@cftc.gov,* Office of the Chief Economist; in each case at the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background
II. Amendments to Part 43
A. § 43.1—Purpose, Scope, and Rules of Construction
B. § 43.2—Definitions
C. § 43.3—Method and Timing for Real-Time Public Reporting
D. § 43.4—Swap Transaction and Pricing Data to be Publicly Disseminated in Real-Time
E. § 43.5—Time Delays for Public Dissemination of Swap Transaction and Pricing Data
F. § 43.6—Block Trades and Large Notional Off-Facility Swaps
G. § 43.7—Delegation of Authority
III. Swap Transaction and Pricing Data Reported to and Publicly Disseminated by Swap Data Repositories
A. Swap Transaction and Pricing Data Elements
IV. Compliance Date
A. General
B. Changes to the Appropriate Minimum Block Sizes and Cap Sizes
V. Related Matters
A. Regulatory Flexibility Act
B. Paperwork Reduction Act
C. Cost-Benefit Considerations
D. Antitrust Considerations

I. Background

Section 2(a)(13) of the Commodity Exchange Act (''CEA'') authorizes and requires the Commission to promulgate regulations for the real-time public reporting of swap transaction and pricing data. Section 2(a)(13)(A) defines ''real-time public reporting'' as reporting data relating to a swap transaction, including price and volume, as soon as technologically practicable after the time at which the swap transaction has been executed. Section 2(a)(13)(B) authorizes the Commission to make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.

Section 2(a)(13) also imposes statutory requirements on the Commission. First, section 2(a)(13)(E) requires the Commission to prescribe regulations specifying what constitutes large notional swap transactions and the appropriate time delays for reporting such transactions to the public. Second, sections 2(a)(13)(E)(i) and 2(a)(13)(C)(iii) of the CEA require the Commission to protect the identities of counterparties and certain business transactions. Third, section 2(a)(13)(E)(iv) directs the Commission, in promulgating regulations under section 2(a)(13), to take into account whether public disclosure of swap transaction and pricing data will ''materially reduce market liquidity.''

Part 43 of the Commission's regulations implements real-time public reporting requirements.[1] Part 43 requires swap counterparties, SEFs, and DCMs to report publicly reportable swap transactions to SDRs.[2] Subject to certain exceptions, SDRs are required to publicly disseminate this swap transaction and pricing data in real-time.[3]

Following the adoption of part 43, Commission staff has worked with SDRs, SEFs, DCMs, and reporting counterparties to address questions regarding interpretation and implementation of the regulatory requirements. Several years ago, the Division of Market Oversight (''DMO'') also reviewed the Commission's swap reporting rules. After completing that review, DMO announced[4] its Roadmap to Achieve High Quality Swaps Data (''Roadmap''),[5] consisting of a comprehensive review to, among other things: ''[(i)] Evaluate real-time reporting regulations in light of goals of liquidity, transparency, and price discovery in the swaps market [; and (ii)] Address ongoing issues of reporting packages, prime brokerage, allocations, risk mitigation services/compressions, [exchange for related futures positions], and [PPSs] by clarifying obligations and identifying those distinct types of transactions to increase the utility of the real-time public tape.''[6]

In February 2020, the Commission proposed certain changes to part 43 (''Proposal'')[7] addressing the method and timing of real-time reporting and public dissemination generally and for specific types of swaps—the delay and anonymization of the public dissemination of block trades and large notional trades; the standardization and validation of real-time reporting data elements; the delegation of specific authority to Commission staff; and the clarification of specific real-time reporting questions and common issues.

The Commission received 33 comment letters regarding the

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

[2] Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182 (Jan. 9, 2012) (''2012 Real-Time Public Reporting Final Rule''); Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades, 78 FR 32866 (May 31, 2013) (''Block Trade Rule''). 17 CFR 43.3(a)(1) through (3) and (b)(1).

[3] *See id.;* 17 CFR 43.4.

[4] *See* Commission Letter 17–33, DMO Announces Review of Swap Reporting Rules in Parts 43, 45, and 49 of Commission Regulations (July 10, 2017), *available at http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/17-33.pdf.*

[5] The Roadmap is available at *https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/dmo_swapdataplan071017.pdf.* Comment letters are available at *https://comments.cftc.gov/PublicComments/CommentList.aspx?id=1824.*

[6] Roadmap at 11.

[7] *See* Real-Time Public Reporting Requirements, 85 FR 21516 (Apr. 17, 2020).

Proposal.[8] After considering the comments, the Commission is adopting portions of the rules as proposed; revising other portions of the proposed rules and adopting such portions as revised; and declining to adopt the remainder of the proposed changes. The Commission believes the rules adopted herein will increase transparency and price discovery in the swaps markets; provide clarity regarding obligations to report and disseminate swap transaction and pricing data; and lead to a more effective real-time reporting regime.

II. Amendments to Part 43

A. § 43.1—Purpose, Scope, and Rules of Construction

The Commission is adopting non-substantive changes to § 43.1. The Commission is removing § 43.1(b). Existing § 43.1(b)(1), titled ''Scope,'' states that part 43 applies to all swaps, as defined in CEA section 1a(47),[9] and lists certain categories of swaps as examples. Existing § 43.1(b)(2) states that part 43 applies to registered entities and parties to a swap, and lists certain categories of swap parties. The Commission believes § 43.1(b) is superfluous. The scope of part 43 coverage is clear from various CEA sections and the operative provisions of part 43.

The Commission is also re-designating existing § 43.1(c), entitled ''Rules of construction,'' as § 43.1(b). The first sentence of existing § 43.1(c) states that the examples in this part and in appendix A to this part are not exclusive. The Commission is deleting the reference to ''appendix A'' because the Commission is removing examples from appendix A.[10] The Commission is only removing this reference in case there are other places within part 43 in which market participants would rely on examples.

The Commission is also deleting § 43.1(d), entitled ''Severability.'' Existing § 43.1(d) provides that if any provision of part 43, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or application of such provision to other persons or circumstances which can be given effect without the invalid provision or application. In the event a court invalidates one or more provisions of part 43, it is unclear that the Commission would interpret all related remaining provisions as continuing to be effective in the absence of the invalid provision(s). The Commission wishes to maintain the flexibility to make that determination at the time, and in light, of any such ruling.

The Commission received no comments on the changes to § 43.1. For the reasons discussed above, the Commission is adopting the changes thereto as proposed.

B. § 43.2—Definitions

The paragraph of existing § 43.2 is not lettered. The Commission is lettering the existing paragraph as ''(a)'' and adding paragraph (b) to § 43.2. Paragraph (a) will contain all of the definitions in existing § 43.2, as the Commission is modifying them. New paragraph (b) will clarify the terms not defined in part 43 have the meanings assigned to those terms in § 1.3 of the Commission's regulations, which was implied before but was not explicit.

The Commission is also adding new definitions, amending certain existing definitions, and removing certain definitions. Within each of these categories of definitions, the Commission discusses the changes in alphabetical order, except as otherwise noted.

1. New Definitions

The Commission is adding a definition of ''execution date'' to § 43.2. As proposed, ''execution date'' refers to the date, determined by reference to Eastern Time, on which swap execution occurred. The Commission believes the term is necessary for the new regulations for PPSs.[11] GFMA comments the proposed definition of ''execution date'' is ''suitable'' and should align with the definition proposed in the part 45 regulations, but does not need to align with other definitions.[12]

The Commission received three comments opposing the definition's reference to Eastern Time. Chatham believes the Commission should use coordinated universal time (''UTC'') instead of Eastern Time to avoid reporting counterparties incurring time and expense converting systems to track in Eastern Time.[13] The NFP Electric Associations and CME both believe ''execution date'' should not reference to a time and note that the reference to eastern time is inconsistent with the execution data elements in appendix A that reference UTC.[14]

The Commission appreciates commenters raising the reference to Eastern Time is inconsistent with the appendix A data elements regarding execution that use UTC. The Commission believes removing the reference to time from the definition of ''execution date'' best addresses the issue, as the reference to time is unnecessary with time covered by the data elements [15] that will continue to reference UTC. As such, the new definition of ''execution data'' will mean the date of execution of a particular swap.

The Commission is adding a definition of ''post-priced swap'' to § 43.2. A ''post-priced swap'' will mean an off-facility swap for which the price is not determined as of the time of execution. The Commission discusses the new regulations for PPSs in section II.C.2.

The Commission is adding a definition of ''reporting counterparty'' to § 43.3. This definition is the same as the existing definition of ''reporting party'' in § 43.2, but uses the more-specific term ''counterparty'' instead of ''party.''

The Commission is adding a definition of ''swap execution facility'' to § 43.2. Parts 43 and 45 currently use the term, but only part 45 defines it. ''Swap execution facility'' will mean a trading system or platform that is a SEF as defined in CEA section 1a(50) and in 17 CFR 1.3, and that is registered with the Commission pursuant to CEA section 5h and 17 CFR part 37.

The Commission is adding a definition of ''swap transaction and

[8] The following entities submitted comment letters: American Council of Life Insurers (''ACLI''); Better Markets; Carnegie Mellon; Chatham Financial; Chris Barnard; CHS Inc. and CHS Hedging LLC (''CHS''); Citadel; Clarus Financial Technology (''Clarus''); CME Group, Inc. (''CME''); Credit Suisse; Depository Trust & Clearing Corporation (''DTCC''); The Futures Industry Association (''FIA''); FIA Principal Traders Group (''FIA PTG''); Foreign Exchange Professionals Association (''FXPA''); The Global Foreign Exchange Division of the Global Financial Markets Association (''GFMA''); Healthy Markets; ICE Clear Credit and ICE Clear Europe (''ICE DCOs''); ICE Trade Vault (''ICE SDR''); IHS Markit (''Markit''); International Swaps and Derivatives Association, Inc. and the Securities Industry and Financial Markets Association (''SIFMA'') (collectively, ''ISDA–SIFMA (Blocks)''); ISDA and SIFMA (collectively, ''ISDA–SIFMA''); Investment Company Institute (''ICI''); Larry Harris and Kumar Venkataraman (''SMU''); Managed Funds Association (''MFA''); Massachusetts Institute of Technology (''MIT''); The National Rural Electric Cooperative Association and American Public Power Association (''NFP Electric Associations''); Navitech; Pacific Investment Management Company LLC (''PIMCO''); The Asset Management Group of the Securities Industry and Financial Markets Association (''SIFMA AMG''); T. Rowe Price (''TRP''); and Vanguard.

[9] 7 U.S.C. 1a(47).

[10] The Commission discusses the changes to appendix A in section III below.

[11] The Commission discusses the regulations for PPSs in section II.C.2.

[12] GFMA at 4.

[13] Chatham at 1. Chatham requested if the Commission decides on eastern time, the Commission should have SDRs convert UTC to eastern time when submitting to the Commission.

[14] NFP Electric Associations at 7; CME at 2.

[15] The Commission discusses the data elements in appendix A in section III below.

pricing data'' to § 43.2 with minor technical corrections for clarity. ''Swap transaction and pricing data'' will mean all data elements for a swap in appendix A [16] of part 43 that are required to be reported or publicly disseminated pursuant to part 43. The Commission believes this definition will help distinguish between the different types of data reported pursuant to the different reporting regulations.

The Commission proposed adding the following six definitions to § 43.2: ''mirror swap;'' [17] ''pricing event;'' [18] ''prime broker;'' [19] ''prime brokerage agency arrangement;'' [20] ''prime brokerage agent;'' [21] and ''trigger swap.'' [22] These definitions are all related to swaps entered into by prime brokers (''PBs''). Because all of these proposed definitions were used in the text of proposed § 43.3(a)(6) or in one or more of the proposed definitions that were in turn used in proposed § 43.3(a)(6), the Commission discusses all of the six proposed definitions in section II.C.4.

2. Changes to Existing Definitions [23]

The Commission is making non-substantive changes to the definitions of: ''as soon as technologically practicable'' (''ASATP''); ''asset class;'' ''novation;'' ''other commodity;'' and ''reference price.''

The Commission proposed changing the definitions of ''appropriate minimum block size,'' ''large notional off-facility swap'' (LNOFS), and ''block trade'' in § 43.2.[24] The Commission discusses the three definitions together, as the changes are inter-connected.

The Commission first proposed changing the ''block trade'' definition in a November 2018 rule proposal.[25] Then, in January 2020, the Commission published a proposal to revise condition (2) of the block trade definition in § 43.2 to state that: Is executed on the trading system or platform, that is not an order book as defined in § 37.3(a)(3), of a registered SEF or occurs away from a registered SEF's or DCM's trading system or platform and is executed pursuant to the registered SEF's or DCM's rules and procedures.[26] The Proposal incorporated the 2020 SEF NPRM's proposed changes to the definition of ''block trade'' in condition (2), which would apply to swaps that are not ''off-facility swaps'' and have specified connections to a SEF or a DCM.[27] In the Proposal, the Commission also proposed to incorporate condition (3) of the existing ''block trade'' definition [28] into condition (1), which would apply to ''off-facility swaps.'' [29] Condition (1) would make the separate definition of ''large notional off-facility swap'' unnecessary.

The Commission believes the change to condition (2) permitting execution of block trades—intended to be cleared or not—on a SEF's non-order book trading systems or platforms furthers the CEA goal of promoting swap trading on SEFs.[30] Moreover, for intended-to-be cleared block trades executed on a SEF's non-Order Book trading system or platform, the change would allow FCMs to conduct pre-execution credit screenings in accordance with § 1.73. The Commission believes that having a single set of block trade rules for both intended-to-be cleared and non-intended to-be-cleared swap block trades will help to reduce operational

[16] The proposed definition of ''swap transaction and pricing data'' referenced appendix C. The Commission is changing the reference to appendix A to reflect the Commission is keeping data elements in appendix A.

[17] The Commission proposed to define mirror swap as a swap: (1) To which a prime broker is a counterparty or both counterparties are prime brokers; (2) that is executed contemporaneously with a corresponding trigger swap; (3) that has identical terms and pricing as the contemporaneously executed trigger swap (except that a mirror swap, but not the corresponding trigger swap, may include any associated prime brokerage service fees agreed to by the parties and except as provided in the final sentence of this ''mirror swap'' definition); (4) with respect to which the sole price forming event is the occurrence of the contemporaneously executed trigger swap; and (5) the execution of which is contingent on, or is triggered by, the execution of the contemporaneously executed trigger swap. The notional amount of a mirror swap may differ from the notional amount of the corresponding trigger swap, including, but not limited to, in the case of a mirror swap that is part of a partial reverse give-up; *provided, however,* that in such cases, (i) the aggregate notional amount of all such mirror swaps to which the prime broker that is a counterparty to the trigger swap is also a counterparty shall be equal to the notional amount of the corresponding trigger swap and (ii) the market risk and contractual cash flows of all such mirror swaps to which a prime broker that is not a counterparty to the corresponding trigger swap is a party will offset each other (and the aggregate notional amount of all such mirror swaps on one side of the market and with cash flows in one direction shall be equal to the aggregate notional amount of all such mirror swaps on the other side of the market and with cash flows in the opposite direction), resulting in such prime broker having a flat market risk position.

[18] The Commission proposed to define pricing event as the completion of the negotiation of the material economic terms and pricing of a trigger swap.

[19] The Commission proposed to define prime broker as with respect to a mirror swap and its related trigger swap, a SD acting in the capacity of a prime broker with respect to such swaps.

[20] The Commission proposed to define prime brokerage agency arrangement as an arrangement pursuant to which a prime broker authorizes one of its clients, acting as agent for such prime broker, to cause the execution of a trigger swap.

[21] The Commission proposed to define prime brokerage agent as a client of a prime broker who causes the execution of a trigger swap acting pursuant to a prime brokerage agency arrangement.

[22] The Commission proposed to define trigger swap as a swap: (1) That is executed pursuant to one or more prime brokerage agency arrangements; (2) to which a prime broker is a counterparty or both counterparties are prime brokers; (3) that serves as the contingency for, or triggers, the execution of one or more corresponding mirror swaps; and (4) that is a publicly reportable swap transaction that is required to be reported to an SDR pursuant to parts 43 and 45.

[23] The Commission received one comment on the existing definition of ''physical commodity swap.'' The NFP Electric Associations oppose defining ''physical commodity swap'' by reference to a swap ''based on a tangible commodity'' because such a definition would be inconsistent with the language of CEA section 1a(47) as well as the Commission's interpretations of ''nonfinancial commodity'' in the context of swaps. NFP Electric Associations at 7. The Commission declines to adopt any changes to the definition of ''physical commodity swap.'' The Commission believes the current definition is sufficient, and would want to provide adequate notice and comment for all market participants on a change involving a swap definition.

[24] Existing § 43.2 defines ''appropriate minimum block size'' to mean the minimum notional or principal amount for a category of swaps that qualifies a swap within such category as a block trade or LNOFS. Existing § 43.2 defines ''block trade'' to mean a publicly reportable swap transaction that: (1) Involves a swap that is listed on a registered SEF or DCM; (2) occurs away from the registered SEF's or DCM's trading system or platform and is executed pursuant to the registered SEF's or DCM's rules and procedures; (3) has a notional or principal amount at or above the appropriate minimum block size applicable to such swap; and (4) is reported subject to the rules and procedures of the registered SEF or DCM and the rules described in part 43, including the appropriate time delay requirements set forth in § 43.5.

[25] *See* Swap Execution Facilities and Trade Execution Requirement, 83 FR 61946 (Nov. 30, 2018) (''2018 SEF NPRM''). The Commission continues to evaluate the 2018 SEF NPRM.

[26] This proposal addressed certain outstanding block-trade no-action relief SEFs and market participants have operated under for several years, most recently under CFTC Staff Letter No. 17–60 (''NAL No. 17–60). *See* Swap Execution Facility Requirements and Real-Time Reporting Requirements, 85 FR 9407 (Feb. 19, 2020) (''2020 SEF NPRM'').

[27] As proposed, paragraph (2) of the ''block trade'' definition would read: (2) With respect to a swap that is not an off-facility swap, a publicly reportable swap that: (a) Involves a swap that is listed on a SEF or DCM; (b) Is executed on the trading system or platform, that is not an order book as defined in § 37.3(a)(3), of a SEF or occurs away from a SEF's or DCM's trading system or platform and is executed pursuant to the SEF's or DCM's rules and procedures; (c) Has a notional or principal amount at or above the appropriate minimum block size applicable to such swap; and (d) Is reported subject to the rules and procedures of the SEF or DCM and the rules described in this part, including the appropriate time delay requirements set forth in § 43.5.

[28] This paragraph currently reads: Has a notional or principal amount at or above the appropriate minimum block size applicable to such swap.

[29] As proposed, paragraph (1) of the ''block trade'' definition would read: (1) With respect to an off-facility swap, a publicly reportable swap that has a notional or principal amount at or above the appropriate minimum block size applicable to such swap. The Commission also proposed minor changes to the term ''off-facility swap,'' as discussed below in this section.

[30] *See* 7 U.S.C. 7b–3(e).

complexity for both SEFs and market participants.

In addition, the Commission believes that new condition (2), in allowing participants to use a SEF's non-Order Book functionalities to execute swap block trades, is consistent with the Commission's regulatory approach to mitigate risks of information leakage (*i.e.,* a ''winner's curse'') as market participants can use the functionality of the SEF to execute a block trade in a manner that will not disclose the order to the entire market.[31] SEFs currently provide various modes of execution to enable market participants to execute block trades on the SEF without providing disclosure of the block trade to the market or to multiple market participants.[32]

Finally, the Commission believes permitting block trades to be executed on a SEF's non-Order Book trading platforms while also allowing them to ''occur away'' from a SEF provides SEFs increased flexibility. In particular, SEFs will be able to provide execution methods for block trades that are most suitable, efficient, and cost-effective for the product being traded, the SEF's market, and its market participants.

Therefore, the Commission is adopting paragraph (2) of the ''block trade'' definition as proposed with a minor non-substantive technical edits for clarity and consistency. However, the Commission is not adopting paragraph (1) of the proposed ''block trade'' definition and is keeping the definition of ''large notional off-facility swap'' in part 43.

The Proposal combined the definition of ''large notional off-facility swap'' into the definition of ''block trade'' to conform to proposed changes to § 43.5. The changes to § 43.5 would have created a single block trade dissemination delay regardless of whether the transaction was a ''block trade'' or a ''large notional off-facility swap,'' thus obviating the need for separate definitions.[33] However, since the Commission is not changing § 43.5,[34] it is necessary to retain separate definitions for block trades and LNOFSs in part 43. As a result, the Commission is keeping the definition of ''large notional off-facility swap'' in § 43.2 and keeping the reference to ''large notional off-facility swaps'' in the definition of ''appropriate minimum block size.''[35]

In light of the above changes, § 43.2 will define a ''block trade'' as a publicly reportable swap transaction that: (1) Involves a swap listed on a SEF or DCM; (2) is executed on a SEF's trading system or platform that is not an order book as defined in § 37.3(a)(3), or occurs away from the SEF's or DCM's trading system or platform and is executed pursuant to the SEF's or DCM's rules and procedures; (3) has a notional or principal amount at or above the appropriate minimum block size applicable to such swap; and (4) is reported subject to the rules and procedures of the SEF or DCM and the rules described in part 43, including the appropriate time delay requirements set forth in § 43.5.

The Commission received two comments on the Proposal's definition of ''block trade.'' ICI believes the proposed definition incorporating ''block trade'' and ''large notional off-facility swap'' would promote clarity and consistency across Commission regulations.[36] The Commission is declining to adopt the proposal because, as described above, separate definitions of ''block trade'' and ''large notional off-facility swap'' remain necessary since the Commission is not changing § 43.5.

Conversely, the NFP Electric Associations believe ''[t]he concept of a 'block trade' is not well understood in the swap markets'' and recommends that the Commission should continue ''to use the descriptive term 'large notional off-facility swap,' as drawn from the primary language of CEA section 2a(13)(E), rather than use 'block trade'. . . .''[37] The Commission agrees and, for the reasons described above, is retaining the separate definitions.

The Commission also received six comments on the 2020 SEF NPRM's ''block trade'' definition.[38] Citadel, ISDA–SIFMA, IECA, and Chris Barnard all generally support the 2020 SEF NPRM's changes.[39] Similarly, FIA agrees with the Commission ''that block trades executed on a SEF's non-[o]rder [b]ook trading system or platform would allow FCMs to conduct pre-execution risk-based limit screenings in accordance with [§] 1.73.''[40] Finally, the TP ICAP SEFs support the proposed changes to the definition of ''block trade,'' but believe the Commission should not limit the execution methods that may be utilized by SEFs for block trades to avoid discouraging SEF trading and inconsistencies with the CEA, ''which was clear that limiting modes of SEF execution was not the intent of Congress.''[41]

The Commission disagrees with the TP ICAP SEFs' assertion there should be no limitation on the method execution that can be used for a block trade.[42] By exposing a swap transaction that is above the appropriate minimum block size to the entire market through the use of a SEF order book,[43] the Commission believes that a market participant has signaled that the risks of information leakage and a ''winner's curse'' are not present to the same extent as they are in other block trades. Therefore, such transactions should not be afforded flexible execution and delayed public dissemination.

The Commission is changing the definition of ''embedded option'' in § 43.2 by removing the reference to

[31] SEF Core Principles Final Rule, 78 FR at 33498, 33562, and 33563 (June 4, 2013).

[32] For example, the Commission has observed that some SEFs offer a ''RFQ-to-one'' functionality that allows counterparties to bilaterally negotiate a block trade between two potential counterparties, without requiring disclosure of the potential trade to other market participants on a pre-trade basis.

[33] For example, under existing § 43.5, block trades are subject to a 15 minute dissemination delay, while LNOFS are subject to a range of dissemination delays ranging from 15 minutes to 24 business hours depending upon the type of market participant and asset class involved in the LNOFS transaction.

[34] The Commission discusses § 43.5 in section II.E below.

[35] The Commission is making non-substantive edits to the definition for clarity.

[36] ICI at 4.

[37] NFP Electric Associations at 7.

[38] The following entities submitted comment letters: Chris Barnard; Citadel; FIA; International Energy Credit Association (''IECA''); ISDA; and ICAP Global Derivatives Limited (''ICDL'') and tpSEF, Inc. (''tpSEF'') (collectively, ''TP ICAP SEFs''). Since the proposed § 43.2 definition of ''block trade'' in the 2020 SEF NPRM is consistent with the second part of the § 43.2 ''block trade'' definition in the Proposal, the Commission is considering the comments in evaluating the proposed changes to the ''block trade'' definition in this release.

[39] Citadel at 1; ISDA–SIFMA at 1; IECA at 1–3; Chris Barnard at 1.

[40] FIA at 1; FIA at Appendix B. FIA separately requests the Commission amend § 1.73 to confirm clearing FCMs are not required to conduct pre-execution risk-based limit screenings for transactions executed bilaterally away from the SEF's non-order book trading system or platform and then submitted for clearing. The Commission declines to amend § 1.73 in this rulemaking. For the avoidance of doubt, if the parties purport to execute a block trade away from the SEF without first obtaining a credit check, an FCM clearing member that clears such trade and does not have knowledge of such purported execution is not in violation of the pre-execution credit check requirement under § 1.73. The Commission understands no mechanism exists to enable pre-execution credit checks where blocks are executed away from a SEF; however, these final rules do not preclude participants from developing and using such a mechanism in the future.

[41] TP ICAP SEFs at 4. Rather, the TP ICAP SEFs believe that ''SEFs have the greatest knowledge of the liquidity and market characteristics to'' determine which execution methods to offer for block trades and as such ''[t]he Commission should defer to the SEFs in a manner consistent with principles-based regulation to determine the methodology that they wish to offer for executing block trades.''

[42] The Commission notes that trades above the appropriate minimum block size may still occur on a SEF's order book, as defined in § 37.3(a)(3), however such transactions will not receive treatment as block trades and will not receive a dissemination delay.

[43] 17 CFR 37.3(a)(3) (''Order Books'').

''confirmation'' at the end of the current definition [44] to reflect the Commission's removal of the definition of ''confirmation'' from § 43.2, discussed further below. As amended, ''embedded option'' will mean any right, but not an obligation, provided to one party of a swap by the other party to the swap that provides the party holding the option with the ability to change any one or more of the economic terms of the swap.

The Commission is changing the definition of ''execution'' in § 43.2 [45] by replacing the reference to execution occurring ''orally, in writing, electronically, or otherwise'' with ''by any method'' to shorten the definition without substantively altering it. The Commission is also removing the phrase that execution occurs simultaneous with or immediately following the affirmation of the swap because the Commission is removing the term ''affirmation'' from § 43.2 as well.[46] As amended, ''execution'' will mean an agreement by the parties, by any method, to the terms of a swap that legally binds the parties to such swap terms under applicable law. The NFP Electric Associations support the alignment of defined terms and concepts between part 45 and part 43, such as the common definition of ''execution.'' [47]

The Commission is amending the definition of ''off-facility swap'' in § 43.2 by removing the reference to ''publicly reportable'' and ''registered.'' Existing § 43.2 defines off-facility swap as any publicly reportable swap transaction that is not executed on or pursuant to the rules of a registered [48] SEF or DCM. The Commission is removing the requirement that the swap be ''publicly reportable'' because determining whether a swap transaction is an off-facility swap depends only on whether a swap was executed on or pursuant to the rules of a SEF or DCM; whether it is also a publicly reportable swap transaction is irrelevant.

The Commission is changing the definition of ''public dissemination and publicly disseminate'' in § 43.2. Existing § 43.2 defines ''public dissemination and publicly disseminate'' as to publish and make available swap transaction and pricing data in a non-discriminatory manner, through the internet or other electronic data feed that is widely published and in machine-readable electronic format. Separately, § 43.3(d)(1) requires that SDRs ''publicly disseminate'' swap transaction and pricing data in a consistent, usable, and machine-readable electronic format that allows the data to be downloaded, saved, and analyzed.

The definition of ''public dissemination and publicly disseminate'' varies enough from § 43.3(d)(1) to create ambiguity for SDRs as to the format they must use in publicly disseminating swap transaction and pricing data. For instance, the definition of ''publicly disseminate'' requires that access be non-discriminatory, but § 43.3(d)(1) does not explicitly require access be non-discriminatory. Therefore, the Commission is re-locating the qualification in § 43.3(d)(1) that SDRs publicly disseminate swap transaction and pricing data in a consistent, usable, and machine-readable electronic format that allows the data to be downloaded, saved, and analyzed to the definition of ''public dissemination and publicly disseminate'' in § 43.2.[49] As amended, the definition of ''public dissemination and publicly disseminate'' will mean to make freely available and readily accessible to the public swap transaction and pricing data in a non-discriminatory manner, through the internet or other electronic data feed that is widely published. Such public dissemination shall be made in a consistent, usable, and machine-readable electronic format that allows the data to be downloaded, saved, and analyzed.[50] The Commission did not propose changing the definition of ''publicly reportable swap transaction,'' but received six comments on the definition.

ISDA–SIFMA and ICE SDR both request the Commission clarify the list of swaps that are not included in the definition.[51] The Commission believes, with one exception, the current definition and the original part 43 adopting release adequately describe the swaps excluded from the definition, which, as ISDA–SIFMA point out, include inter-affiliate swaps and portfolio compression exercises. The Commission understands that since 2012, different multi-party swap portfolio risk reduction exercises have evolved to accomplish the same goals as portfolio compression exercises. To the extent any such risk reduction exercises serve the same purposes as portfolio compression exercises, the Commission is of the view that the resulting new or amended swaps from the exercise would not be deemed publicly reportable swaps. The purpose of such risk reduction exercises, similar to portfolio compression exercises, is to mitigate risk by replacing or changing swaps, which have already been publicly reported if the original swaps were publicly reportable swap transactions. Any new or amended swaps executed as a result of these exercises would not be arm's-length transactions resulting in a corresponding change in the market risk position between the parties, but may not otherwise meet the Commission's portfolio compression exercise definitions.[52] To qualify, the sole purpose of such risk reduction exercises, like portfolio compression exercises, must be to mitigate risk by replacing or changing swaps that have already been publicly reported, if the original swaps were publicly reportable swap transactions. In addition, the resulting new or amended swaps must be entered into between the same counterparties as the original swap(s) that is amended or terminated, and the risk reduction exercises must be market risk neutral and performed by automated systems of third-party service providers. If these conditions are satisfied, like portfolio compression exercises, the replacement or amended swaps resulting directly from a risk reduction exercise would not fall within the definition of publicly reportable swap transaction.[53]

[44] ''Embedded option'' is currently defined as any right, but not an obligation, provided to one party of a swap by the other party to the swap that provides the party holding the option with the ability to change any one or more of the economic terms of the swap as those terms previously were established at confirmation (or were in effect on the start date).

[45] Existing § 43.2 defines ''execution'' as an agreement by the parties (whether orally, in writing, electronically, or otherwise) to the terms of a swap that legally binds the parties to such swap terms under applicable law. The existing definition further provides that execution occurs simultaneous with or immediately following the affirmation of the swap.

[46] The Commission discusses the proposed removal of ''affirmation'' in section II.B.3.

[47] NFP Electric Associations at 6.

[48] The Commission is also changing ''registered SEF'' to ''SEF'' throughout part 43. The Commission discusses this change in section II.C.1.a.

[49] As discussed below in section II.C.8, the Commission is removing existing § 43.3(d)(1) in conjunction with moving the substance of the requirement to the definition of ''publicly disseminate.''

[50] The revised definition of ''public dissemination and publicly disseminate'' is also discussed below in section II.C.7 with respect to the responsibilities of SDRs to make publicly disseminated swap transaction and pricing data available to the public.

[51] ISDA–SIFMA at 49; ICE SDR at 7. ISDA–SIFMA note that the list of swaps not included in the definition may include (i) inter-affiliate swaps, (ii) portfolio compression exercises, and (iii) post-allocation swaps. ICE SDR notes that it was unclear whether cross-border transactions are exempt from the definition.

[52] 77 FR 1182 at 1187 (Jan. 9, 2012).

[53] For avoidance of doubt, the Commission makes clear that the evaluation of whether a swap that results from a risk reduction exercise does or does not fall within the definition of publicly reportable swap transaction is separate and distinct from the

In response to ICE SDR's comment that it is unclear whether cross-border transactions are exempt from the definition the ''publicly reportable swap transaction,'' the Commission notes that its cross-border guidance covers cross-border reporting requirements. The Commission does not want to reassess the existing definition or its cross-border guidance without providing adequate notice for all market participants to comment on.

The NFP Electric Associations believe the Commission should exclude a subset of off-facility non-financial commodity swaps from the definition because few, if any, of such swaps enhance discovery.[54] Similarly, Clarus believes providers of portfolio compressions should report trade level details to SDRs for public dissemination.[55] The Commission disagrees and is keeping compressions on the list of transactions excluded from the publicly reportable swap definition or excluding non-financial commodity swaps. The Commission believes its determination that compression swaps do not contribute to price discovery,[56] and that the CEA requires the public dissemination of all swaps,[57] still holds true.

ICE DCOs and CME believe if the Commission finalizes § 43.3(a)(5), it should also change the definition of publicly reportable swap transaction to exclude swaps created through DCO default management processes.[58] The Commission agrees with CME and ICE DCOs, and is amending the definition to exclude ''swaps entered into by a [DCO] as part of managing the default of a clearing member.'' However, the Commission discusses this change in section II.C.3 below.

The Commission is changing the definition of ''trimmed data set'' in § 43.2 by changing the standard deviation used in the calculation of the trimmed data set from four to two for the ''other commodity'' asset class, and from four to three for all other asset classes. The Commission discusses the reasoning behind these changes in section II.F.2.

3. Removed Definitions

The Commission is removing the definition of ''Act'' from § 43.2 because the term is defined in § 1.3.

The Commission proposed removing the definition of ''business day'' from § 43.2 because the term is defined in § 1.3. Further, the Commission proposed removing the definition of ''business hours'' because the term would have been unnecessary as a result of the Commission's proposal to remove references to ''business hours'' in the § 43.5 regulations for the timing delays for block trades.

The Commission received one comment on removing the definition of ''business day.'' DTCC notes § 43.2 does not include Saturdays while § 1.3 includes Saturdays; thus, replacing § 43.2 with § 1.3 would impact SDR operations as well as the currency conversion requirements in proposed § 43.6(g)(4).[59] Further, DTCC believes it is unclear whether the term ''holiday'' as used in the ''business day'' definition in § 1.3 has an identical meaning as existing § 43.2.[60]

The Commission agrees with DTCC that removing the definition of business day from § 43.2 would create a discrepancy in the regulations that would impact operations for all market participants. Therefore, the Commission is not adopting the proposal to remove the definition of business day from § 43.2. Similarly, the Commission is not adopting the proposal to remove the term ''business hours'' from § 43.2 because, as the Commission discusses in section II.E.2, § 43.5(c) will continue to reference ''business hours.''

The Commission is removing the definition of ''confirmation'' from § 43.2, along with the following related definitions: ''affirmation'' and ''confirmation by affirmation.'' These definitions are unnecessary in part 43, as they are not used in any of the regulations.

The Commission is removing the definition of ''executed'' from § 43.2. The current definition is vague and the definition of ''execution date'' will provide the specificity that the current ''executed'' definition lacks.

The Commission is removing the definition of ''real-time public reporting'' from § 43.2. Existing § 43.2 defines ''real-time public reporting'' as the reporting of data relating to a swap transaction, including price and volume, ASATP after the time at which the swap transaction has been executed. The CEA currently already defines ''real-time public reporting'' as to report data relating to a swap transaction, including price and volume, ASATP after the time at which the swap transaction has been executed.[61] To avoid creating confusion between the two definitions, the Commission is removing the definition in part 43.

The Commission is removing the definition of ''reporting party'' from § 43.2 because it is adding the more-precise definition of ''reporting counterparty'' to § 43.2, as discussed above.

The Commission proposed removing the following definitions from § 43.2 as a result of proposed changes to §§ 43.5 and 43.6 for block trades and LNOFSs: ''futures-related swap,'' ''major currencies,'' ''non-major currencies,'' and ''super-major currencies.'' The Commission declines to adopt the proposal to remove these definitions from § 43.2.

The Commission is also removing the following definitions from § 43.2 as a result of changes simplifying the definition of ''novation:'' ''remaining party,'' ''transferee,'' and ''transferor.''

The Commission is removing the ''unique product identifier'' (''UPI'') definition from § 43.2. ''Unique product identifier'' is currently only used in § 43.4(e). The Commission is deleting existing § 43.4(e), as discussed below in section II.D.1. Therefore, the definition of UPI in § 43.2 is unnecessary.

The Commission is removing the definition of ''widely published'' from § 43.2. ''Widely published'' means to publish and make available through electronic means in a manner that is freely available and readily accessible to the public. ''Widely published'' is currently referenced in the definition for ''public dissemination and publicly disseminate'' as the standard by which SDRs must publish data.[62] The Commission believes that the plain meaning of the term ''widely published'' is clear and that the definition is unnecessary and may cause confusion.

C. § 43.3—Method and Timing for Real-Time Public Reporting

1. § 43.3(a)(1) Through (3)—Method and Timing for Reporting Off-Facility Swaps and Swaps Executed on or Pursuant to the Rules of a SEF or a DCM

a. § 43.3(a)(1)—General Rule

The Commission is adopting changes to § 43.3(a)(1). Existing § 43.3(a)(1): (i)

evaluation of whether or not the platform operating such risk reduction exercises is subject to SEF registration requirements. *See* Core Principles and Other Requirements for Swap Execution Facilities, 78 FR 33476, 33482–33483 (Jun. 4, 2013).

[54] NFP Electric Associations at 6.

[55] Clarus at 2.

[56] 2012 Real-Time Public Reporting Final Rule at 77 FR 1187 (Jan. 9, 2012).

[57] *Id.* at 1223.

[58] ICE DCOs at 2; CME at 7–8. The commenters believe including such swaps could result in front-running as the default management processes may span multiple days. ICE DCOs believe DCO default management swaps may be impractical for part 43 reporting because they can be executed at the portfolio level.

[59] DTCC at 2.

[60] *Id.*

[61] 7 U.S.C. 2(a)(13)(A).

[62] The term ''widely published'' is also used in existing § 43.6(g)(4) for currency conversions.

Requires a ''reporting party'' to report publicly reportable swap transactions to SDRs ASATP after execution; and (ii) states that for purposes of part 43, a registered SDR includes any SDR provisionally registered with the Commission pursuant to part 49.

The Commission is changing the reference to a ''reporting party'' to reference the persons that, depending on the circumstances, have the reporting obligation for a publicly reportable swap transaction: A reporting counterparty; a SEF; or a DCM to be more precise. The Commission is also rewording § 43.3(a)(1) for brevity and adding a cross-reference to proposed § 43.3(a)(2) through (6), which address matters such as who must report publicly reportable swap transactions and the timing thereof. Consequently, the Commission is adding language to § 43.3(a)(1) stating that it would be ''subject to'' proposed § 43.3(a)(2) through (6) to reflect that, with respect to the transactions and persons covered by proposed § 43.3(a)(2) through (6), the provisions thereof apply instead of the general ASATP requirement of proposed § 43.3(a)(1). The Commission is also adding a requirement that the publicly reportable swap transaction reporting required pursuant to proposed § 43.3(a)(1) through (6) be done in the manner set forth in proposed § 43.3(d).[63]

Finally, the Commission is deleting the sentence in § 43.3(a)(1) stating that for purposes of part 43, a registered SDR includes any SDR provisionally registered with the Commission pursuant to part 49. The Commission is replacing all references to registered SDRs with references to SDRs in § 43.3(a) specifically and throughout part 43.[64] The Commission is removing the reference to ''registered'' because registered and provisionally registered SDRs are subject to the same Commission regulations, but the existing regulations only referenced ''registered'' SDRs.

The Commission did not receive any comments on the non-substantive changes to § 43.3(a)(1). For the reasons discussed above, the Commission is adopting the changes to § 43.3(a)(1) as proposed with non-substantive edits for clarity. Amended § 43.3(a)(1) will require reporting counterparties, SEFs, or DCMs responsible for reporting a swap to report the publicly reportable swap transaction to an SDR ASATP after execution subject to § 43.3(a)(2) through (6) and in the manner set forth in § 43.3(d).

b. § 43.3(a)(2)—Swaps Executed on or Pursuant to the Rules of a SEF or a DCM

The Commission is adopting non-substantive changes to § 43.3(a)(2). Existing § 43.3(a)(2) states that a party to a publicly reportable swap transaction can satisfy its part 43 real-time public reporting obligations by executing publicly reportable swap transactions on or pursuant to the rules of a SEF or DCM. Existing § 43.3(b)(1) states that SEFs and DCMs satisfy their real-time public reporting obligations by transmitting swap transaction and pricing data to SDRs ASATP after the publicly reportable swap transaction was executed on or pursuant to the rules of the trading platform or facility.

The Commission is replacing § 43.3(a)(2) with the existing requirement in § 43.3(b)(1). New § 43.3(a)(2) will state that SEFs or DCMs must report publicly reportable swap transactions executed on or pursuant to the rules of a SEF or DCM ASATP after execution. As a result, § 43.3(a)(2), instead of § 43.3(b)(1), will contain SEFs' and DCMs' part 43 reporting obligations. In revising § 43.3(a)(2), the Commission is replacing the reference to a ''registered [SEF]'' with a reference to SEFs because the term ''registered'' is unnecessary with the Commission defining ''SEFs'' in § 43.2 as registered SEFs.[65]

The Commission did not receive any comments on the structural and non-substantive changes to § 43.3(a)(2). For the reasons discussed above, the Commission is adopting the changes as proposed. Amended § 43.3(a)(2) will require that for each swap executed on or pursuant to the rules of a SEF or DCM, the SEF or DCM shall report swap transaction and pricing data to an SDR ASATP after execution.

c. § 43.3(a)(3)—Off-Facility Swaps

The Commission proposed non-substantive changes to § 43.3(a)(3). Existing § 43.3(a)(3) requires reporting parties to report all off-facility swaps to an SDR for the appropriate asset class in accordance with the rules set forth in part 43 ASATP following execution, and sets out the reporting hierarchy for these publicly reportable swap transactions.[66]

The Commission is clarifying in § 43.3(a)(3)(iii) through (v) that, in situations where the parties to an off-facility publicly reportable swap transaction must designate which of them is the reporting counterparty, they must make such designation prior to the execution of the off-facility publicly reportable swap transaction so that there is no delay in reporting the off-facility publicly reportable swap transaction pursuant to part 43. The Commission believes it will prevent a delay if the parties do not make such designation until after the off-facility publicly reportable swap transaction is executed or cannot agree on such designation.

Because the Commission is adding part 43 reporting requirements specific to PPSs, clearing swaps, and mirror swaps, respectively, in new § 43.3(a)(4) through (6), the Commission is introducing proposed § 43.3(a)(3) with ''except as otherwise provided in paragraphs (a)(4) through (6) of this section.''

The Commission did not receive any comments on the changes to § 43.3(a)(3). For the reasons discussed above, the Commission is adopting the changes to § 43.3(a)(3) as proposed with non-substantive edits for clarity. Amended § 43.3(a)(3) will require that, except as otherwise provided in § 43.3(a)(4) through (6), a reporting counterparty report all publicly reportable swap transactions that are off-facility swaps to an SDR for the appropriate asset class in accordance with the rules set forth in part 43 ASATP after execution. Unless otherwise agreed to by the parties prior to execution, the reporting hierarchy will remain the same as it is in existing § 43.3(a)(3).[67]

2. § 43.3(a)(4)—Post-Priced Swaps

a. Proposal

The Commission proposed new § 43.3(a)(4) to address issues market participants face in reporting PPSs. ''Post-priced swap'' is a newly defined term in § 43.2 that means an off-facility swap for which the price has not been determined at the time of execution. Existing § 43.3(a) generally requires the reporting party for each publicly reportable swap transaction to report

[63] The Commission discusses § 43.3(d) in section II.C.8 below.

[64] To limit repetition, the Commission will not discuss this change repeatedly throughout this release.

[65] To limit repetition, the Commission will not discuss this change throughout this release.

[66] The Commission did not propose substantive amendments to the reporting hierarchy.

[67] The hierarchy will remain: (i) If only one party is a SD or MSP, then the SD or MSP shall be the reporting counterparty; (ii) if one party is an SD and the other party is a MSP, then the SD shall be the reporting counterparty; (iii) if both parties are SDs, then prior to execution of a publicly reportable swap transaction that is an off-facility swap, the SDs shall designate which party shall be the reporting counterparty; (iv) if both parties are MSPs, then prior to execution of a publicly reportable swap transaction that is an off-facility swap, the MSPs shall designate which party shall be the reporting counterparty; and (v) if neither party is an SD or MSP, then prior to execution of a publicly reportable swap transaction that is an off-facility swap, the parties shall designate which party shall be the reporting counterparty.

certain swap terms to an SDR ASATP after execution of the transaction. Market participants raised concerns with complying with the ASATP requirement for a category of swaps with respect to which one or more terms are unknown at the time the swap is executed.[68]

In the Proposal, the Commission proposed a longer deadline for reporting swap transaction and pricing data for PPSs. Proposed § 43.3(a)(4)(i) would permit the reporting counterparty to delay reporting a PPS to an SDR until the earlier of the price being determined and 11:59:59 p.m. eastern time on the execution date. Proposed § 43.3(a)(4)(i) would further provide that, if the price of a publicly reportable swap transaction that is a PPS is not determined by 11:59:59 p.m. eastern time on the execution date, the reporting counterparty shall: (i) Report all swap transaction and pricing data for such PPS other than the price and any other then-undetermined variable term, and (ii) report each such item of previously undetermined swap transaction and pricing data ASATP after such item is determined.[69] Proposed § 43.3(a)(4)(ii) would provide that the more lenient proposed reporting deadline in § 43.3(a)(4)(i) would not apply to publicly reportable swap transactions with respect to which the price *is* known at execution but one or more other variable terms are not yet known at the time of execution.[70]

b. Comments on the Proposal

The Commission received two comments opposing a delay from real-time reporting for PPSs. Citadel comments that instead of reducing the amount of information publicly reported in real-time, the Commission should enhance the reported data by implementing a separate flag to specifically identify PPSs.[71] Further, Citadel believes the proposal seems overly broad because it includes swaps where key economic terms are fully agreed at the time of execution (*e.g.,* where a spread above or below a reference index price is the key economic term, but the reference index price is not published until later in the day).[72] DTCC recommends minimizing carve-outs for strict validation rules wherever possible to avoid deviating from standardization and creating additional complexities.[73]

Better Markets comments that any delay in public reporting would advantage certain market participants but reporting on the date of execution would be achievable for the vast majority of PPSs contingent on an independent market measure.[74] In addition, Better Markets believes delayed reporting for supposed ''hedging needs'' should not be accommodated until the Commission publishes additional information necessary to examine the implications of such a proposal.[75]

The Commission received six comments supporting a delay from real-time reporting for PPSs. AMG supports permitting a reporting counterparty to report PPSs at the earlier of the price being determined or 11:59:59 p.m. eastern time on the execution date.[76]

ICI comments that the proposal would provide clarity and consistency so market participants can understand when their trading information will be publicly disseminated to the market.[77] Further, ICI believes funds may enter into PPSs in the form of swaps on various well-known indices and these swaps are priced based on the relevant index, which typically is published an hour or two after the close of the relevant markets.[78] ICI states that existing SDs have inconsistent practices regarding when they report these swaps and the Commission's proposal will in most cases prevent a fund's trading information from being prematurely disseminated and used to front run the fund's trades.[79]

ISDA–SIFMA strongly agree with the proposal.[80] GFMA supports the ISDA–SIFMA response.[81]

CME believes that PPSs and other swaps with variable term(s) that are not known at the time of execution should not be reported or disseminated until such time that the price(s) and all other variable term(s) are known.[82] CME believes the proposed requirement to have PPSs reported no later than 11:59:59 p.m. eastern time on the day of execution is misplaced as it would not further price transparency without a price.[83] CME also believes the proposal to require the immediate reporting of swap transactions with respect to which the price *is* known at execution but one or more other variable terms are not yet known is similarly misplaced.[84]

FIA suggests the Commission amend the Proposal to require the reporting of a PPS only after the price is determined, regardless of whether the price is determined on or after the execution date. FIA believes there is no value in reporting swap data without a price element and that reporting only after the price has been determined should reduce the risk of front-running.[85]

The Commission received one comment maintaining that the proposal lacked needed explanation. Better Markets comments that the Commission's general description is undoubtedly accurate, but it does not sufficiently describe the use of PPSs for the public to determine the value, if any, of such transactions that would justify codifying a delayed public reporting timeline.[86] Further, Better Markets believes the proposal relied too heavily on only a few market participants and the Commission should instead look at common fact patterns, the identified asset classes using PPS practices, and the volume of PPSs within each asset class.[87]

The Commission received one comment regarding an alternative proposal of reporting PPSs ASATP and then updating the report after the price is determined (in response to the Commission's request for comment 2). ISDA–SIFMA oppose the alternative proposal and comment that PPSs should have a reporting delay before being publicly disseminated by the SDR.[88] ISDA–SIFMA believe the reporting of PPSs before the price is determined does not serve any price discovery function and may increase the costs of hedging by signaling to other participants that a SD will be hedging a

[68] *See, e.g.,* ISDA Request for No-action Relief for Post-priced Swaps (Mar. 26, 2013), *available at https://www.isda.org/2013/03/26/no-action-relief-request-post-price-swaps-under-parts-43-and-45/.*

[69] While the proposed definition of ''post-priced swap'' would be a swap for which the price has not been determined at the time of execution, such a swap with *additional* terms that are also not determined at the time of execution would also fall within the proposed ''post-priced swap'' definition. Consequently, if a PPS also has non-price terms that are not determined at the time of execution, a value for such non-price terms must be reported ASATP after it is determined. If a placeholder value that satisfies the allowable values parameters for an unknown variable term was previously reported for such undetermined swap transaction and pricing data, then such swap transaction and pricing data must be corrected ASATP after it is determined.

[70] The Commission notes that when the price is known at execution but one or more variable terms are not yet known, the reporting counterparty must report the swap ASATP and then report the variable terms later ASATP after each item is determined.

[71] Citadel at 10.

[72] *Id.*

[73] DTCC at 2.

[74] Better Markets at 8.

[75] *Id.*

[76] SIFMA AMG at 6.

[77] ICI at 8.

[78] *Id.*

[79] *Id.*

[80] ISDA–SIFMA at 50.

[81] GFMA at 14.

[82] CME at 3–4.

[83] *Id.*

[84] *Id.*

[85] FIA at 11.

[86] Better Markets at 8.

[87] *Id.*

[88] ISDA–SIFMA at 50.

particular large notional trade the following day.[89] Further, ISDA–SIFMA believe reporting counterparties should be able to submit data to the SDR as soon as available, and that the SDR should be permitted to delay public dissemination (similar to the process for block trades).[90]

The Commission received one comment related to the alternative of an indefinite delay for PPSs (in response to the Commission's request for comment 3). ISDA–SIFMA comments that PPS reporting under part 43 should be delayed until (a) the price is determined, or (b) 11:59:59 p.m. eastern time on the next business day following the execution date. If the price is still not yet known at 11:59:59 p.m. eastern time on the next business day following the execution date, ISDA–SIFMA comments that the reporting counterparty should then report the data elements that are known. Further, ISDA–SIFMA believe that the majority of PPSs would have the price determined prior to T+1. ISDA–SIFMA believe the reporting of PPSs before the price is determined may increase the costs of hedging by signaling to other participants that a SD will be hedging a particular large notional trade the following day.[91] As such, ISDA–SIFMA believe a T+1 cutoff will significantly reduce potential unnecessary hedging costs by reducing the number of PPSs reported without a price.[92]

The Commission received one comment regarding whether the definition of PPS should be amended to exclude swaps for which the price is not known at execution because it is contingent upon the outcome of SD hedging (in response to the Commission's request for comment 4). ISDA–SIFMA comments that swaps for which a price is not known at execution because it is contingent upon the outcome of SD hedging should benefit from a reporting delay. ISDA–SIFMA do not believe permitting such swaps to receive the reporting delay in proposed § 43.3(a)(4) would change trading behavior.[93]

The Commission received three comments addressing indicators for PPSs. ISDA–SIFMA do not support an additional indicator to identify whether the price for a PPS is not known because it is contingent on SD hedging. ISDA–SIFMA believe that an identifier that specifies the reason the price is not known for a PPS would exacerbate the potential for other market participants to trade ahead of SD hedging.[94] ISDA–SIFMA believe the Commission should not modify its proposed post-priced swap indicator and anything more granular could exacerbate the issues (*e.g.,* front running) that the PPS proposal intends to remedy.[95] CME opposes additional data elements related to PPSs as they are of no value to market participants.[96] In contrast to CME, ICI supports an additional indicator to identify whether the price for a PPS is not known because it is contingent on SD hedging, and notes that such an indicator would provide the CFTC with additional information regarding each PPS.[97]

The Commission received one comment regarding costs and benefits. ISDA–SIFMA recommend that reporting for PPSs be delayed at least until 11:59:59 p.m. eastern time on the next business day following the execution date because of the potential cost to customers that results from the proposed 11:59:59 p.m. eastern time cutoff for PPSs, particularly in the context of global equity index trades.[98] ISDA–SIFMA give a cross-border example showing that a post-priced swap indicator could indicate to other market participants that an SD will continue hedging a large notional trade on T+1, which could hurt the client's execution.[99]

The Commission received one comment addressing an inconsistency with proposed validations. CME comments that the proposed PPS reporting process is inconsistent with the validations proposed in the Proposal.[100] Further, CME believes since the Commission did not specifically identify which data elements constitute ''other economic or other terms'' in proposed § 43.3(a)(4)(ii), it is not clear if the proposed validations would allow for the reporting of all these data elements.[101] However, CME states it is clear from the variable term ''quantity'' that is referenced in the Proposal that § 43.3(a)(4)(ii) is not consistent with the proposed validations.[102] CME notes that many proposed data elements relate to quantity (notional quantity, etc.), and some of these data elements, such as quantity unit of measure and total notional quantity, are mandatory data elements that would need to be populated to pass proposed validations.[103] CME states that while the proposed quantity unit of measure data element allows for submission of a dummy value, the allowable values and validations for the other proposed quantity data elements would require the reporting party to submit an inaccurate value to comply with proposed § 43.3(a)(4)(ii) and the proposed validations.[104] CME suggests that the Commission identity all data elements that comprise the variable terms and elements for any swap and either (1) open up the proposed validations to permit submission of such transactions with one or more blank data elements; (2) establish dummy variables as necessary for each of the variable terms such that the dummy variables could be submitted to pass validations; or (3) open all validations for all data elements for such swaps covered by § 43.3(a)(4)(ii).[105]

c. Final Rule

For reasons discussed in the Proposal and as more fully considered in light of comments, discussed below, the Commission is adopting § 43.3(a)(4) as proposed with a minor ministerial change for clarity. The Commission is modifying the swap data technical specification in response to a comment from CME that § 43.3(a)(4) was inconsistent with the swap data technical specification.

The Commission agrees with commenters that believe the reporting and public dissemination of PPSs ASATP after execution, but before the price is determined, generally does not serve a significant price discovery function. However, the Commission disagrees with CME's comment that the public dissemination of a PPS prior to the price being determined *never* provides any value to the market. The Commission believes the public dissemination of a PPS ASATP after execution with a blank price, or with a placeholder price that reflects the reporting counterparty's expectation of the future event on which pricing is contingent, would not enhance price discovery and may confuse the market. The Commission also believes, and thus agrees with Citadel, that when the price of a PPS is set as a spread above or below a referenced index that is to be published later in the day, the publishing of such spread and the reference index would serve a price

[89] *Id.*
[90] *Id.*
[91] *Id.*
[92] *Id.*
[93] *Id.* at 51.
[94] *Id.*
[95] *Id.*
[96] CME at 4.
[97] *Id.*
[98] ISDA–SIFMA at 56–57.
[99] *Id.*
[100] CME at 4.
[101] *Id.*
[102] *Id.*
[103] *Id.*
[104] *Id.*
[105] *Id.*

discovery function. Specifically, publishing the spread above or below a referenced index that is not published until a later time would inform market participants of the current pricing formula at which specific products are being traded. Market participants could use such information for intra-day price discovery even though the referenced index is not published until later in the day.

The Commission also agrees with FIA and ICI that the publishing of swap transaction and pricing data for PPSs ASATP after execution presents unique and heightened risks of front running. Public reporting of PPSs before their prices are determined would allow market participants to transact in swaps ahead of the event on which the price is contingent, potentially disadvantaging a counterparty to the PPS and increasing its costs. The Commission believes the increase in costs could be expected to lead market participants to forego the use of such swaps, thereby materially reducing swap market liquidity.

The Commission believes proposed § 43.3(a)(4) strikes an appropriate balance between public transparency and price discovery, and concerns that immediate publication of PPSs would materially reduce market liquidity.

In permitting the delayed reporting of PPSs until the earlier of the price being determined or the end of the execution day, the Commission expects that the majority of PPSs will be publicly disseminated only *after* their price has been determined. This will allow market participants to transact those PPSs without the risk that public dissemination will negatively affect the determination of the price, and thus address the Commission's concern regarding a potential material reduction in market liquidity.

The Commission also expects the end of the day reporting deadline in § 43.3(a)(4) *will* result in some PPSs being publicly disseminated prior to their price being determined. The Commission, balancing the delayed reporting of PPSs with the potential harms to transparency that would accrue if counterparties were incentivized to structure swaps as PPSs to take advantage of a longer reporting delay, believes an end of day reporting deadline is appropriate. The Commission believes an end of day reporting deadline for PPSs is necessary to ensure that the regulation does not inappropriately restrict public transparency and price discovery by encouraging or permitting the indefinitely delayed reporting of PPSs.

Additionally, the Commission is modifying the technical specification in response to a comment by CME. The Commission agrees with CME that the validations in the draft specification needed to be revised to ensure that swaps required to be reported pursuant to § 43.3(a)(4) would be consistent with the validations proposed in the specification. The validations in the technical specification have been revised accordingly.

The Commission agrees with DTCC that adding exceptions to the proposed validations in the technical specification, as the Commission is doing to facilitate the reporting of swaps with variable terms, should generally be avoided because it creates complexities and impedes the standardization of reporting brought about by strict validation rules. However, the Commission is cognizant of its statutory directive to make swap transaction and pricing data available as appropriate to enhance price discovery while taking into account whether the public dissemination will materially reduce market liquidity. Accordingly, the Commission does not view the benefits of simplicity and standardization available under the alternative approach of providing an indefinite delay in reporting PPSs until all variable terms are determined as sufficient reason to justify deviation from the more balanced approach that the Commission believes best suited to effectuate this statutory directive.

3. § 43.3(a)(5)—Clearing Swaps

The Commission is amending § 43.3(a) by adding DCOs to the reporting counterparty hierarchy for clearing swaps that are publicly reportable swap transactions to address the limited circumstances in which DCOs may execute clearing swaps that meet the definition of a publicly reportable swap transaction in part 43. Proposed § 43.3(a)(5) stated that notwithstanding the provisions of § 43.3(a)(1) through (3), if a clearing swap, as defined in § 45.1, is a publicly reportable swap transaction, the DCO that is a party to such swap shall be the reporting counterparty and shall fulfill all reporting counterparty obligations for such swap ASATP after execution.

The Commission received two comments on the proposed amendments to § 43.3(a)(5). ICE DCOs and CME believe that if the Commission finalizes proposed § 43.3(a)(5), the Commission should amend the definition of ''publicly reportable swap transaction'' in § 43.2 to exclude swaps created through DCO default management processes to avoid frustrating the default management process by allowing front-running if the processes span multiple days.[106] They also believe it would be impractical as the default management process may be achieved through the sale at the portfolio (not individual swap) level, which ''does not lend itself'' to part 43 reporting.[107] Also, they believe the prices disseminated with default management related swaps would not be relevant to market participants as the prices are affected by the clearing house's priority to take timely action, so mistaken reliance on these prices may lead to price dislocations and market disruption.[108]

The Commission agrees with ICE DCOs and CME that the Commission should amend the definition of publicly reportable swap transaction to exclude swaps created through DCO default management processes because of § 43.3(a)(5). The Commission is concerned that the new requirement could impede the efficacy or ability of DCOs to proceed with default management exercises.

As such, the Commission is adopting § 43.3(a)(5) as proposed, but as discussed above in section II.B.2, is amending the definition of ''publicly reportable swap transaction'' in § 43.2(a) to exclude swaps entered into by a DCO as part of managing the default of a clearing member. New § 43.3(a)(5) will require that notwithstanding the provisions of § 43.3(a)(1) through (3), if a clearing swap, as defined in § 45.1(a), is a publicly reportable swap transaction, the DCO that is a party to such swap shall be the reporting counterparty and shall fulfill all reporting counterparty obligations for such swap ASATP after execution.

4. § 43.3(a)(6)—PB Swaps

The Commission understands that prime brokerage swaps begin with a counterparty opening an account with a PB that grants limited agency powers to the counterparty. These limited powers enable the counterparty, as an agent for the PB, to enter into swaps with approved executing dealers (''ED''), subject to specific limits and parameters, such as credit limits and collateral requirements. The PB also enters into ''give-up'' arrangements with approved EDs in which the EDs agree to negotiate swaps with the counterparty, acting as an agent for the PB, within the specified parameters and to face the PB as counterparty for the resulting ED–PB swap (''ED–PB Swap'').

[106] ICE DCOs at 2; CME at 7–8.

[107] *Id.*

[108] *Id.*

The Commission understands that in a prime brokerage swap, the counterparty seeks bids for the desired swap from one or more of the approved EDs, within the parameters established by the PB. Once the counterparty and ED agree on the terms, the Commission believes that both the counterparty and ED provide a notice of the terms to the PB, and those terms constitute the ED–PB Swap, which the PB must accept if: The swap is with an approved ED; the counterparty and ED have committed to the material terms; and the terms are within the parameters established by the PB. Once the ED–PB Swap is accepted by the PB, the PB enters into a mirror swap (''Mirror Swap'') with the counterparty with identical economic terms and pricing, subject to adjustment, as a result of the prime brokerage servicing fee.

a. Proposal

The CEA authorizes the Commission to make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.[109] In 2017, DMO announced its intention to review the reporting regulations addressing ongoing issues of reporting prime brokerage transactions.[110] In response to concerns that publicly disseminating all legs of a prime brokerage transaction incorrectly suggests the presence of more trading activity and price discovery than actually exists, the Commission proposed to define and exempt certain legs of prime brokerage transactions, defined as ''mirror swaps,'' from public dissemination.

i. Proposed New § 43.2 Definitions Related to Mirror Swaps

As noted above at section II.C, the Commission proposed adding the following six definitions to § 43.2: ''mirror swap;'' ''pricing event;'' ''prime broker;'' ''prime brokerage agency arrangement;'' ''prime brokerage agent;'' and ''trigger swap.'' Since these six proposed definitions are related to the Commission's proposal to exempt mirror swaps from public dissemination, the Commission discusses these definitions in this section.

The Commission proposed adding the term ''prime brokerage agency arrangement'' to § 43.2(a). ''Prime brokerage agency arrangement'' would mean an arrangement pursuant to which a PB authorizes one of its clients, acting as agent for such PB, to cause the execution of a particular leg of a prime brokerage transaction. The Commission's goal in proposing the ''prime brokerage agency arrangement'' definition and using this defined term in other definitions in proposed § 43.2(a) was to help ensure that the scope of unreported mirror swaps is limited to swaps that are, among other things, integrally related to the other leg(s) of a prime brokerage transaction that will always be required to be reported.

The Commission proposed adding the term ''prime brokerage agent'' to § 43.2(a) as a new definition that would mean a client of a PB who causes the execution of a particular leg(s) of a prime brokerage transaction acting pursuant to a prime brokerage agency arrangement.

The Commission also proposed adding the term ''prime broker'' to § 43.2(a). ''Prime broker'' would mean with respect to a mirror swap and the related leg(s) of a PB transaction that will not be required to be reported, a SD acting in the capacity of a PB with respect to such swaps. The Commission proposed to use the term ''prime broker'' in the proposed definitions of ''prime brokerage agency arrangement,'' ''prime brokerage agent,'' and ''trigger swap'' in proposed § 43.2(a), and in proposed § 43.3(a)(6), to establish the parameters of when a ''mirror swap'' would not be reportable under part 43 if it satisfied the terms of proposed § 43.3(a)(6)(i).

The Commission proposed adding the term ''trigger swap'' to § 43.2(a) as a new definition that would mean a swap: (1) That is executed pursuant to one or more prime brokerage agency arrangements;[111] (2) to which one counterparty or both counterparties are PBs; (3) that serves as the contingency for, or triggers the execution of, one or more corresponding mirror swaps; and (4) that is a publicly reportable swap transaction that is required to be reported to an SDR pursuant to parts 43 and 45. The Commission proposed to use the term ''trigger swap'' as an element of a ''mirror swap,'' which the Commission proposed to make not reportable.

The Commission proposed adding the term ''pricing event'' to § 43.2(a) as a new definition that would mean the completion of the negotiation of the material economic terms and pricing of a trigger swap. The Commission proposed using the term ''pricing event'' in proposed § 43.3(a)(6)(i) to make it clear when execution of a trigger swap, which would be required to be reported under proposed § 43.3(a)(6)(iv) (discussed below in section II.C.4.b), occurs.

The Commission proposed adding the term ''mirror swap'' to § 43.2(a) to mean a swap: (1) To which a PB is a counterparty or both counterparties are PBs; (2) that is executed contemporaneously with a corresponding trigger swap; (3) that has identical terms and pricing as the contemporaneously executed trigger swap (except that a mirror swap, but not the corresponding trigger swap, may include any associated prime brokerage service fees agreed to by the parties and except as provided in the final sentence of this ''mirror swap'' definition); (4) with respect to which the sole price forming event is the occurrence of the contemporaneously executed trigger swap; and (5) the execution of which is contingent on, or is triggered by, the execution of the contemporaneously executed trigger swap. As further proposed, the notional amount of a mirror swap may differ from the notional amount of the corresponding trigger swap, including, but not limited to, in the case of a mirror swap that is part of a partial reverse give-up;[112] provided, however, that in such cases, (i) the aggregate notional amount of all such mirror swaps to which the PB that is a counterparty to the trigger swap is also a counterparty shall be equal to the notional amount of the corresponding trigger swap and (ii) the market risk and contractual cash flows of all such mirror swaps to which a PB that is not a counterparty to the corresponding trigger swap is a party will offset each other (and the aggregate notional amount of all such mirror swaps on one side of the market and with cash flows in one direction shall be equal to the aggregate notional amount of all such

[109] 7 U.S.C. 2(a)(13)(B).

[110] Roadmap at 11. DMO has previously provided no-action relief from the real-time public reporting requirements for swaps executed pursuant to prime brokerage arrangements in response to concerns that reporting both legs of prime brokerage transactions would incorrectly suggest the presence of more trading activity and price discovery in the market than actually exists. *See* Commission Letter No. 12–53, Time-Limited No-Action Relief from (i) Parts 43 and 45 Reporting for Prime Brokerage Transactions, and (ii) Reporting Unique Swap Identifiers in Related Trades under Part 45 by Prime Brokers (Dec. 17, 2012), *available at https://www.cftc.gov/sites/default/files/idc/groups/public/@lrlettergeneral/documents/letter/12-53.pdf* (''NAL No. 12–53'').

[111] The Commission understands that some pricing events that result in trigger swaps are negotiated by persons that are acting pursuant to a prime brokerage agency arrangement with more than one prime broker. The Commission understands that some pricing events that lead to trigger swaps are negotiated by two persons that are each acting pursuant to a prime brokerage agency arrangement with its respective prime broker.

[112] A ''partial reverse give-up'' is described below in section II.C.4.b.

mirror swaps on the other side of the market and with cash flows in the opposite direction), resulting in each PB having a flat market risk position.

The Commission proposed defining the term ''mirror swap'' to delineate a group of swaps that do not have to be reported under part 43 if the related conditions set forth in proposed § 43.3(a)(6) are satisfied. The Commission believed that because the terms and pricing of a trigger swap and its related mirror swaps are similar, part 43 reporting of both a trigger swap and the related mirror swaps could falsely indicate the occurrence of two or more pricing events and incorrectly suggest the presence of more trading activity and price discovery than actually exist.

The Commission proposed using the word ''contemporaneously'' in clause (2) of the ''mirror swap'' definition rather than ''simultaneously'' to reflect the fact that it may take time for potential parties to a mirror swap to receive the terms of such mirror swap and to verify that the terms are within the parameters established by the governing prime brokerage arrangement.

The Commission proposed the language regarding associated prime brokerage service fees in clause (3) of the proposed ''mirror swap'' definition to reflect that a mirror swap may contain fees that a PB that is a counterparty to a mirror swap may charge as a fee for serving as a PB in such swap. The Commission understands that PBs typically charge their clients a service fee for the swap intermediation service that PBs provide. The PB service fee is meant to reflect PBs' credit intermediation costs as well as PBs' back-office and middle-office administrative services costs related to trigger swaps and mirror swaps (*e.g.,* booking, reconciling, settling, and maintaining such trigger swaps and mirror swaps). The PB service fee is typically agreed upon by a PB and its client before a pricing event. To be considered prime brokerage service fees for purposes of clause (3) of the proposed ''mirror swap'' definition, such fees must be limited to the foregoing purpose and cannot contain any other elements.[113]

ii. Proposed Regulations

Proposed new § 43.3(a)(6)(i) would provide that a mirror swap, which the Commission proposed to define in § 43.2(a), as discussed above in section II.B.1, is not a publicly reportable swap transaction. Proposed new § 43.3(a)(6)(i) would also state that, for purposes of determining when execution occurs under § 43.3(a)(1) through (3), execution of a trigger swap shall be deemed to occur at the time of the pricing event for such trigger swap.

Proposed new § 43.3(a)(6)(ii) would provide parameters for determining which counterparty is the reporting counterparty for a given trigger swap in situations where it is unclear, with respect to a given set of swaps, which are mirror swaps and which is the related trigger swap. More specifically, proposed new § 43.3(a)(6)(ii) would state that if, with respect to a given set of swaps, it is unclear which are mirror swaps and which is the related trigger swap, the PBs would be required to determine which swap is the trigger swap and which are mirror swaps. Proposed new § 43.3(a)(6)(ii) would also specify that, with respect to the trigger swap to which a PB is a party, the reporting counterparty shall be determined pursuant to § 43.3(a)(3). Proposed new § 43.3(a)(6)(ii) would add that, notwithstanding the foregoing, if the counterparty to a trigger swap that is not a PB is an SD, then that counterparty will be the reporting counterparty for the trigger swap.

Proposed new § 43.3(a)(6)(iii) would provide that, if, with respect to a given set of swaps, it is clear which are mirror swaps and which is the related trigger swap, the reporting counterparty for the trigger swap shall be determined pursuant to § 43.3(a)(3).

Proposed new § 43.3(a)(6)(iv) would provide that trigger swaps described in proposed § 43.3(a)(6)(ii) and (iii) shall be reported pursuant to the requirements set out in § 43.3(a)(2) or (a)(3), as applicable, except that the provisions of proposed § 43.3(a)(6)(ii), rather than of proposed § 43.3(a)(3), shall govern the determination of the reporting counterparty for purposes of the trigger swaps described in proposed § 43.3(a)(6)(ii).

The goal of proposed § 43.3(a)(6)(ii) is to have each trigger swap be reported ASATP after its pricing event. The Commission understands that one counterparty to a trigger swap often will have participated in negotiating the related pricing event, so should be well-placed to report the trigger swap pursuant to part 43 in such circumstances, particularly if that counterparty is an SD, given that most SDs are experienced with part 43 reporting. If the PB is an SD, but its counterparty is not, the PB would be the reporting counterparty for the trigger swap even though the PB may not learn of the pricing event for some time. However, pursuant to proposed § 43.3(a)(7), discussed below in section II.C.5, the PB could contract with a third-party service provider (which could include a party to the pricing event (*e.g.,* an executing broker)) to handle such reporting if it believes reporting such publicly reportable swap transaction in a timely manner (*i.e.,* ASATP after the pricing event, per proposed § 43.3(a)(6)(i)) would be problematic, while remaining fully responsible for such reporting. Similarly, even in circumstances in which neither counterparty to a trigger swap participated in negotiating the related pricing event (*e.g.,* a double give-up prime brokerage swap structure), such counterparties can contract with a third-party service provider to handle such reporting if they believe that reporting such trigger swap in a timely manner (*i.e.,* ASATP after the pricing event, per proposed § 43.3(a)(6)(i)) would be problematic for them, while remaining fully responsible for such reporting.

b. Comments on the Proposal

The Commission received one comment opposing the proposal to provide an exemption from real-time reporting for mirror swaps. Citadel comments the Commission should instead enhance swap transaction and pricing data by implementing a separate flag to specifically identify mirror swaps.[114]

The Commission received two comments supporting the proposal to provide an exemption from real-time reporting for mirror swaps. CME comments that publishing information regarding mirror swaps would not provide any information of value to market participants.[115] FXPA similarly notes their agreement with Commissioner Berkowitz's assessment that ''duplicated reporting can create a false signal of swap trading volume and potentially obscure price discovery by giving the price reported for a single prime brokerage swap twice as much weight relative to other non-prime brokerage swaps.'' [116]

The Commission received an additional two comments that support the proposal but also suggest

[113] For example, the Commission would not consider a purported prime brokerage service fee providing the prime broker or its counterparty exposure to a commodity to be a prime brokerage service fee within the meaning of clause (3) of the proposed ''mirror swap'' definition, as a result of which the related ''mirror swap'' would not be a mirror swap, and thus would not be within the scope of proposed § 43.3(a)(6) (discussed below in section II.C.4.b), and therefore would be reportable under § 43.3(a)(1) through (3), as applicable, depending on the facts and circumstances.

[114] Citadel at 10.

[115] CME at 5.

[116] FXPA at 4.

modifications. ISDA–SIFMA support the proposed treatment of mirror swaps as non-publicly reportable swap transactions.[117] ISDA–SIFMA note that even though mirror swaps resemble hedging swaps, the key difference is that hedges occur in the market while mirror swaps are solely entered into as a function of a PB acting as a credit intermediary between parties that agreed to the terms of the relevant swap.[118]

ISDA–SIFMA also believe the current proposal could be improved by modifying obligations to report trigger swaps where the reporting obligation may fall on a prime broker. ISDA–SIFMA suggest that when an off-facility trigger swap is entered into with a SD that is not a PB with respect to such trigger swap, that SD should always report such trigger swap ASATP after such pricing event.[119] However, ISDA–SIFMA believe that when a pricing event occurs between two non-SDs, the related trigger swap should be reported ASATP upon acceptance of the prime broker.[120]

ISDA–SIFMA also note that non-SDs generally do not have the necessary systems to effectuate reporting and PBs would thus be reluctant to delegate reporting responsibility to a non-SD.[121] ISDA–SIFMA believe a PB would therefore report a trigger swap when the pricing event occurred between two non-SDs, which could only occur after the PB has accepted the trigger swap. ISDA–SIFMA believe that requiring the PB to report a trigger swap sooner than acceptance is impractical and would have the negative effect of limiting PB client access to non-SD liquidity.[122] ISDA–SIFMA believe that PB client access to non-SD liquidity would be limited under the Proposal because PBs would be concerned with their ability to comply with the reporting requirement and may restrict their PB clients from transacting with non-SDs.[123]

ISDA–SIFMA acknowledge that the suggestion that PBs be required to report trigger swaps after the PB has accepted the trigger swap may lead to a delay in the reporting of the trigger swap.[124] ISDA–SIFMA state that the extent of the delay would vary based on factors that include the sophistication of the non-SD's operational and systems capability, but that they assume reporting would be feasible within a T+1 timeline.[125] ISDA–SIFMA suggest using the proposed prime broker transaction indicator exclusively for such non-SD trigger swaps to assist in indicating to market participants that such trigger swaps may be reported later than the occurrence of the pricing event.[126]

ISDA–SIFMA do not believe additional indicators for trigger swaps are necessary because pricing data that is of interest to the public are already included in the swap transaction and pricing data for the trigger swap.[127] ISDA–SIFMA believe it is not practicable to require the potential additional reporting data elements on which the Commission sought comment because the relevant reporting counterparty may not have access to such information.[128]

GFMA supports ISDA–SIFMA's response and similarly believes that the above modifications to the proposal are necessary.[129]

The Commission received one comment addressing definitions. ISDA–SIFMA do not believe the proposed definitions need to be modified to reflect that prime brokerage fees might not be included in all mirror swaps. ISDA–SIFMA comments that clause (3) of the proposed ''Mirror Swap'' definition appears to adequately address such a possibility.[130]

ISDA–SIFMA support the Commission's proposed definition for ''prime broker'' and believes it accurately describes the term as understood in common industry practice.[131] However, ISDA–SIFMA anticipate that the related definitions for ''mirror swap'' and ''trigger swap'' would create unintended challenges and suggests revisions to those definitions that reference a newly defined term, ''prime broker swap.''[132] ISDA–SIFMA suggest revisions to clarify that the defined terms apply across asset classes and were not intended to imply that a prime brokerage agency arrangement is limited to the execution of the trigger swap.[133] ISDA–SIFMA also suggest a revision to the definition of trigger swap that would not, in conjunction with proposed § 43.3(a)(6)(i), require the public dissemination of a mirror swap if the associated trigger swap was exempt from public dissemination for any reason.[134]

The Commission received one comment specifically regarding costs and benefits. ISDA–SIFMA comments that adding an additional reporting data element identifying if a swap was a mirror swap or a trigger swap would only result in added costs and complexity to PB reporting, without commensurate benefit to regulatory oversight.[135] ISDA–SIFMA believe that the real-time reporting of mirror swaps would neither enhance price transparency nor serve any price discovery purpose given that there would be no new or additional pricing information released to the market and publicly disseminating mirror swaps with a mirror swap flag would only create noise on the public tape.[136] With respect to the prevalence of mirror swaps, ISDA–SIFMA note that all PB intermediated transactions have at least one mirror swap, but ISDA–SIFMA cannot speak to percentages because firms have strict internal policies on what sort of information can be shared with or amongst other firms.[137]

c. Final Rule

The Commission is adopting the proposal and the proposed new § 43.2 definitions related to mirror swaps with some modifications suggested by commenters, as discussed further below.[138]

The CEA authorizes the Commission to make swap transaction and pricing data available to the public in such form and *at such times as the Commission determines appropriate to enhance price discovery.*[139] The Commission concludes, as informed by commenters, that price discovery will be enhanced by excluding mirror swaps from public dissemination. The Commission believes that price discovery will not be enhanced because the terms and pricing of a trigger swap and its related mirror swap(s) are the same and the current requirement to report both trigger and mirror swaps may be falsely indicating the occurrence of two or more pricing events. The Commission understands that such potentially false indications may also incorrectly suggest the presence of more trading activity and price discovery in the market than actually exists. The Commission is therefore finalizing the portions of the proposed amendments that clarify that

[117] ISDA–SIFMA at 51–53, 64–66.
[118] *Id.*
[119] *Id.*
[120] *Id.*
[121] ISDA–SIFMA at 64.
[122] *Id.*
[123] ISDA–SIFMA at 51–53, 64–66.
[124] ISDA–SIFMA at 52.
[125] ISDA–SIFMA at 66.
[126] ISDA–SIFMA at 52–53.
[127] ISDA–SIFMA at 51–53.
[128] *Id.*
[129] GFMA at 1, 5–6.
[130] ISDA–SIFMA at 53.
[131] ISDA–SIFMA at 53–54.
[132] *Id.*
[133] *Id.*
[134] ISDA–SIFMA at 65.
[135] ISDA–SIFMA at 57.
[136] *Id.*
[137] *Id.* at 58.
[138] In addition, the Commission made minor non-substantive technical edits for clarity.
[139] 7 U.S.C. 2(a)(13)(B) (emphasis added).

mirror swaps are not publicly reportable swap transactions.

The Commission disagrees with the comment that mirror swaps should continue to be publicly disseminated. The commenter suggests that the Commission address concerns that mirror swaps may create false signals of swap trading volume by requiring the reporting of a new indicator for mirror swaps, but the Commission notes that none of the other commenters assert that the public reporting of mirror swaps enhances price discovery. The Commission believes that it would be inconsistent with section 2(a)(13) of the CEA for the Commission to continue to require the public dissemination of swap transaction and pricing data that does not enhance price discovery.[140]

The Commission is also finalizing as proposed those portions of the proposal that provide that the execution of a trigger swap, for purposes of determining when execution occurs under § 43.3(a)(1) through (3), shall be deemed to occur at the time of the pricing event for such trigger swap. Since all of the material terms of trigger swaps are determined at the time of its related pricing event, the Commission believes it would enhance price discovery for swap transaction and pricing data associated with trigger swaps to be reported in real time and disseminated, subject to any applicable time delay described in § 43.5, ASATP after the occurrence of the pricing event.

The Commission disagrees with the comment that a PB should be required to report a trigger swap after the trigger swap has been accepted by the PB in circumstances where the counterparty to the trigger swap is not an SD. The commenter acknowledges that conditioning the requirement to report a trigger swap upon the acceptance of the trigger swap by a PB would permit an indefinite delay in the reporting of some trigger swaps. The Commission believes that the proposed indefinite delay is generally inconsistent with the section 2(a)(13) of the CEA and would have negative impacts on transparency, price discovery, and liquidity. Since all of the material terms of trigger swaps are determined at the time of its related pricing event, the Commission believes it would enhance price discovery for swap transaction and pricing data associated with trigger swaps to be reported in real time and disseminated, subject to any applicable time delay described in § 43.5, ASATP after the occurrence of the pricing event.

The Commission is also finalizing the proposed definition of mirror swap and trigger swap with modifications suggested by commenters.[141] The Commission believes it is necessary to define a mirror swap and trigger swap with specificity to ensure that § 43.3(a)(6) only exempts from public reporting those legs of a prime brokerage transaction that might incorrectly suggest the presence of more trading activity and price discovery than actually exist.

The Commission agrees with comments suggesting clarifying revisions to the proposed definitions of mirror swap and trigger swap, and the creation of a newly defined term ''prime broker swap.'' These modifications seek to clarify that such terms apply across asset classes and were not intended to imply that a prime brokerage agency arrangement is limited to the execution of the trigger swap. The Commission did not intend to imply otherwise and believes such clarifications may help market participants better understand their obligations. Accordingly, the Commission is amending proposed § 43.2(a) to define the term ''Prime broker swap'' as ''any swap to which a SD acting in the capacity as PB is a party.'' Under this definition, both the trigger swap and mirror swap would be prime broker swaps. The Commission is similarly amending the proposed definitions of ''Prime brokerage agency arrangement'' and ''Prime brokerage agent'' to reference PB swaps instead of trigger swaps.

The Commission is amending the proposed definition of ''Trigger swap'' to clarify that a PB swap executed on or pursuant to the rules of a SEF or DCM shall be treated as the trigger swap for purposes of part 43. The Proposal did not directly address the potential fact pattern where a leg of a prime brokerage transaction is executed on a facility. In such instances, the Commission believes that it is preferable for that leg to be deemed the trigger swap so that it can be reported in real-time by the SEF or DCM.

The Commission is amending the proposed definition of ''Mirror swap'' to replace references to ''notional'' with a broader reference to ''contractually agreed payment and delivery amounts.'' The Commission believes that use of the broader term ''contractually agreed payment and delivery amounts'' clarifies that the term mirror swap may apply to swaps in all asset classes, including swaps for which the term ''notional'' may not generally be used by market participants. The Commission is also amending the proposed definition of ''Mirror swap'' to remove the phrase: Including, but not limited to, in the case of a mirror swap that is part of a partial reverse give-up. While the Commission understands that the definition of ''Mirror swap'' may apply to swaps associated with partial reverse give-ups, as described in the Proposal, the Commission believes such specific reference in the text of the regulation is unnecessary.

The Commission is otherwise finalizing the proposed definitions of mirror swap and trigger swap as proposed. The Commission believes the definitions are necessary to ensure that § 43.3(a)(6) only exempts from public reporting those legs of a prime brokerage transaction that might incorrectly suggest the presence of more trading activity and price discovery than actually exist.

The Commission is therefore defining a mirror swap to mean a swap: (1) To which (i) a PB is a counterparty or (ii) both counterparties are prime brokers; (2) that is executed contemporaneously with a corresponding trigger swap; (3) That has identical terms and pricing as the contemporaneously executed trigger swap (except (i) that a mirror swap, but not the corresponding trigger swap, may include any associated prime brokerage service fees agreed to by the parties and (ii) as provided in paragraph (5) of this ''mirror swap'' definition); (4) With respect to which the sole price forming event is the occurrence of the contemporaneously executed trigger swap; and (5) The execution of which is contingent on, or is triggered by, the execution of the contemporaneously executed trigger swap. The contractually agreed payments and delivery amounts under a mirror swap may differ from those amounts of the corresponding trigger swap if: (i) Under all such mirror swaps to which the PB that is a counterparty to the trigger swap is also a counterparty, the aggregate contractually agreed payments and delivery amounts shall be equal to the aggregate of the contractually agreed payments and delivery amounts under the corresponding trigger swap; and (ii) the market risk and contractually agreed payments and delivery amounts of all such mirror swaps to which a PB that is not a counterparty to the corresponding trigger swap is a party will offset each other, resulting in such PB having a flat market risk position at the execution of such mirror swaps.

The Commission is similarly defining a trigger swap to mean a swap: (1) That is executed pursuant to one or more prime brokerage agency arrangements; (2) to which one counterparty or both counterparties are prime brokers; (3)

[140] 7 U.S.C. 2(a)(13)(B).

[141] In addition, the Commission made minor non-substantive technical edits for clarity.

that serves as the contingency for, or triggers, the execution of one or more corresponding mirror swaps; and (4) that is a publicly reportable swap transaction that is required to be reported to an SDR pursuant to parts 43 and 45. A PB swap executed on or pursuant to the rules of a SEF or DCM shall be treated as the trigger swap for purposes of part 43.

The Commission expects the parties to a trigger swap to promptly convey those terms to the relevant prime broker(s) that would be a party or parties to related mirror swaps. Any delay in conveying such terms should not be used as an opportunity to find additional counterparties to take part in unreported mirror swaps.[142] The Commission may construe any purported mirror swaps resulting from such activity as not executed contemporaneously with the related trigger swap, and thus not within the scope of the proposed mirror swap definition or, as a result, § 43.3(a)(6), and therefore reportable under § 43.3(a)(1) through (3), as applicable, depending on the facts and circumstances.

The Commission disagrees with comments suggesting the proposed definition of trigger swap be amended to allow an exception to the requirement that such swap be a publicly reportable swap transaction reported to an SDR, where the trigger swap is otherwise exempt from public reporting. The Commission is excluding mirror swaps from public dissemination because of its concern that the public dissemination of both trigger and mirror swaps may falsely indicate the occurrence of two or more pricing events. The Commission's concern that the publication of a mirror swap may mislead the market is premised on the publication of the associated trigger swap. If the trigger swap is not publicly disseminated, this concern is moot. The Commission is therefore not amending the definition of trigger swap to allow for an exception to the requirement that a trigger swap be a publicly reportable swap transaction that is reported to an SDR.

The Commission agrees with the comment suggesting revisions to clarify and simplify reporting obligations for trigger swaps. The Commission is changing the title of § 43.6(a)(6) from ''Mirror swaps'' to the more general ''Prime Broker swaps'' as the paragraph contains reporting obligations related to trigger swaps. The Commission is modifying proposed § 43.6(a)(6)(ii) to clarify that the obligation for PBs to determine which swaps are mirror swaps and which are trigger swaps applies when the trigger swap would occur between two PBs under a prime brokerage agency arrangement. The Commission is also removing the distinction in proposed §§ 43.6(a)(6)(ii) and 43.6(a)(6)(iii) that would have created slight differences in the process for determining the reporting counterparty for certain off-facility trigger swaps.

5. § 43.3(a)(7)—Third-Party Facilitation of Data Reporting

The Commission is adding new § 43.3(a)(7) to provide for the third-party facilitation of data reporting. New § 43.3(a)(7) states that any person required by part 43 to report swap transaction and pricing data, while remaining fully responsible for reporting as required by part 43, may contract with a third-party service provider to facilitate reporting. Regulation 45.9 provides for third-party facilitation of data reporting, and the Commission believes a parallel requirement in part 43 will provide regulatory certainty by expressly permitting the same opportunity for part 43 reporting.

The Commission received one comment on the proposal. Markit comments the proposed explicit acknowledgement that third-party reporting services may be used to meet part 43 reporting requirements will encourage more firms to provide such services and will consequently result in reduced compliance costs.[143] The Commission agrees with Markit, and for the reasons discussed above, is adopting § 43.3(a)(7) as proposed.

6. § 43.3(b)—Public Dissemination of Swap Transaction and Pricing Data

The Commission is adopting changes to § 43.3(b). Existing § 43.3(b)(2)[144] states that registered SDRs shall ensure that swap transaction and pricing data is publicly disseminated ASATP after such data is received from a SEF, DCM, or reporting party, unless such publicly reportable swap transaction is subject to a time delay described in § 43.5, in which case the publicly reportable swap transaction shall be publicly disseminated in the manner described in § 43.5.

The Commission is re-locating existing § 43.3(b)(2) to § 43.3(b)(1). The Commission is replacing the language in existing § 43.3(b)(2) stating that SDRs ''shall ensure'' swap transaction and pricing data is publicly disseminated with an SDR ''shall publicly disseminate'' swap transaction and pricing data ASATP to clarify that SDRs must disseminate the data, rather than ensure it is done. The Commission is also correcting two references to ''publicly reportable swap transaction'' to reference ''swap transaction and pricing data.''

The Commission is re-locating § 43.3(c)(1) to § 43.3(b)(2) in conjunction with the above relocation of § 43.3(b)(2) to § 43.3(b)(1). Existing § 43.3(c)(1) states that any SDR that accepts and publicly disseminates swap transaction and pricing data in real-time shall comply with part 49 and shall publicly disseminate swap transaction and pricing data in accordance with part 43 ASATP upon receipt of such data, except as otherwise provided in part 43. Because existing § 43.3(c)(1) is an SDR obligation regarding the public dissemination of swap transaction and pricing data, the Commission is re-locating it to revised § 43.3(b).

The Commission is also removing the last phrase of existing § 43.3(c)(1), which states that SDRs must publicly disseminate swap transaction and pricing data in accordance with part 43 ASATP upon receipt of such data, except as otherwise provided in part 43. The language is unnecessary given the similar, but more precise, reference to § 43.5 in existing § 43.3(b)(2) and in proposed § 43.3(b)(1).[145] Finally, the Commission is re-designating existing § 43.3(c)(2) and (3) as § 43.3(b)(4) and (5), respectively.

The Commission did not receive any comments on the non-substantive or structural changes to § 43.3(b). For the reasons discussed above, the Commission is adopting the changes to § 43.3(b) as proposed. Separately, DTCC recommends deleting the annual independent review requirements for SDRs in existing § 43.3(c)(3), re-designated § 43.3(b)(5), because SDRs are subject to the system safeguards requirements in § 49.24, so the requirements in § 43.3(b)(5) create unnecessary compliance costs and burdens for SDRs.[146] To the extent the requirements overlap, the Commission clarifies SDRs can apply the controls

[142] This could include, but would not be limited to, a potential party to a mirror swap receiving the terms of a related trigger swap from one party to the trigger swap and seeking additional counterparties to a mirror swap while waiting to receive the matching terms of the trigger swap from the other party thereto.

[143] Markit at 8.

[144] As the Commission discussed above in section II.C.1, the Commission is moving the substance of existing § 43.3(b)(1) to revised § 43.3(a)(2).

[145] The reference in § 43.3(c)(1) to ''except as otherwise provided in part 43'' rather than solely to § 43.5 is unnecessarily broad, given that § 43.5 currently is the only regulation in part 43 containing a delay to public dissemination.

[146] DTCC at 3.

testing provisions in § 49.24 by their internal audit departments to satisfy § 43.3(b)(5), but the Commission is not removing § 43.3(b)(5) from its regulations.

7. § 43.3(c)—Availability of Swap Transaction and Pricing Data to the Public

The Commission is relocating the requirements to make swap transaction and pricing data available to the public from existing § 43.3(d)(1) and (2) to § 43.3(c)(1) and (2).[147] Existing § 43.3(d)(2) specifies that SDRs must make ''publicly disseminated'' [148] swap transaction and pricing data ''freely available and readily accessible'' to the public.

The Commission is also changing existing § 43.3(d)(1) and (2), re-designated as § 43.3(c)(1) and (2) to establish requirements for SDRs to make swap transaction and pricing data available to the public on their websites. First, the Commission is specifying that SDRs must make swap transaction and pricing data available on their websites for a period of a least one year after the initial ''public dissemination'' of such data. Second, the Commission is moving the format requirements for SDRs in making this swap transaction and pricing data available to the revised definition of ''public dissemination.''

The Commission believes publishing historical data supports the fairness and efficiency of markets and increases transparency, which in turn improves price discovery and decreases risk.[149] Most SDRs currently make historical swap transaction and pricing data available on their websites for market participants to download, save, and analyze.[150] However, without clear requirements on how long SDRs must make this data available, or make instructions available, a situation could arise where swap transaction and pricing data is reported, publicly disseminated, and then quickly or unreasonably made unavailable to the public. Removing data in this fashion would deny the public a sufficient opportunity to review the data and ultimately impede the goals of increasing market transparency, improving price discovery, and mitigating risk.

The Commission received three comments supporting the proposal to require SDR's to make public data available on their websites free for one year.[151] In particular, Citadel believes SDRs should be required to make available at least one year of historical data free of charge.[152] The Commission agrees with commenters and is adopting the changes to § 43.3(c) as proposed, with one modification described below.

DTCC recommends clarifying the connection between the fee requirement in proposed § 43.3(c)(2) and the one-year period set forth in § 43.3(c)(1) by either (i) combining the requirements in a single paragraph or (ii) changing the language under § 43.3(c)(2) from ''pursuant to this part'' to ''pursuant to this paragraph (c).'' [153] The Commission agrees with DTCC and is changing ''this part'' in § 43.3(c)(2) to ''this paragraph'' to clarify the connection.

Therefore, § 43.3(c) will state that SDRs shall make: Swap transaction and pricing data available on their websites for a period of time that is at least one year after the initial public dissemination thereof; instructions freely available on their websites on how to download, save, and search such swap transaction and pricing data; and swap transaction and pricing data that is publicly disseminated pursuant to this paragraph available free of charge.

8. § 43.3(d)—Data Reported to SDRs

The Commission is adopting new § 43.3(d)(1) to require reporting counterparties, SEFs, and DCMs to report the swap transaction and pricing data as described in the elements in appendix A. The Commission provides guidance with respect to the form and manner of reporting such elements in the technical specification published by the Commission in place of existing § 43.3(d)(1).[154] The Commission is also adding § 43.3(d)(2) to require reporting counterparties, SEFs, and DCMs to satisfy SDR validation procedures when reporting swap transaction and pricing data to SDRs in place of existing § 43.3(d)(2).[155]

The Commission is also removing existing § 43.3(d)(3). In its place, the Commission is requiring reporting counterparties, SEFs, and DCMs to use the facilities, methods, or data standards provided or required by the SDR to which the reporting counterparty, SEF, or DCM, reports the data.

The Commission believes reporting counterparties will benefit from distinct regulatory requirements in part 43 for reporting the swap transaction and pricing data as described in the data elements in appendix A in the form and manner provided in the technical specification published by the Commission. In addition, the Commission believes the SDR validation procedures the Commission is adopting in § 43.3(f) will help improve the timeliness and accuracy of data SDRs publicly disseminate. However, the Commission believes a companion requirement to § 43.3(f) for reporting counterparties, SEFs, and DCMs to satisfy SDR validation procedures in § 43.3(d)(2) is necessary. Without a companion requirement, ambiguity could arise as to the responsibilities of reporting counterparties, SEFs, and DCMs to actually satisfy the validation requirements in § 43.3(f).

The Commission received one comment [156] on the changes to § 43.3(d). DTCC believes the revisions would benefit market participants by having publicly disseminated swap transaction and pricing data standardized across SDRs via the requirements of the technical specifications published by the Commission pursuant to § 43.7.[157] The Commission agrees with DTCC. For the reasons discussed above, the Commission is adopting the changes to existing § 43.3(d) as proposed, with a non-substantive technical change to proposed § 43.3(d)(1) for clarity.

[147] As discussed above in section II.C.6, the Commission is re-locating the text of existing § 43.3(c)(1), as the Commission is modifying it, to § 43.3(b)(2), and existing § 43.3(c)(2) and (3) as § 43.3(b)(4) and (5), respectively.

[148] Existing § 43.2 defines ''publicly disseminated'' to mean to publish and make available swap transaction and pricing data in a non-discriminatory manner, through the internet or other electronic data feed that is widely published and in machine readable electronic format.

[149] *See* Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1183.

[150] DTCC–SDR's historical swap transaction and pricing data is available at *https://rtdata.dtcc.com/gtr/;* CME SDR's historical swap transaction and pricing data is available at *https://www.cmegroup.com/market-data/repository/data.html;* and ICE Trade Vault's historical swap transaction and pricing data is available at *https://www.icetradevault.com/tvus-ticker/#.*

[151] Citadel at 11; CME at 8; DTCC at 3.

[152] Citadel at 11.

[153] DTCC at 3. DTCC is concerned interpreting § 43.3(c)(2)'s fee requirement without any time limitation would mean any such previously publicly disseminated data held by an SDR must be offered free of charge in perpetuity, which could unnecessarily limit the services SDRs could provide to market participants.

[154] The Commission is relocating the requirement in existing § 43.3(d)(1) to the definition of ''publicly disseminate'' in § 43.2.

[155] The Commission is relocating the requirement in existing § 43.3(d)(2) to § 43.3(c)(1) and (2).

[156] NFP Electric Associations also comment they read CEA section 2(a)(13)(D) as only authorizing the Commission to require registered entities to disseminate data on swaps. As such, after a non-SD/MSP/DCO reports an off-facility swap pursuant to part 43, their reporting obligations should be satisfied as there is no separate ''public dissemination'' requirement in the CEA that falls on such non-registered entities. The Commission agrees nothing in existing or amended § 43.3(d) imposes a public dissemination requirement on a non-registered entity, and as such, the Commission considers NFP Electric Associations' concern misplaced.

[157] DTCC at 4.

9. § 43.3(f)—Data Validation Acceptance Message

The Commission is adopting new regulations for SDRs to validate swap transaction and pricing data in § 43.3(f). New § 43.3(f) will require that, in addition to validating each swap transaction and pricing data report submitted to it, the SDR also shall notify the reporting counterparty, SEF, or DCM submitting the report whether the report satisfied the data validation procedures of the SDR. The SDR will have to provide such notice ASATP after accepting the swap transaction and pricing data report. New § 43.3(f)(1) will provide that an SDR may satisfy the validation requirements by transmitting data validation acceptance messages as required by § 49.10.[158]

New § 43.3(f)(2) will provide that if a swap transaction and pricing data report submitted to an SDR does not satisfy the data validation procedures of the SDR, the reporting counterparty, SEF, or DCM required to submit the report has not satisfied its obligation to report swap transaction and pricing data in the manner provided by § 43.3(d). The reporting counterparty, SEF, or DCM will not have satisfied its obligation until it submits the swap transaction and pricing data report in the manner provided by § 43.3(d), which includes the requirement to satisfy the data validation procedures of the SDR.

The Commission is making one change to the proposal in response to a comment from DTCC. DTCC believes the Commission should replace the word ''transmitting'' with ''making available'' to give market participants flexibility in using the best available means to achieve proposed § 43.3(f)(1)'s purpose.[159] The Commission agrees ''transmitting'' could limit SDRs in providing information to their customers. As a result, the Commission is changing ''transmitting'' in § 43.3(f)(1) to ''making available.''

The Commission believes rules for validations in § 43.3(f) are critical for ensuring accurate, high-quality swap transaction and pricing data reaches the public. The Commission's regulations do not currently require that SDRs validate swap transaction and pricing data. The Commission understands, however, that SDRs have implemented validations as a best practice. As a result, each SDR runs a number of checks, or validations, on each message prior to publicly disseminating it. A failed validation can cause an SDR to reject the message without disseminating it to the public.

The Commission is concerned that the lack of validation requirements has resulted in reporting counterparties, SEFs, and DCMs being unaware of, or unfamiliar with, the existence of such validations. The Commission is concerned that the lack of awareness may be resulting in reporting counterparties, SEFs, and DCMs being unclear about their responsibilities to monitor their submissions to SDRs for errors that may result in validation failures that ultimately result in non-dissemination. As a result, the Commission is adopting § 43.3(d)(2) to require reporting counterparties, SEFs, and DCMs to satisfy SDR validation procedures when reporting swap transaction and pricing data to SDRs. The Commission is also adopting § 43.3(f) to make clear the requirement for each SDR to notify submitting parties of their failure to meet the SDR's validation procedures and that an entity's reporting obligation is not satisfied until the SDR's validation procedures have been satisfied.

The Commission received one comment opposing validations. NFP Electric Associations believe they will impose a significant additional burden on non-SD/MSP/DCO counterparties to off-facility non-financial commodity swaps and believe the Commission has not proved the validations will achieve a specific regulatory benefit to offset these burdens.[160] The Commission acknowledges the concerns raised by NFP Electric Associations, but believes that as SDRs currently validate data, the new regulations should not impose significant additional burdens on all reporting counterparties, including non-SD/MSP/DCO counterparties.

10. § 43.3(h)—Timestamp Requirements

The Commission is removing the timestamp requirements in existing § 43.3(h)(1) through (4).[161] Existing § 43.3(h)(1) through (4) sets forth timestamp requirements for registered entities, SDs, and MSPs for all publicly reportable swap transactions.[162] Separately, existing § 43.3(h)(4)(i) contains regulations regarding SDR fees. The Commission is not substantively amending § 43.3(h)(4)(i), but is relocating the requirement to § 43.3(g) in light of the changes to § 43.3(h).

The updated list of data elements in appendix A will cover the timestamps described in § 43.3(h).[163] Therefore, § 43.3(h)(1) through (3) requiring SEFs, DCMs, SDs, MSPs, and SDRs to timestamp swap transaction and pricing data is now redundant. In addition, the separate recordkeeping requirement for timestamps duplicates other recordkeeping requirements for SEFs, DCMs, SDs, MSPs, and SDRs. SDRs must already keep swap data for five years following the final termination of the swap and for an additional ten years in archival storage.[164] In a separate release, the Commission is adding part 43 swap transaction and pricing data to the recordkeeping requirement in § 49.12(b)(1) for SDRs.[165] SEFs, DCMs, SDs, and MSPs have similar recordkeeping requirements for swaps.[166] As a result, SEFs, DCMs, SDs, MSPs, and SDRs have to maintain timestamps they disseminate as part of recordkeeping requirements separate

[158] The Commission is adopting new regulations for SDRs to validate swap transaction and pricing data in a separate release amending parts 45, 46, and 49.

[159] DTCC at 4. DTCC is concerned proposed § 43.3(f)(1) is silent regarding other means by which an SDR can satisfy the validation requirements and is concerned that the proposed language unnecessarily limits the means by which SDRs and their members may arrange for access to such information.

[160] NFP Electric Associations at 6–7.

[161] The Commission proposed moving the § 43.3(g) regulations for SDR hours of operation to § 49.28 and reserving § 43.3(g). *See* 84 FR at 21064 (May 13, 2019).

[162] SEFs and DCMs must timestamp swap transaction and pricing data relating to a publicly reportable swap transaction with the date and time, to the nearest second, of when such SEF or DCM receives data from a swap counterparty (if applicable), and transmits such data to an SDR for public dissemination. 17 CFR 43.3(h)(1). SDRs must timestamp swap transaction and pricing data relating to a publicly reportable swap transaction with the date and time, to the nearest second when such SDR receives data from a SEF, DCM, or reporting party, and publicly disseminates such data. 17 CFR 43.3(h)(2). SDs or MSPs must timestamp swap transaction and pricing data for off-facility swaps with the date and time, to the nearest second when such SD or MSP transmits such data to an SDR for public dissemination. 17 CFR 43.3(h)(3). Records of all timestamps required by § 43.3(h) must be maintained for a period of at least five years from the execution of the publicly reportable swap transaction. 17 CFR 43.3(h)(4).

[163] The Commission discusses appendix A in section III below.

[164] *See* § 45.2(f) and (g) (containing recordkeeping requirements for SDRs); *see also* § 49.12(a) (referencing part 45 recordkeeping requirements). In the May 2019 notice of proposed rulemaking relating to the Commission's SDR regulations in parts 23, 43, 45, and 49, the Commission proposed to move the requirements in § 45.2(f) and (g) to § 49.12. *See* Certain Swap Data Repository and Data Reporting Requirements, 84 FR 21044, 21103–04 (May 13, 2019).

[165] The Commission is doing so by replacing the term ''swap data'' with ''SDR data,'' which the Commission proposes to define as data required to be reported pursuant to two or more of parts 43, 45, 46, or 49 of the Commission's regulations. *See* Certain Swap Data Repository and Data Reporting Requirements, 84 FR 21044, 21103–04 (May 13, 2019).

[166] Existing § 45.2(c) requires SDs, MSPs, SEFs, and DCMs to maintain records for each swap throughout the life of the swap for a period of at least five years following the final termination of the swap.

from § 43.3(h)(4), making the requirement redundant as well.

The Commission did not receive any comments on the changes to § 43.3(h)(1)–(4). For the reasons discussed above, the Commission is adopting the changes as proposed.

D. § 43.4—Swap Transaction and Pricing Data To Be Publicly Disseminated in Real-Time

1. § 43.4(a) Through (e)—Public Dissemination, Additional Swap Information, Anonymity, and Unique Product Identifiers

The Commission is adopting several changes to § 43.4(a) through (e). Existing § 43.4(a) generally requires that swap transaction and pricing data be reported to an SDR so that the SDR can publicly disseminate the data in real-time, including according to the manner described in § 43.4 and appendix A. Existing § 43.4(b) requires that any SDR that accepts and publicly disseminates swap transaction and pricing data in real-time publicly disseminate the information described in appendix A, as applicable, for any publicly reportable swap transaction. Existing § 43.4(c) states that SDRs that accept and publicly disseminate swap transaction and pricing data in real-time may require reporting parties, SEFs, and DCMs to report to the SDR information necessary to compare the swap transaction and pricing data that was publicly disseminated in real-time to the data reported to an SDR pursuant to section 2(a)(13)(G) of the CEA or to confirm that parties to a swap have reported in a timely manner pursuant to § 43.3.[167] Existing § 43.4(d) contains regulations for maintaining the anonymity of the parties to a publicly reportable swap transaction. Existing § 43.4(e) permits SDRs to disseminate UPIs for certain data fields once a UPI is available.

The Commission is deleting existing § 43.4(a) as it is overly general. As a result, the Commission is re-designating § 43.4(b) through (d) as § 43.4(a) through (c) and making minor non-substantive changes. The Commission is also removing existing § 43.4(e), which gives SDRs discretion regarding what fields to publicly disseminate after a UPI exists.[168] As discussed below in section III, the UPI will be addressed in the swap transaction and pricing data elements in appendix A.[169]

The Commission is adopting its proposed changes to § 43.4(d)(4) with modifications. The Commission proposed removing § 43.4(d)(4)(i) through (iii); re-designating § 43.4(d)(4) as § 43.4(c)(4); consolidating the substance of § 43.4(d)(4)(i) and (iii) in proposed § 43.4(c)(4); and eliminating the requirement in existing § 43.4(d)(4)(ii) that SDRs publicly disseminate the actual assets underlying certain swaps in the other commodity asset class that either reference one of the contracts described in appendix B to part 43 [170] or that are economically related to such contracts.[171]

In proposing the changes to § 43.4(d)(4), the Commission believed other commodity swaps referencing, or economically related to, the contracts in appendix B could still be sufficiently bespoke to warrant additional masking. Consequently, the Commission proposed eliminating the requirement in existing § 43.4(d)(4)(ii) that registered SDRs publicly disseminate the actual assets underlying other commodity swaps that either reference one of the contracts described in appendix B to part 43 or that are economically related to such contracts. Because the Commission proposed removing that requirement from existing § 43.4(d)(4)(ii), the Commission also proposed removing appendix B to part 43 and re-designating existing appendix E as appendix B.

The Commission is keeping the masking requirements in existing § 43.4(d)(4), but re-locating the requirement to § 43.4(c)(4) and making minor technical edits. The Commission has reconsidered whether expanding masking outweighs reducing transparency, and believes the analysis that formed the basis for adopting existing § 43.4(d)(4) remains operative. As a result, the Commission is keeping appendix B as well, as § 43.4(d)(4) references it. The Commission is leaving appendices B and E in their current locations and making minor technical edits to appendix E to reflect the relocation of § 43.4(d)(4) to § 43.4(c)(4).

The Commission received two comments on geographic masking of commodities swap transactions. NFP Electric Associations strongly support the proposed additional masking of swap transactions as it will help ensure that business transactions and market positions of counterparties are not disclosed.[172] CME, conversely, raised issues with proposed § 43.4(c)(4). CME notes § 43.3(c)(4) would require an SDR to identify ''. . . any specific delivery point or pricing point associated with the underlying asset of such other commodity swap . . .'' and publicly disseminate it pursuant to appendix B to part 43.[173] CME, however, cannot identify any data element(s) that would be populated with delivery or pricing points and believes that this would render proposed § 43.4(c)(4) unnecessary unless the Commission anticipates those data elements being part of a uniform product identifier.[174] CME claims requiring CME to implement such masking would require the introduction of an additional data element that would identify the regions in proposed appendix B to which the delivery or pricing point map, since the reporting party, not the SDR, would have that information.[175] For reasons discussed above, the Commission is not adopting the proposed substantive changes to § 43.4(c)(4).

2. § 43.4(f)—Process To Determine Appropriate Rounded Notional or Principal Amounts

The Commission is adopting non-substantive changes to existing § 43.4(f). Existing § 43.4(f) requires reporting parties, SEFs, and DCMs to report the actual notional or principal amount of any swap, including block trades, to an SDR that accepts and publicly disseminates such data pursuant to part 43.[176] The Commission is re-designating § 43.4(f) as § 43.4(d) [177] and making minor non-substantive changes. The Commission received no comments on the changes.

3. § 43.4(g)—Public Dissemination of Rounded Notional or Principal Amounts

The Commission is re-designating existing § 43.4(g) as § 43.4(e).[178] The Commission is also changing existing § 43.4(g), titled ''Public dissemination of rounded notional or principal amounts,'' which states that the notional or principal amount of a publicly reportable swap transaction, as described in appendix A to this part, shall be rounded and publicly disseminated by a registered SDR, and

[167] The real-time reporting requirements pursuant to section 2(a)(13) of the CEA are separate and apart from the requirements to report swap transaction information to a registered SDR pursuant to section 2(a)(13)(G).

[168] The Commission has not yet designated a UPI and product classification system to be used in recordkeeping and swap data reporting pursuant to § 45.7.

[169] In addition, the Commission is making technical non-substantive edits to § 43.4(a) for clarity.

[170] *See* existing § 43.4(d)(4)(ii)(A).

[171] *See* existing § 43.4(d)(4)(ii)(B).

[172] NFP Electric Associations at 7.

[173] CME at 10.

[174] *Id.*

[175] *Id.*

[176] *See* existing § 43.4(f)(1)–(2).

[177] This is due to removing § 43.4(a) and (e), and re-designating § 43.4(b) through (d) as § 43.4(a) through (c).

[178] This is a result of re-designating § 43.4(f) as § 43.4(d).

then sets out the rules for rounding. The Commission is rephrasing § 43.4(g), re-designated as § 43.4(e), to state that the notional or principal amount of a publicly reportable swap transaction shall be publicly disseminated by a swap data repository subject to rounding as set forth in § 43.4(f) and the cap size as set forth in § 43.4(g).

The rounding rules in existing § 43.4(g) will be in § 43.4(f), titled ''Process to determine appropriate rounded notional or principal amounts.'' New § 43.4(f) will contain the rounding rules set forth in existing § 43.4(g), subject to two substantive changes explained below, among other non-substantive changes.

The Commission is changing § 43.4(g)(8) and (9), re-designated as § 43.4(f)(8) and (9). Existing § 43.4(g)(8) requires an SDR to round the notional or principal amount of a publicly reportable swap transaction to the nearest one billion if it is less than 100 billion but equal to or greater than one billion. The Commission is changing § 43.4(f)(8) to require rounding to the nearest 100 million instead of one billion. Existing § 43.4(g)(9) requires an SDR to round the notional or principal amount of a publicly reportable swap transaction to the nearest 50 billion if it is greater than 100 billion. The Commission is changing existing § 43.4(f)(9) to require rounding to the nearest 10 billion and adding the words ''equal to or'' before ''greater than 100 billion'' to include swaps with notional or principal amounts that are exactly 100 billion, the omission of which from the 2012 reporting rules appears to have been an oversight.[179]

The Commission is concerned that broadly rounded notional or principal amounts could undermine the price discovery purpose of real-time reporting. The Commission is particularly concerned about swaps with notional or principal amounts over 1 billion because there tend to be fewer swaps of such size relative to swaps with smaller notional or principal amounts. The Commission believes smaller rounding increments for the notional or principal amount of swaps covered by proposed § 43.4(f)(8) and (9) will improve price discovery for such swaps. Rounding the notional or principal amounts in smaller increments in § 43.4(f)(8) and (9) also would be consistent with the rounding increments prescribed in § 43.4(g)(1) through (7) (*i.e.,* § 43.4(f)(1) through (7)) on a percentage basis. The Commission did not receive any comments on the proposal. For the reasons discussed above, the Commission is adopting the changes as proposed.

4. § 43.4(h)—Process To Determine Cap Sizes

In the Proposal, the Commission proposed removing the regulations for initial cap sizes and replacing them with new regulations for cap sizes. To avoid removing regulations that still need to be effective during the compliance period for the changes to § 43.4(h) (which the Commission is still re-designating § 43.4(g) as proposed), the Commission has decided to leave the existing regulations for the initial cap sizes as § 43.4(g), while adding the new updated regulations for cap sizes during the post-initial period that were proposed in the Proposal to new § 43.4(h). The Commission discusses the new regulations in this section.

First, the Commission is re-designating existing § 43.4(h)(1) (regulations for initial cap sizes) as § 43.4(g).[180] Existing § 43.4(h) requires the Commission to establish initial cap sizes[181] and post-initial cap sizes.[182] Existing § 43.4(h)(2) requires the Commission to establish post-initial cap sizes, according to the process in § 43.6(f)(1) using a one-year window of reliable SDR data for each relevant swap category, recalculated no less than once each calendar year and using the 75-percent notional amount calculation described in § 43.6(c)(3).[183] The Commission was to publish post-initial cap sizes on its website at *https://www.cftc.gov,*[184] and the caps were to be effective on the first day of the second month following the date of publication.[185]

The Commission is keeping the substance of existing § 43.4(h)(1), while also publishing post-initial cap sizes using the 75-percent notional calculation as required by existing § 43.4(h)(2) through (4). As discussed above, to avoid removing regulations needed during the compliance period until market participants need to comply with the regulations for post-initial cap sizes, the Commission is retaining the substance of § 43.4(h)(1) in new § 43.4(g) (titled ''Initial cap sizes'') in its regulations.

Second, the Commission is establishing cap sizes for each of the proposed new swap categories set forth in proposed § 43.6(c)(1)(i) (interest rate (''IRS'')), (c)(2)(i) through (xii) (credit (''CDS'')), (c)(4)(i) (foreign exchange (''FX'')), and (c)(5)(i) (other commodity) using the 75-percent notional amount calculation.[186] The Commission is setting the cap sizes for those swap categories containing swaps with limited trading activity in the IRS, CDS, FX, and other commodity asset class at United States dollar (''USD'') 100 million, USD 400 million, USD 150 million, and USD 100 million, respectively.[187] The Commission is also setting the cap size for all swaps in the equity asset class at USD 250 million. As indicated by the proposed cap size tables published by the Commission, the 75-percent notional amount calculation does not result in a cap size for certain IRS categories set forth in proposed § 43.6(c)(1)(i).[188] The Commission is

[179] The omission of swaps with notional or principal amounts of exactly 100 billion did not change the rounding result. Although such swaps are not presently subject to rounding due to their omission from § 43.4(g)(9), even if they were included therein, because their notional or principal amount is a round number already, they would not have been rounded, and would not be rounded as a result of proposed § 43.4(f)(9). However, because all swaps with notional or principal amounts of greater than 100 billion will be rounded to the nearest 10 billion if § 43.4(f)(9) is adopted as proposed, such swaps would still obtain the anonymizing benefits of § 43.4(f)(8) and (9) when 100 billion is the nearest number to round to pursuant to § 43.4(f)(8) or (9), as applicable.

[180] This is a result of re-designating existing § 43.4(g) as § 43.4(e) and creating a separate section for rounding in § 43.4(f).

[181] Initial cap sizes for each swap category are the greater of the initial appropriate minimum block size for the respective swap category in existing appendix F of part 43 or the respective cap sizes in § 43.4(h)(1)(i) through (v). 17 CFR 43.4(h)(1). If appendix F did not provide an initial appropriate minimum block size for a particular swap category, the initial cap size for such swap category was equal to the appropriate cap size as set forth in § 43.4(h)(1)(i) through (v). Existing § 43.4(h)(1) also requires SDRs, when publicly disseminating the notional or principal amounts for each such category, to disseminate the cap size specified for a particular category rather than the actual notional or principal amount in those cases where the actual notional or principal amount of a swap is above the cap size for its category. Existing § 43.4(h) does not explicitly state that an SDR must publicly disseminate swap data subject to the cap size limit, but the Commission clarified this requirement in the preamble to the 2012 Real-Time Public Reporting Final Rule. See 2012 Real-Time Public Reporting Final Rule, 77 FR 1182, 1214 (Jan. 9, 2012).

[182] Before the Proposal, the Commission had not yet established post-initial cap sizes.

[183] 17 CFR 43.4(h)(2).

[184] 17 CFR 43.4(h)(3).

[185] 17 CFR 43.4(h)(4).

[186] *See* section II.F.4 below for a discussion of the process to determine appropriate minimum block size. As mentioned above, using the 75% notional amount calculation would be consistent with what the Commission had intended when it adopted the Block Trade Rule. *See* 17 CFR 43.4(h)(2).

[187] New § 43.4(h) would reference the regulations containing the categories for swaps with limited trading activity: § 43.6(c)(1)(ii) (IRS); § 43.6(c)(2)(xiii) (CDS); § 43.6(c)(4)(iii) (FX); § 43.6(b)(5)(ii) (other commodity). The Commission's process for determining these categories is discussed in section II.F.2 below.

[188] The proposed cap size tables indicated that the 75-percent notional amount calculation did not result in a cap size for 15 IRS categories. There was insufficient swap transaction and pricing data for the Commission to determine a cap size for such swap categories.

setting the cap sizes for such IRS categories at USD 100 million, the cap size being assigned to other IRS with limited trading activity.

The Commission received several comments on its proposal to implement post-initial cap sizes using the 75-percent notional calculation. Most commenters combined their comments on raising cap sizes with the Commission's proposal to raise the block threshold in § 43.6. As such, the Commission discusses these comments together, along with the Commission's decision to raise the cap sizes and block thresholds, in section II.F.4 below.

Existing § 43.4(h)(2)(i) requires the Commission to recalculate cap sizes no less than once each calendar year. The Commission proposed replacing existing § 43.4(h)(2)(i), re-designated as § 43.4(g)(2)(i), with a flexible approach permitting the Commission to recalculate cap sizes when it determined necessary. The Commission is not adopting these changes. Most commenters combined their comments on the flexible approach for determining cap sizes with the Commission's proposal to adopt a flexible approach for determining block thresholds. The Commission discusses these comments together, along with the Commission's decision to keep the substance of the current requirements in re-designated § 43.4(h)(9) and (10), in section II.F.1 below.

Separately, the Commission requested comment on whether it should require SDRs to remove any caps applied pursuant to § 43.4(h) after six months to reveal the actual notional amount after six months of anonymity and whether six months was long enough to mitigate anonymity concerns. The Commission received two general comments on the topic. DTCC suggests the Commission carefully consider the costs and burdens associated with removing cap sizes as it would deviate from current market practice and would likely lead to significant operational complexity for implementation.[189] MFA supports the public dissemination of the full, uncapped notional amount of block trades and believes a shorter delay than six months could be appropriate, but notes that a six-month delay would harmonize the Commission's rules with similar reporting in the fixed income market on the Financial Industry Regulatory Authority's (''FINRA'') Trade Reporting and Compliance Engine.[190]

The Commission received two comments requesting faster removal. Citadel recommends the Commission consider publishing full, uncapped notionals of block trades three months after execution.[191] Clarus believes SDRs should remove caps by T+1, as SEFs already publish part 16 data T+1, to introduce consistency for on-SEF and off-SEF transactions and promote SEF execution.[192]

The Commission received one comment opposing SDR removal of caps. GFMA believes caps protect the ability of liquidity providers to manage and hedge any risk exposure without compromising anonymity.[193] GFMA notes large trades, such as those facilitating merger and acquisition transactions, are illiquid and potentially sensitive in nature, and the ability to successfully manage risk could be compromised if a cap is removed, even after time.[194]

Despite some commenters supporting such a proposal, the Commission is concerned about revealing information that could enable market participants to identify trading patterns or open positions of swap counterparties. The CEA requires the Commission ensure swap transaction and pricing data disseminated by SDRs does not identify the transaction's participants.[195] The Commission is concerned removing the caps from this data after six months could comprise the required anonymity by allowing the public to associate certain pricing and quantity data with trading patterns. In addition, the Commission shares GFMA's concerns about revealing information about certain large trades that could be sensitive given certain circumstances, like corporate events like mergers and acquisitions. Therefore, the Commission is declining to adopt new rules requiring SDRs remove cap sizes at this time.

E. § 43.5—Time Delays for Public Dissemination of Swap Transaction and Pricing Data

1. § 43.5(a) and (b)—General Rule and Public Dissemination of Publicly Reportable Swap Transactions Subject to a Time Delay

The Commission proposed many technical changes to § 43.5(a) and (b). The Commission proposed one substantive change to remove references to LNOFS transactions in § 43.5(a), and throughout part 43, to reflect proposed changes to § 43.5(c) for a single time delay for block trade delays.[196]

The Commission proposed removing the requirements of § 43.5(b)(1) and (2) that SDRs must disseminate the specified swap transaction and pricing data no sooner than, and no later than the prescribed time delay period and to retain the requirement of § 43.5(b)(3) that SDRs must disseminate the specified swap transaction and pricing data precisely upon the expiration of the time delay period. The Commission also proposed ministerial rephrasing amendments to § 43.5(b). The Commission believed that together, the proposed amendments to § 43.5(b) would improve the clarity of the provision.

The Commission is keeping § 45.3(a) and (b) without any changes because the Commission is not adopting a single time delay for public dissemination of block trades. The Commission discusses the decision to keep different time delays in § 43.5 in the following section. Since the changes to § 43.5(a) and (b) would have conformed to changes the Commission is not adopting, adopting the changes would make § 43.5(a) and (b) inconsistent with the rest of part 43. As a result, the Commission is not adopting any of the changes to § 43.5(a) and (b).

2. § 43.5(c) Through (h)—Removal of Certain Regulations Related to Time Delays

a. Proposal

The Commission proposed removing existing § 43.5(c) through (h) and adding a new § 43.5(c) that would require SDRs to implement a time delay of 48 hours for disseminating swap transaction and pricing data for each applicable swap transaction with a notional or principal amount above the corresponding appropriate minimum block size, if the parties to the swap have elected block treatment. Because the time delays in proposed § 43.5(c) would replace the time delays in existing appendix C, the Commission also proposed removing appendix C.

Existing § 43.5(c) provides interim time delays for each publicly reportable swap transaction, not just block trades and LNOFSs, until an appropriate minimum block size is established for such publicly reportable swap transaction. The Commission adopted § 43.5(c) in case compliance with part 43 was required before the establishment of appropriate minimum

[189] DTCC at 4.

[190] MFA at 3.

[191] Citadel at 8.

[192] Clarus at 2.

[193] GFMA at 8.

[194] *Id.*

[195] 7 U.S.C. 2(a)(13)(E)(i).

[196] The Commission discusses the definition of ''large notional off-facility swap'' in section II.B.2 above.

block sizes.[197] Because the Commission has now established appropriate minimum block sizes by swap category,[198] existing § 43.5(c) is technically no longer applicable.

Existing § 43.5(d) through (h) phased in the various time delays for the dissemination of swap block trades and LNOFSs over a one- to two-year period. The Commission believed when it adopted those regulations that providing longer time delays for public dissemination during the first year or years of real-time reporting would enable market participants to perfect and develop technology and to adjust hedging and trading strategies in connection with the introduction of post-trade transparency.[199] Since the phasing in of the time delays in existing § 43.5(d) through (h) is complete, the Commission proposed to remove the text remaining from the phase-in concept.

Existing § 43.5(d) through (h) provides specific time delays for the public dissemination of swap transaction and pricing data by an SDR. As background, CEA section 2(a)(13)(E)(iv) directs the Commission to take into account whether public disclosure of swap transaction and pricing data ''will materially reduce market liquidity.'' When the Commission adopted the Block Trade Rule in 2013, the Commission understood that the publication of detailed information regarding ''outsize swap transactions'' (*i.e.,* block trades and LNOFSs) could expose swap counterparties to higher trading costs.[200] In this regard, the publication of detailed information about an outsize swap transaction could alert the market to the possibility that the original liquidity provider to the outsize swap transaction will be re-entering the market to offset that transaction. Other market participants, alerted to the liquidity provider's large unhedged position, would have a strong incentive to exact a premium from the liquidity provider when the liquidity provider seeks to enter into offsetting trades to hedge this risk. As a result, liquidity providers may be deterred from becoming counterparties to outsize swap transactions if swap transaction and pricing data is publicly disseminated before liquidity providers can adequately offset their positions.

If a liquidity provider agrees to execute an outsize swap transaction, it likely will charge the counterparty the additional cost associated with hedging this transaction. In consideration of these potential outcomes, the Commission established the time delays for block trades and LNOFSs to balance public transparency and the concerns that post-trade reporting would reduce market liquidity.[201] The Commission did so in furtherance of its stated policy goal to provide maximum public transparency, while taking into account the concerns of liquidity providers regarding possible reductions in market liquidity.[202] The time delays established by the Commission currently range from 15 minutes to 24 business hours, depending upon the type of market participant, method of execution, and asset class.

When the Commission adopted the time delays for block trades and LNOFSs in 2012, it noted that commenters to the proposal recommended a range of time delays for public dissemination of block trades and LNOFSs, including end-of-day, 24 hours, T+1, T+2, a minimum of four hours, and 180 days.[203] In the Roadmap, DMO stated an intention to evaluate real-time reporting regulations in light of goals of liquidity, transparency, and price discovery in the swaps market.[204] In response, the Commission received comments on the time delays for block trades and LNOFSs.

In response to the Roadmap comments, the Commission proposed significant changes to the time delays for block trades and LNOFSs. In place of the current time delays ranging between 15 minutes to 24 business hours, depending upon the type of market participant, method of execution and asset class, the Commission proposed a single 48 hour time delay for all block trades and LNOFSs. The Commission sought comment on whether a single 48 hour time delay was necessary to account for potential situations when a market participant requires additional time to place a hedge position without significant unfavorable price movement and to create some consistency with the disclosure requirements of other authorities for non-liquid swaps.

b. Comments on the Proposal

The Commission received three comments supporting, and 15 comments opposing, the proposed 48 hour time delay for block trades and LNOFSs.

FXPA and GFMA support the proposed delay for FX swaps because it would assist market participants conducting hedging activities.[205] ACLI similarly supports the proposed 48 hour delay, but comments that it can take days or weeks to execute large hedging programs.[206] ACLI believes the need for price transparency in the swaps market is not as compelling as it is in other markets and that public dissemination sooner than the time it takes to execute hedging programs causes costs to end-users that outweigh any benefits to the market.[207]

Other commenters express concern that the proposed delay would have negative impacts on transparency, price discovery, and liquidity.[208]

Citadel expresses concern that counterparties to a block trade or LNOFS would have significantly more information regarding the fair value of a particular instrument than the rest of the market, which could advantage them when negotiating additional transactions in both that and similar instruments during the 48 hour period.[209] FIA PTG similarly believes this information asymmetry created by the proposal would be significant and impact related futures, options, and cash products.[210] Healthy Markets, SMU, and TRP believe the information asymmetry would benefit large liquidity providers at the expense of other market participants.[211] Citadel believes the information asymmetry also benefits current liquidity providers by increasing barriers to entry for potential new liquidity providers.[212]

[197] *See* Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1217 (Jan. 9, 2012) (stating ''it is possible that compliance with part 43 may be required before the establishment of appropriate minimum block sizes for certain asset classes and/or groupings of swaps within an asset class'').

[198] *See* § 43.6 (setting forth the block sizes for various swap categories).

[199] Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1217 (Jan. 9, 2012).

[200] *See* Block Trade Rule at 32871 n.44 (stating that an ''outsize swap transaction'' is a transaction that, as a function of its size and the depth of the liquidity of the relevant market (and equivalent markets), leaves one or both parties to such transaction unlikely to transact at a competitive price).

[201] *Cf.* Federal Reserve Bank of New York Staff Reports, An Analysis of OTC Interest Rate Derivatives Transactions: Implications for Public Reporting (Mar. 2012, revised Oct. 2012) at 3 (explaining that most post-trade reporting regimes allow for reduced reporting requirements for large transactions since immediate reporting of trade sizes has the potential to disrupt market functioning, deter market-making activity, and increase trading costs).

[202] 78 FR 32870 (May 31, 2013).

[203] *See* Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1216 (Jan. 9, 2012).

[204] Roadmap at 11.

[205] FXPA at 2–3; GFMA at 1,8–9.

[206] ACLI at 2.

[207] *Id.* at 2–3.

[208] Better Markets, Carnegie Mellon, Chris Barnard, CHS, Citadel, Clarus, FIA PTG, Healthy Markets, ICI, MFA, MIT, SIFMA AMG, SMU, TRP, and Vanguard.

[209] Citadel at 6.

[210] FIA at 2.

[211] Healthy Markets at 2,7; SMU at 3; TRP at 2–3.

[212] Citadel at 7–8.

CHS, Citadel, and FIA PTG contrast the proposed 48-hour time delay to time delays in futures markets. Citadel notes the five-minute deferral for block trades in U.S. Treasury futures, a primary hedging tool for the USD IRS.[213] FIA PTG notes the same.[214] CHS believes the difference between block futures reporting deferrals and the proposed time delay would impact futures market participants and potentially result in regulatory arbitrage.[215]

Better Markets, Carnegie Mellon, Citadel, MIT, and SMU comment that the Proposal is inconsistent with research indicating that post-trade transparency improves liquidity while reducing transaction costs in financial markets, including the swaps market.[216] These commenters, as well as FIA PTG and Healthy Markets, note that such information was recently submitted to FINRA as it considered a similar proposal.[217] [218] Carnegie Mellon notes the lack of academic studies or evidence to support substantial dissemination delays.[219] SMU similarly notes the lack of research indicating that SDs lose significant sums to frontrunners and their belief that SDs regularly oppose timely reporting of blocks across financial markets because it reduces their pricing power.[220]

Commenters urge the Commission to not adopt the proposal and to retain the current reporting delays because the current reporting delays have been effective in supporting liquidity and risk transfer.[221] Other commenters urge the Commission to not change the current delays until the necessity of such changes are more clearly supported by a data analysis of market liquidity conditions.[222] Vanguard believes a 48-hour delay is unwarranted based upon current market liquidity, at least for IRS in the most liquid currencies.[223] ICI similarly comments that a ''one size fits all'' delay does not reflect differences in liquidity among different types of swaps.[224] TRP does not think an additional delay is necessary because indicators of a well-functioning market, especially on SEFs, have constantly increased since the implementation of the current reporting deferrals for block trades.[225] FIA PTG believes any perceived difficulty in hedging large swap transactions is more likely due to other elements of market structure, like an incomplete transition to electronic trading (including all-to-all platforms) and limited competition among liquidity providers.[226]

Clarus presents a methodology for measuring liquidity using data publicly disseminated by SDRs and comments that because liquidity is currently identical for swaps above and below the appropriate minimum block size, it does not appear that the proposed substantial delay is necessary.[227] Better Markets and Citadel cite swaps data maintained by Clarus for their assertions that all market risks are adequately hedged within current deferral periods.[228] TRP similarly comments that there is no indication that liquidity providers are unwilling to make markets because the current reporting delays are too short.[229] TRP notes studies indicating that market liquidity, especially for on-SEF transactions, has been consistently improving.[230] Citadel and Clarus further note that more block trades were executed in March 2020 than any prior month.[231] Citadel believes current liquidity levels support reducing the current 15 minute deferral for block trades in standardized and liquid instruments subject to mandatory clearing and on-venue trading requirements.[232]

The Commission also received comments asserting that a 48-hour delay would impair risk management functions. Commenters note that the Proposal would restrict access to current prices, which would make it more difficult for market participants to correctly value transactions to support end-of-day valuations and margin calculations. Commenters believe such difficulties would be particularly pronounced during periods of market volatility.[233] Healthy Markets comments the proposed delay would similarly hamper efforts to comply with best execution obligations.[234]

CME did not comment on whether 48 hours is an appropriate delay, but supports the simplified approach of a single time delay set forth in the Proposal because it would be less costly for SDRs to implement.[235]

The Commission received six comments regarding the Commission's stated goal of harmonization. Better Markets comments that harmonization should not be used as pretext for deregulatory initiatives contravening statutory objectives, but acknowledged harmonization of an appropriately balanced regulatory framework that is consistent with Congress' instructions and intent would be sensible and statutorily commanded.[236] Chris Barnard comments that harmonization should be reversed, with other authorities shortening their public reporting delays.[237]

FXPA comments that a 48-hour delay would better align with MiFID II requirements.[238] In contrast, Citadel comments that almost all European (''EU'') swaps transactions receiving a deferral are deferred four weeks and that a 48 hour delay with capped notionals would not increase harmonization with an EU regime that provides a four-week delay and does not cap notionals.[239] Citadel and Clarus comment that there is insufficient post-trade transparency in Europe, and thus harmonization with European regulations regarding transparency is not desirable.[240] SIFMA AMG comments that the European Securities and Markets Authority (''ESMA'') recently both (i) adopted regulations requiring certain products be reported in 15 minutes or less and (ii) released a consultation paper questioning whether prior ESMA reporting requirements achieved greater market transparency.[241]

The Commission also received three comments asserting that the Commission did not put forward legally sufficient support for the proposed 48-hour delay. Healthy Markets comments that the proposed reporting delay is insufficiently supported to fulfill the Commission's obligations under the

[213] Citadel at 3.

[214] FIA PTG at 2–3.

[215] CHS at 2.

[216] Better Markets at 5; Carnegie Mellon at 2–4; Citadel at 5; MIT at 1–2; SMU at 4–5.

[217] Better Markets at 5; Carnegie Mellon at 2–4; Citadel at 3; FIA PTG at 1; Healthy Markets at 7.

[218] As background, FINRA requested comment on a proposed pilot program to study changes to corporate bond block trade dissemination based on recommendations of the Securities and Exchange Commission's Fixed Income Market Structure Advisory Committee. Specifically, the proposed pilot was designed to study: An increase to the current dissemination caps for corporate bond trades, and delayed dissemination of any information about trades above the proposed dissemination caps for 48 hours. *See* FINRA Regulatory Notice 19–12, *available at https://www.finra.org/rules-guidance/notices/19-12.* FINRA's comment period closed in June 2019.

[219] Carnegie Mellon at 3.

[220] SMU at 4–7.

[221] Clarus at 2; MFA at 2; TRP at 3.

[222] Citadel at 4; ICI at 7; Vanguard at 5–6.

[223] Vanguard at 6.

[224] ICI at 7.

[225] TRP at 2.

[226] FIA PTG at 2.

[227] Clarus at 6.

[228] Better Markets at 6; Citadel at 4.

[229] TRP at 2.

[230] *Id.*

[231] Citadel at 4; Clarus at 6.

[232] Citadel at 8.

[233] Better Markets at 2; Citadel at 6, 7; Healthy Markets at 4; MFA at 2.

[234] Healthy Markets at 4.

[235] CME at 11.

[236] Better Markets at 7.

[237] Chris Barnard at 2.

[238] FXPA at 2–3.

[239] Citadel at 6–7.

[240] Citadel at 6–7; Clarus at 8.

[241] SIFMA AMG at 5.

APA.[242] TRP comments that the Commission did not allege any ''material reduction in market liquidity,'' as required by the CEA, to justify the proposed 19,200% increase in the time delay for SEF-executed block trades.[243] Better Markets comments that the proposal should be withdrawn in the absence of data to reasonably support the conclusion that a uniform 48-hour block trade reporting delay is necessary across markets and asset classes.[244]

c. Final Rule

For reasons discussed below, the Commission is not adopting proposed § 43.5(c), which would have required SDRs to implement a time delay of 48 hours for disseminating swap transaction and pricing data for each block trade or LNOFS, if the parties to those swaps elected such treatment. The Commission is also not removing the existing regulatory text in § 43.5(d)–(h) and appendix C that provides for potential block and LNOFS time delays ranging between 15 minutes to 24 business hours, depending upon the type of market participant, method of execution and asset class. The Commission is removing and reserving existing § 43.5(c) and paragraphs within §§ 43.5(d), 43.5(e), 43.5(f), 43.5(g), and 43.5(h) as described further below. The regulatory text being removed is technically no longer applicable. The Commission is also making non-substantive ministerial and conforming edits to align the text with other changes being made throughout this part.

The majority of commenters oppose the proposed 48-hour delay and expressed concern that such a delay would have negative impacts on transparency, price discovery, and liquidity. Several commenters believe that, particularly for the most liquid products that are currently eligible for a 15-minute delay, there is no evidence that current post-trade reporting requirements have reduced market liquidity. The Commission recognizes the merit in those concerns. Taking into account the comments and data submitted by commenters regarding the liquidity of, and necessary time to hedge, U.S. dollar IRS swaps, the Commission concludes that a 48 hour delay would be particularly inappropriate for those products and would unnecessarily restrict transparency and price discovery.

Existing § 43.5(d) through (h) establish time delays for block trades and LNOFSs that vary based upon the type of market participant, method of execution, and asset class, an approach the Commission saw as appropriate to balance public transparency and price discovery against the concerns that post-trade reporting would reduce market liquidity. Several commenters reference and support this prior determination by the Commission. These commenters believe that the current varying time delays are preferable to the proposed 48-hour delay that did not distinguish transactions according to the type of market participant, method of execution, and asset class. Informed by commenters, the Commission agrees.

The Commission reiterates its stated policy goal ''to provide maximum public transparency, while taking into account the concerns of liquidity providers regarding possible reductions in market liquidity.''[245] The Commission does not believe that this policy goal is furthered by a universal 48 hour delay for all block and LNOFSs. The Commission concludes, as informed by comments opposing the proposal, that this policy goal is better served by the current, transaction specific reporting delays that make block and LNOFS swap transaction and pricing data available quickly for more liquid markets, with longer time delays for less liquid markets.

The Commission believes the transparency currently provided by the dissemination of swap transaction data promotes confidence in the fairness and integrity of swaps markets. This transparency increases participation in the swaps markets and provides enhanced price discovery that is of particular value to buy-side participants and end-users.

The Commission agrees with one commenter that the proposed simplified approach of a 48-hour time delay for all block and LNOFSs may have reduced operational costs compared to the current approach of varying time delays. However, the Commission is cognizant of its statutory directive to make swap transaction and pricing data available as appropriate to enhance price discovery while taking into account whether the public dissemination will materially reduce market liquidity. Accordingly, the Commission does not view operational cost savings potentially available under an alternative simplified time-delay regime sufficient reason to justify deviation from the current varied-time delay approach that the Commission believes best suited to effectuate this statutory directive.

The Commission also agrees with commenters that EU and CFTC regulations requiring the public dissemination of swap transaction and pricing data differ significantly, particularly with respect to the duration of deferrals from public dissemination. Since the Commission is not changing the dissemination delays available to block trades or LNOFSs, differences with respect to the duration of deferrals are not being harmonized at this time. The Commission understands that EU authorities are currently examining potential changes to their public dissemination rules, leading the Commission to conclude that it is premature to attempt harmonization with respect to the duration of deferrals at this time.

The Commission is removing and reserving existing § 43.5(c). Existing § 43.5(c) provides interim time delays for each publicly reportable swap transaction, not just block trades and LNOFSs, until an appropriate minimum block size is established for such publicly reportable swap transaction. The Commission adopted § 43.5(c) in case compliance with part 43 was required before the establishment of appropriate minimum block sizes.[246] Because the Commission has now established appropriate minimum block sizes by swap category,[247] existing § 43.5(c) is technically no longer applicable.

The Commission is also removing and reserving existing §§ 43.5(d)(1), 43.5(e)(2)(i), 43.5(e)(3)(i), 43.5(e)(3)(ii), 43.5(f)(1), 43.5(f)(2), 43.5(g)(1), 43.5(g)(2), 43.5(h)(1), and 43.5(h)(2). These sections phased in the various time delays for the dissemination of swap block trades and LNOFSs after the existing rules came into effect. Since the phasing in of the time delays in existing § 43.5(d) through (h) is complete, the Commission is removing the text remaining from the phase-in concept.

F. § 43.6—Block Trades and Large Notional Off-Facility Swaps[248]

In the Proposal, the Commission proposed removing the regulations for initial appropriate minimum block sizes and replacing them with new regulations for appropriate minimum block sizes. To avoid removing

[242] Healthy Markets at 6.

[243] TRP at 2.

[244] Better Markets at 3.

[245] 78 FR 32870 (May 31, 2013).

[246] *See* Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1217 (Jan. 9, 2012) (stating ''it is possible that compliance with part 43 may be required before the establishment of appropriate minimum block sizes for certain asset classes and/or groupings of swaps within an asset class'').

[247] *See* § 43.6 (setting forth the appropriate minimum block sizes for various swap categories).

[248] Existing § 43.6 was adopted in the Block Trade Rule.

regulations that still need to be effective during the compliance period for the changes to § 43.6, the Commission has decided to leave the existing regulations for the initial appropriate minimum block sizes, including the existing swap categories, while adding the new updated regulations for appropriate minimum block sizes during the post-initial period that were proposed in the Proposal, including the new swap categories. The Commission discusses the new regulations in this section.

1. § 43.6(a)

Existing § 43.6(a) states that the Commission shall establish the appropriate minimum block size for publicly reportable swap transactions based on the swap categories in existing § 43.6(b) in accordance with the provisions set forth in paragraphs (c), (d), (e), (f) or (h) of § 43.6, as applicable. Existing § 43.6(f) contains requirements for the Commission to update the block thresholds annually. Existing § 43.6(f)(1) through (3) requires the Commission to establish post-initial appropriate minimum block size using a one-year window of reliable SDR data recalculated no less than once each calendar year using the 67-percent notional amount calculation for most swap categories. Existing § 43.6(f)(4) requires the Commission to publish post-initial appropriate minimum block size on its website. Existing § 43.6(f)(5) specifies that unless otherwise indicated on the Commission's website, the post-initial appropriate minimum block size shall be effective on the first day of the second month following the date of publication.

Similarly, § 43.4(h) contains analogous requirements for the Commission to update the cap sizes annually. Existing § 43.4(h)(2) requires the Commission to establish post-initial cap sizes using a one-year window of reliable SDR data recalculated no less than once each calendar year using the 75-percent notional amount calculation. Existing § 43.4(h)(3) requires the Commission to publish post-initial cap sizes on its website. Existing § 43.4(h)(4) specifies that unless otherwise indicated on the Commission's website, the post-initial cap sizes shall be effective on the first day of the second month following the date of publication.

To implement a more flexible approach than this current regime provides, the Commission proposed amending existing § 43.6(a) to instead provide that the Commission would establish appropriate minimum block size at such times the Commission determines necessary. Since the processes for updating cap sizes and block thresholds are analogous, the Commission discusses these changes together in this section.

The Commission only proposed changing the requirement to recalculate the block thresholds and cap sizes annually. The Commission proposed keeping the requirement to post new cap sizes and block thresholds on its website in new § 43.4(g)(9) and § 43.6(e)(5), respectively. The Commission also proposed keeping the requirement for revised cap sizes to be effective on the first day of the second month following publication, unless otherwise indicated by the Commission, in new § 43.4(g)(10), but omitted the effective date of any appropriate minimum block size in error.

The Commission received two general comments on the proposed flexible approach. GFMA believes the flexible approach to updating cap sizes and block thresholds will create operational burdens with limited benefits.[249] GFMA believes the flexible approach will be difficult to implement and operationalize and suggests the Commission assess cap sizes annually but not look to change the cap sizes more than once per year.[250] CME, alternatively, supports no longer requiring the Commission to update cap sizes and block thresholds annually as frequent changes to cap sizes will require frequent SDR system updates at unnecessary costs.[251]

As it expressed in the Proposal, the Commission believed the flexible approach would avoid frequent updates to SDR systems without a clear benefit to the real-time public tape.[252] However, the Commission explained it instead expected to evaluate the cap sizes and block thresholds on an ongoing basis to update cap sizes and block thresholds when doing so would benefit the public tape.[253] The Commission recognizes the tension that creates, as it suggests the Commission would review the data more frequently than once each calendar year, with market participants unable to anticipate updates.

As a result, the Commission finds GFMA's point that the proposal would be difficult to implement and operationalize persuasive and significant enough to reconsider the proposed flexible approach. While CME supports the Commission's expectation that the flexible approach would avoid frequent updates, the Commission's concerns about creating uncertainty override the anticipated benefits of the proposal and the Commission is declining to adopt the proposal to amend § 43.6(a). Instead, the Commission is maintaining the current requirement to establish cap sizes using a one-year window of reliable SDR data according to the 75-percent notional amount calculation recalculated no less than once each calendar year in § 43.4(h)(2). Similarly, the Commission is maintaining the current requirement to establish appropriate minimum block size using a one-year window of reliable SDR data according to the 67-percent notional amount calculation no less than once each calendar year in § 43.6(g)(2).[254]

The Commission received two comments on the effective date requirements. CME believes the effective date should instead be the date determined by the Commission in consultation with the SDRs.[255] The Commission is declining to adopt this approach as it would create uncertainty for market participants outside of SDRs. Similarly, DTCC believes the effective date should instead be not less than 90 days following publication, given the highly technical nature of the changes, that appropriate minimum block size is delegated to Commission staff, and that implementation could require a longer amount of time.[256] The Commission is declining to adopt this change because the regulations the Commission is keeping give the Commission discretion to determine a different effective date if necessary. The Commission expects to work with SDRs to help ensure appropriate effective dates to accommodate any technological changes.

The Commission received three comments on the publication requirement. CME requests the Commission explain whether the cap thresholds or the actual methodology or swap categories will change on an ongoing basis without a rulemaking, and how the Commission would notify the public about changes to cap sizes so SDRs do not have to establish programs

[249] GFMA at 7, 10.

[250] *Id.* GFMA also believes if an FX product is considered for a future MAT determination, the Commission should revisit the block thresholds to ensure any determinations do not have a detrimental impact on FX markets. The Commission is unaware of any FX MAT determinations and notes that any determinations would follow the MAT process, which is separate from part 43 reporting.

[251] CME at 9–10.

[252] Proposal at 85 FR 21532 (Apr. 17, 2020).

[253] *See id.*

[254] The Commission discusses the renumbering changes to § 43.6 throughout the following sections.

[255] *Id.* CME notes if the implementation date fell on a weekday rather than a weekend when CME implements changes, CME would need to develop a new process, which would be a complex undertaking and reduce the amount of testing that could occur.

[256] DTCC at 5–6.

to monitor the Commission's website.[257] ISDA–SIFMA (Blocks) believe block and cap threshold changes should go through notice and comment, regardless of changes to the categories or methodologies.[258] SIFMA AMG requests the Commission adopt a 30-day notice and public comment period and a three month implementation period following any appropriate minimum block size or cap size changes.[259]

As the existing rules provide, the Commission updates the cap sizes and block thresholds on its website, but modifies the categories and methodologies through rulemaking.[260] The Commission did not propose any changes to the current process as the Commission believes notification on the Commission's website provides sufficient notice to market participants. The Commission will continue calculating block thresholds and cap sizes for swap categories set forth in the Final Rules using methodologies set forth in the rules, but the application of regulations does not require additional notice and comment. The Commission is concerned opening the results of applying the methodologies to data would suggest the methodologies are open to public comment annually, when opening the rules for public comment each year would be an inefficient use of Commission resources.

The Commission received one comment on temporary changes to the block thresholds and cap sizes. Citing March 2020 volatility, ISDA–SIFMA (Blocks) suggest the Commission create a formal adjustment mechanism to allow market participants to petition the Commission to temporarily change block and cap thresholds based on observed market conditions, or enable the Commission to do so subject to a public comment process.[261] The Commission considered comments raising this issue in the Block Trade Rule, and ultimately decided the requirement to analyze the thresholds no less than once each calendar year gives the Commission the authority to update appropriate minimum block size when warranted and as necessary to respond to such circumstances.[262] In light of the Commission's observations and oversight of the markets during periods of high volatility, including March 2020, the Commission believes this authority continues to give the Commission sufficient authority to respond to changing conditions. As a result, the Commission is declining to adopt ISDA–SIFMA's suggestion for a mechanism beyond the current rule.

2. § 43.6(b)—Swap Categories

Existing § 43.6(b) delineates the swap categories referenced in § 43.6(a) by five asset classes: IRS, CDS, equity, FX, and other commodity. It then subdivides these asset classes into various swap categories. The categories group together swaps with similar quantitative or qualitative characteristics that warrant being subject to the same appropriate minimum block size.[263]

The Commission is concerned the existing swap categories disparately impact different swap transaction types. For instance, the existing swap categories group together economically distinct swaps, such as IRS denominated in U.S. dollars (''USD IRS'') and IRS denominated in Japanese yen (''JPY IRS''). Because the notional amounts of USD IRS transactions are, on average, higher than the notional amounts of JPY IRS transactions, the current IRS appropriate minimum block size, which includes transactions from a group of currencies, is too high for some products, like JPY IRS, and too low for others, like USD IRS. In other words, USD IRSs are eligible for a dissemination delay, even though a delay may be unnecessary for a counterparty to hedge the trade at minimal additional cost due to the trade size, and JPY IRS are ineligible for a dissemination delay even though a delay may be necessary for a counterparty to hedge the trade without incurring material costs due to the trade size.

The Commission analyzed 2018–2019 part 43 SDR data for each asset class to evaluate the sufficiency of the existing swap categories. The Commission reviewed all products within each asset class, but removed certain swaps from the data sets: Duplicate swap reports, indicated by swaps having the same unique swap identifier (''USI''); terminated swaps; cancelled swap reports; modifications to existing swap reports; and swaps with notional values of zero. The Commission removed FX swaps with blank currency fields.

In addition, the Commission removed CDS trades around the time the index rolls twice a year. As new CDS indexes are introduced each March and September, many market participants ''roll'' their positions from the old ''off-the-run'' index into the new ''on-the-run'' index. These trades are often done as spread trades, similar to how futures positions are rolled using calendar spread trades during the expiration cycle. As discussed below, commenters raised including CDS roll days in the CDS data set would result in significantly larger thresholds for non-roll swaps. For almost all indices, the Commission found there was a substantial increase in daily notional on those days in a way that could skew the block thresholds.[264] For example, on September 27, 2018, CDXHY showed a notional amount over 11 times the annual daily sample average. The Commission removed these swaps to avoid significantly larger thresholds for non-roll swaps.

The Commission proposed new swap categories in § 43.6(c) [265] for swaps in the IRS, CDS, FX, and other commodity asset classes. The Commission discusses comments on the specific swap categories in the sections below. The Commission received one comment generally supporting new swap categories. ICI believes the new categories will be better calibrated to the relative liquidity of the swap categories in each asset class.[266] The Commission agrees with ICI and, for the reasons the Commission discusses generally above and specifically below for each asset class, is adopting the new swap categories, with some modifications.

The Commission received one comment generally opposing the new swap categories. Citadel believes the new categories significantly increase operational complexity for market participants and trading venues, as each threshold must be separately implemented, monitored, and surveilled.[267] Citadel further believes new categories would reduce market transparency as the Commission proposed setting the block threshold at zero for certain newly-created categories that have smaller trading volumes, including instruments subject to mandatory clearing, which would result

[257] *Id.*

[258] ISDA–SIFMA (Blocks) at 7–8.

[259] SIFMA AMG at 4.

[260] *See also* Block Trade Rule at 78 FR 32903 (May 31, 2013).

[261] ISDA–SIFMA (Blocks) at 7–8.

[262] Block Trade Rule at 78 FR 32903 (May 31, 2013).

[263] *See* Block Trade Rule at 78 FR 32872 (May 31, 2013).

[264] The analysis did not show similar patterns in the option swap categories, and the Commission is not adjusting options thresholds for roll periods.

[265] In the Proposal, the Commission proposed removing the existing swap categories in § 43.6(b) and replacing them with new swap categories. As explained above, the Commission has decided to leave the existing regulation for initial appropriate minimum block sizes, including the existing swap categories, in § 43.6 to avoid removing regulations that are still needed during the compliance period for any changes to § 43.6. As a result, the Commission is leaving the existing swap categories as § 43.6(b) and renaming them ''Initial swap categories,'' and adding the new swap categories for the post-initial appropriate minimum block sizes in § 43.6(c) (titled ''Post-initial swap categories'').

[266] ICI at 4–5.

[267] Citadel at 9.

in a reporting delay for swaps that are currently reported in real time.[268]

As explained above, the Commission believes the new swap categories are better calibrated and will result in more reliable appropriate minimum block sizes. As explained below, the Commission believes setting the appropriate minimum block size to zero is appropriate for swaps with a low level of trading activity for which the Commission cannot determine a robust and reliable appropriate minimum block size. In response to Citadel's comment that the rule could reduce transparency for certain newly-created categories that have smaller trading volumes, the Commission has assessed the impact that the new categories could have on transparency as part of its review of the 2018–2019 data but nonetheless found that block treatment was appropriate given low liquidity. The Commission finds that the appropriate minimum block sizes for certain swaps will increase thus leading to real-time reporting for swaps that had previously received block treatment and thereby increased transparency. For these reasons, the Commission is adopting the new swap categories subject to the modifications to the categories the Commission describes below.

In addition, as mentioned above, in the Proposal, the Commission proposed removing the regulations for initial appropriate minimum block sizes and replacing them with new regulations for appropriate minimum block sizes. As part of this, the Commission proposed removing the existing swap categories. To avoid removing regulations that still need to be effective during the compliance period for the changes to § 43.6, the Commission has decided to leave the existing swap categories in § 43.6(b), while adding the new updated swap categories for appropriate minimum block sizes during the post-initial period that were proposed in the Proposal in § 43.6(c). The Commission discusses the new regulations in this section.

a. Interest Rate Asset Class

Existing § 43.6(b)(1) sets forth the IRS categories. The Commission based the existing IRS categories on a unique combination of three currency groups and nine tenor ranges, for a total of 27 categories.

The Commission proposed new swap categories for each combination of the top 15 different currencies[269] and nine tenor ranges,[270] for a total of 135 swap categories. The proposed nine tenor ranges were the same nine tenor ranges in existing § 43.6(b)(1)(ii)(A) through (I). The proposed top 15 currencies added the currencies of Brazil, Chile, the Czech Republic, India and Mexico and removed the currencies of Switzerland and Norway from the currencies in existing § 43.6(b)(1)(i)(A). The Commission proposed a 136th swap category in § 43.6(b)(1)(ii) for IRS other than those of the top 15 currencies and the nine tenors. The Commission proposed grouping these swaps with low activity together and setting the appropriate minimum block size to zero to make each transaction eligible for delayed dissemination.[271]

The Commission is adopting the new IRS categories as proposed, but numbered as § 43.6(c) in the regulations. For IRS, the Commission believes new swap categories referencing the top 15 currencies, which make up 96% of the total population of IRS trades, will have appropriate minimum block sizes that better fit these swaps by grouping IRS into more discrete categories. A 136th category for swaps in currencies outside of the top 15 currencies that will have an appropriate minimum block size of zero will address the swaps for which there is not enough activity for the Commission to compute a reliable and robust appropriate minimum block size.

The Commission received three comments on the new IRS categories. SIFMA AMG believes the 135 new IRS categories will burden market participants with complicated reporting that may not provide meaningful transparency or price discovery for numerous IRS categories.[272] ISDA–SIFMA (Blocks) are concerned the scope of data was overly inclusive and not representative of all swaps in a particular swap category, especially with CDS and IRS.[273] ACLI requests that interest rate products with a tenor of 10 years and greater be made into a separate category because they have a different sensitivity to risks than shorter-dated interest rate products.[274]

When the Commission formulated the proposed categories it recognized, as SIFMA AMG comments, that increasing the number of categories could increase operational and reporting costs. The Commission also recognized the concern expressed by ISDA–SIFMA (Blocks) that there must be enough categories so that the categories are not overly inclusive. The Commission believes the new IRS categories balance these concerns. As described in the Proposal, the new swap categories address the following two policy objectives: (1) Categorizing together swaps with similar quantitative or qualitative characteristics that warrant being subject to the same appropriate minimum block size; and (2) minimizing the number of swap categories within an asset class in order to avoid unnecessary complexity in the determination process.[275] The Commission has determined that increasing the number of categories from the current level is necessary to group swaps with a similar economic impact and better ensure that the appropriate minimum block size for each swap is appropriate.

The Commission is not persuaded by ACLI's recommendation. To be consistent, the Commission could not just create a new interest rate category based on risk sensitivity. The Commission would have to adopt an entirely new block regime based on risk—it would have to establish new categories and develop new appropriate minimum block sizes on the basis of risk. As explained fully in its § 43.6(e) discussion, the Commission believes its approach is superior to a risk-based approach as the ultimate goal in establishing thresholds is to focus on liquidity differences across swap categories, not risk-transfer *per se.*

b. Credit Asset Class

Existing § 43.6(b)(2) sets forth the CDS swap categories. The Commission based the current CDS swap categories on combinations of three conventional spread levels and six tenor ranges, for a total of 18 swap categories. The Commission proposed replacing the current spreads and tenor ranges in § 43.6(b)(2)(i) and (ii) with seven product types and four to six year tenor ranges. The Commission proposed setting the new CDS categories in § 43.6(b)(2) as: (i) Based on the CDXHY product type and a tenor greater than 1,477 days and less than or equal to 2,207 days; (ii) based on the iTraxx Europe product type and a tenor greater than 1,477 days and less than or equal to 2,207 days; (iii) based on the iTraxx Crossover product type and a tenor greater than 1,477 days and less than or

[268] *Id.*

[269] *See* proposed § 43.6(b)(1)(i)(A)(1) through (15). These 15 currencies are the currencies of Australia, Brazil, Canada, Chile, Czech Republic, the European Union, Great Britain, India, Japan, Mexico, New Zealand, South Africa, South Korea, Sweden, or the United States.

[270] *See* proposed § 43.6(b)(1)(i)(B)(1) through (9).

[271] *See* proposed § 43.6(e)(4), discussed below in section II.F.4.

[272] SIFMA AMG at 6.

[273] ISDA–SIFMA (Blocks) at 6–7. The Commission discusses the ISDA–SIFMA (Blocks) comment with respect to CDS in the following section.

[274] ACLI at 3–4.

[275] Proposal at 85 FR 21534 (Apr. 17, 2020).

equal to 2,207 days; (iv) based on the iTraxx Senior Financials product type and a tenor greater than 1,477 days and less than or equal to 2,207 days; (v) based on the CDXIG product type and a tenor greater than 1,477 days and less than or equal to 2,207 days; (vi) based on the CDXEmergingMarkets product type and a tenor greater than 1,477 days and less than or equal to 2,207 days; and (vii) based on the CMBX product type. The Commission proposed a new swap category in § 43.6(b)(2)(viii) for CDS with low activity and setting the appropriate minimum block size to zero to make them eligible for delayed dissemination.[276]

The Commission is adopting the new CDS categories with modifications. For CDS, the Commission believes spreads may not be a consistent measure for the swap categories. Specifically, the Commission is concerned products with similar spreads are not necessarily economically similar because all market participants may not calculate the same spread for a given product. In addition, a product's spread range can change, making it difficult for parties to be certain that they are eligible for block treatment. Instead, the Commission finds most market participants trade specific credit products within specific tenor ranges. The Commission finds the most-traded CDS products are: (i) The CDXHY; (ii) iTraxx Europe, Crossover, and Senior Financials indexes; (iii) CDXIG; (iv) CDXEmergingMarkets; and (v) CMBX.[277] For each CDS product except for CMBX, the Commission finds the four to six year tenors, or greater than 1,477 days and less than or equal to 2,207 days, make up around 90% of all CDS trades. The Commission believes a separate category for CDS outside the products and/or tenor ranges above that will have an appropriate minimum block size of zero will address these swaps for which there is not enough activity for the Commission to compute a reliable and robust appropriate minimum block size.

The Commission received one comment on the scope of data used to create the CDS categories. In response, the Commission is adopting § 43.6(c)(2) with additional swap categories for CDS with optionality. ISDA–SIFMA (Blocks) are concerned the scope of data was overly inclusive and not representative of all swaps in a particular swap category, especially with CDS.[278] First, ISDA–SIFMA (Blocks) believe including swaps with optionality skewed block and cap sizes because non-delta–1 products[279] trade in higher notional amounts than delta–1 products and do not represent the underlying products (*i.e.,* the delta–1 products) that make up the rest of the swap category.[280] ISDA–SIFMA (Blocks) believe this is shown by, for example, the proposed appropriate minimum block size for CDXIG being $550 million notional, while the proposed appropriate minimum block size for CDXEM, whose markets have very little option activity, as $51 million notional.[281] ISDA–SIFMA (Blocks) also believe the data set inappropriately included CDS rolls.[282] Separately, ISDA–SIFMA (Blocks) believe the data sets should capture calm and stressed market conditions. ISDA–SIFMA (Blocks) recommend the Commission either: (1) Recalibrate the proposed appropriate minimum block sizes by excluding such products from its data sets; or (2) create new categories that would distinguish between these products.[283]

In response to the ISDA–SIFMA (Blocks) comment that it may be inappropriate when determining the block and cap thresholds to include swap products with optionality in particular swap categories, the Commission examined non-option and option products separately. The Commission determined there is a substantial difference in the distribution of trade sizes between non-option and option CDS products.[284] During 2018 to 2019 the notional values of swaps with optionality were approximately three to six larger than non-option swaps. As a consequence, for many swaps categories, excluding options had an economically meaningful effect on the calculated block and cap thresholds. Accordingly, the Commission is separating the option activity into distinct swap categories for some indices, and there will now be a swap category for CDXIG and one for CDXIG-options.

In response to the ISDA–SIFMA (Blocks) comment that the data sets used to determine appropriate minimum block sizes should capture calm and stressed market conditions, the Commission notes the current data set includes data from the fourth quarter of 2018 when markets were stressed and data from the third quarter of 2018 and the first quarter of 2019 when the markets were calm. The Commission understands that basing appropriate minimum block sizes primarily on periods of high or low volatility would lead to appropriate minimum block sizes that are inappropriate under most market conditions; thus, the adopted appropriate minimum block sizes are based on a sample that is representative of market activity in a range of market conditions.

The Commission also has determined that it will not establish appropriate minimum block sizes for stressed market conditions. By their nature, markets may be stressed for different reasons and to different levels, and thus, the appropriate minimum block sizes cannot be determined in advance.

c. Equity Asset Class

Existing § 43.6(b)(3) specifies that there shall be one swap category consisting of all swaps in the equity asset class. The Commission did not propose changing the equity asset class in § 43.6(b)(3).[285]

The Commission received one comment on the equity asset class. ICI requests the Commission consider whether to include appropriate minimum block size for equity swaps because the assumption that a highly liquid underlying cash market negates the need for an appropriate minimum block size does not hold true.[286] The Commission considered whether equity swaps should be eligible for block treatment but continues to believe that there is a highly liquid underlying cash market for equities and that the equity index swaps market is not small relative to the futures, options, and cash equity index markets. The Commission declines to adopt ICI's suggestion at this time, but will continue to assess the

[276] *See* proposed § 43.6(e)(4), discussed below in section II.F.4.

[277] The Markit CDX family of indices is the standard North American CDS family of indices, with the primary corporate indices being the CDX North American Investment Grade (consisting of 125 investment grade corporate reference entities) (CDX.NA.IG) and the CDX North American High Yield (consisting of 100 high yield corporate reference entities) (CDX.NA.HY). The Markit CDX Emerging Markets Index (CDX.EM) is composed of 15 sovereign reference entities that trade in the CDS market. The Markit CMBX index is a synthetic tradable index referencing a basket of 25 commercial mortgage-backed securities. Markit iTraxx indices are a family of European, Asian and Emerging Market tradable CDS indices.

[278] ISDA–SIFMA (Blocks) at 6–7.

[279] Delta–1 products refer to derivatives that have no optionality (*i.e.,* for a given instantaneous move in the price of the underlying asset there is expected to be an identical move in the price of the derivative).

[280] ISDA–SIFMA (Blocks) at 6–7.

[281] *Id.*

[282] *Id.*

[283] *Id.* at 7.

[284] Similar analysis of IRS and FX trading shows that the differences between the size distributions of option and non-option swaps was sufficiently small that the Commission concluded block and cap sizes in IRS and FX should be the same for option and non-option swaps.

[285] As explained above, due to renumbering issues, the regulations for post-initial appropriate minimum block sizes in the equity asset class will be found at § 43.6(c)(3), even though the Commission proposed leaving them in § 43.6(b)(3).

[286] ICI at 5.

equity asset class when it recalculates the block levels every year.

d. Foreign Exchange Asset Class

Existing § 43.6(b)(4) sets forth the FX swap categories. The Commission grouped the existing FX swap categories by: (i) The unique currency combinations of one super-major currency [287] paired with another super major currency, a major currency,[288] or a currency of Brazil, China, Czech Republic, Hungary, Israel, Mexico, Poland, Russia, and Turkey; or (ii) unique currency combinations not included in § 43.6(b)(4)(i).[289]

The Commission proposed replacing the FX swap categories in § 43.6(b)(4) with new swap categories by currency pair. The new FX categories would be comprised of FX swaps with one currency of the currency pair being USD, paired with another currency from one of the following: Argentina, Australia, Brazil, Canada, Chile, China, Colombia, the European Union, Great Britain, India, Indonesia, Japan, Malaysia, Mexico, New Zealand, Peru, Philippines, Russia, South Korea, or Taiwan.

The Commission proposed creating a new category for FX swaps in § 43.6(b)(4)(ii) (re-designated as § 43.6(c)(4)(ii)) where neither currency in the currency pair is USD. Proposed § 43.6(c)(4)(ii) would be comprised of swaps with currencies from Argentina, Australia, Brazil, Canada, Chile, China, Colombia, the European Union, Great Britain, India, Indonesia, Japan, Malaysia, Mexico, New Zealand, Peru, Philippines, Russia, South Korea, or Taiwan. Parties to these FX swaps could elect block treatment if the notional amount of either currency in the currency exchange is greater than the appropriate minimum block size for a FX swap between the respective currencies, in the same amount, and USD described in § 43.6(c)(4)(i). The Commission proposed adding a swap category in § 43.6(b)(4)(iii) (re-designated as § 43.6(c)(4)(iii)) for FX swaps that trade with relatively low activity and setting the appropriate minimum block size to zero to make these swaps eligible for delayed dissemination.[290]

The Commission is adopting the new FX swap categories as proposed, with technical modifications to re-designate/re-number certain requirements, as discussed above. For FX, the Commission finds that almost 94% of the over 7 million FX swaps included USD as one currency in each swap's currency pair. Of these swaps, the top-20 currencies paired with USD were currencies from Argentina, Australia, Brazil, Canada, Chile, China, Colombia, the European Union, Great Britain, India, Indonesia, Japan, Malaysia, Mexico, New Zealand, Peru, Philippines, Russia, South Korea, or Taiwan. The Commission believes a separate category for FX swaps outside the above currency pairs that will have an appropriate minimum block size of zero will address these swaps for which there is not enough activity for the Commission to compute a reliable and robust appropriate minimum block size.

The Commission received two comments on the new FX swap categories. The FXPA believes the Commission's reliance on market data has led to an appropriate outcome and the Commission's empirical analysis supports the conclusions set forth in the proposal and encourages the Commission to commit to periodic reviews of FX asset class categories on a regular basis.[291]

GFMA, conversely, believes significant changes have occurred to the FX market and the Commission should consider the impact of changes in FX market conditions, including changes to the number and size of transactions, since the 2018–2019 time period for which data was analyzed.[292] GFMA also believes notional may not be a good proxy for liquidity of some products and suggests the Commission not aggregate notionals for non-deliverable forwards and FX options and instead consider them as distinct categories.[293] GFMA notes that several currencies—such as Swiss francs (''CHF'')—that are currently in the block/cap tables are not in the proposed tables and these currencies would now fall into the ''limited trading activity'' bucket, which GFMA believes is surprising.[294] GFMA also notes that the proposed block and cap tables have added several new currencies, some of which are emerging market currencies that are more volatile.[295]

The Commission acknowledges GFMA's comment that market conditions may have changed since the proposed categories were created, creating potential that the categories may be a looser fit today than when designed. However, the Commission believes that the swap categories are appropriately based on an analysis of SDR swap data, discussions with market participants, as well as information from commenters, including FXPA which concurs with the outcome. The Commission does not agree that the block and cap sizes of certain currencies are too high. The appropriate minimum block size of an FX product is determined by the FX category to which the FX product belongs. The Commission utilized 2018–2019 part 43 SDR data to construct the FX categories. The Commission believes the FX categories are appropriate as they advance the Commission's policy objectives of (1) categorizing swaps with similar quantitative or qualitative characteristics that warrant being subject to the same appropriate minimum block size and (2) minimizing the number of swap categories within an asset class in order to avoid unnecessary complexity in the determination process.[296]

Per GFMA's comment, the Commission reviewed whether FX non-deliverable forwards and FX options should be aggregated. The Commission determined that aggregating the two types of swaps is appropriate for achieving its policy goals, and is concerned treating them separately would complicate the categories without a commensurate benefit to transparency.

e. Other Commodity Asset Class

Existing § 43.6(b)(5) sets forth the other commodity swap categories. The Commission grouped the existing other commodity swap categories by either (1) the relevant contract referenced in existing appendix B of part 43 [297] for swaps that are economically related to a contract in appendix B, or (2) futures-related swaps for swaps that are not economically related to contracts in appendix B.[298] Swaps outside of

[287] § 43.2 defines ''Super-major currencies'' as the currencies of the European Monetary Union (*i.e.,* the euro), Japan (*i.e.,* the yen), the United Kingdom (*i.e.,* the pound sterling), and the United States (*i.e.,* the U.S. dollar).

[288] § 43.2 defines ''Major currencies'' as the currencies, and the cross-rates between the currencies, of Australia (*i.e.,* the Australian dollar), Canada (*i.e.,* the Canadian dollar), Denmark (*i.e.,* the Danish krone), New Zealand (*i.e.,* the New Zealand dollar), Norway (*i.e.,* the Norwegian krone), South Africa (*i.e.,* the South African rand), South Korea (*i.e.,* the South Korean won), Sweden (*i.e.,* the Swedish krona), and Switzerland (*i.e.,* the Swiss franc).

[289] *See* 17 CFR 43.6(b)(4).

[290] *See* proposed § 43.6(e)(4) (re-designated as § 43.6(g)(4)), discussed below in section II.F.4.

[291] FXPA at 2.

[292] GFMA at 9.

[293] GFMA at 7, 10.

[294] *Id.*

[295] *Id.*

[296] *See* Block Trade Rule at 32872.

[297] Appendix B to part 43 lists 42 swap categories based on such contracts.

[298] These swaps are: CME Cheese; CBOT Distillers' Dried Grain; CBOT Dow Jones-UBS Commodity Index; CBOT Ethanol; CME Frost Index; CME Goldman Sachs Commodity Index (GSCI), (GSCI Excess Return Index); NYMEX Gulf Coast

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§ 43.6(b)(5)(i) and § 43.6(b)(5)(ii) are categorized according to the relevant product type referenced in appendix D of part 43.[299]

The Commission proposed new swap categories for the other commodity asset class based on the list of underliers in existing appendix D to part 43. The Commission also proposed modifying the list of underliers in existing appendix D and re-designating it as appendix A.[300] For swaps with a physical commodity underlier listed in appendix A, proposed § 43.6(b)(5)(i) would group swaps in the other commodity asset class by the relevant physical commodity underlier. The proposed list of underliers in appendix A would be based on broad commodity categories the Commission has identified from its review of the swap data from SDRs, rather than references to specific futures contracts.

For other commodity swaps outside of those based on the underliers in proposed appendix A, the Commission found the trade count was not high enough to compute a robust and reliable appropriate minimum block size. The Commission proposed adding a swap category in § 43.6(b)(5)(ii) for relatively illiquid other commodity swaps and setting the appropriate minimum block size for these swaps at zero.[301]

The Commission is adopting the new other commodity swap categories as proposed in § 43.6(c).[302] The Commission believes the new other commodity swap categories advance the Commission's policy objectives of (1) categorizing swaps with similar quantitative or qualitative characteristics that warrant being subject to the same appropriate minimum block size and (2) minimizing the number of swap categories within an asset class in order to avoid unnecessary complexity in the determination process.[303] However, the Commission is not adopting the proposal to re-designate appendix D to appendix A. The Commission had proposed to re-designate the appendix as a result of the proposed removal of other appendices. As the Commission is not removing all of the other appendices as proposed, appendix D will remain where it is.

The Commission received one comment on the commodity asset class. ICE SDR recommends the Commission provide additional clarity on the appropriate minimum block sizes in the other commodity asset class table, as, for example, electricity and natural gas references do not specify whether they apply to North America only or apply to all global gas and electricity products.[304] ICE SDR notes commodity index trades are not referenced and oil should be clarified as to whether it only applies to crude oil only or other refined products.[305]

Based on the reasons above concerning the Commission's policy objectives to maintain a reasonable number of categories with adequate breadth, the Commission declines to create additional categories. Thus, the categories will continue to cover all products with the referenced underlier regardless of geographic location. Similarly, commodity index swaps comprised of underliers that span multiple categories will continue to be in the other commodity swaps category under § 43.6(c)(5)(ii) and other refined oil products without their own category will continue to be the broad oil category.

3. § 43.6(c)—Methodologies To Determine Appropriate Minimum Block Sizes and Cap Sizes

Existing § 43.6(c) sets forth the methodologies the Commission must use to determine appropriate minimum block sizes and cap sizes in the § 43.6(b) swap categories. These methodologies are: A 50-percent notional amount calculation; a 67-percent notional amount calculation; and a 75-percent notional amount calculation.[306]

For the initial period,[307] the Commission has used the 50-percent notional amount calculation to determine the appropriate minimum block size.[308] For the post-initial period, existing § 43.6(f)(2) required the Commission to use the 67-percent notional amount calculation.[309] For the initial period, the Commission set the initial cap sizes as the greater of the interim cap sizes (the time before the initial period) in all five asset classes and the appropriate minimum block size calculated using the 50-percent notional amount calculation.[310] For post-initial cap sizes, existing § 43.4(h) required the Commission to use the 75-percent notional amount calculation for all swap categories.[311]

Prior to the Proposal the Commission had not calculated the post-initial block sizes or cap sizes, although the condition specified in § 43.6(f)(1) for moving to the post-initial period had been met, *i.e.,* SDR collection of at least one year's worth of reliable data for the particular asset classes. As a result, the appropriate minimum block size and cap sizes have remained at lower thresholds than the Commission intended when it adopted the Block Trade Rule. In practice, this results in more swaps qualifying for block treatment and capping, at the expense of more swaps being available to the public without a delay or fewer swaps capped to mask their notional value.

In the Proposal, the Commission proposed removing the 50-percent notional amount calculation in § 43.6(c)(1) and re-designating § 43.6(c)(2) and (3) as § 43.6(c)(1) and (2), respectively. However, as discussed above, to avoid removing regulations that still need to be effective during the

Sour Crude Oil; CME Hurricane Index; CME Rainfall Index; CME Snowfall Index; CME Temperature Index; or CME U.S. Dollar Cash Settled Crude Palm Oil. The 18 swap categories in § 43.6(b)(5)(ii) are based on futures contracts to which swaps in these categories are economically related.

[299] *See* § 43.6(b)(5)(iii). Appendix D establishes ''other'' commodity groups and individual other commodities within these groups for swaps that are not economically related to any of the contracts listed in appendix B or any of the contracts listed in § 43.6(b)(5)(ii). If there is an individual other commodity listed, the Commission would deem it a separate swap category, and thereafter set an appropriate minimum block size for each such swap category. If a swap is unrelated to a specific other commodity listed in the other commodity group in appendix D, the Commission would categorize such swap as falling under the relevant other swap category. *See* Block Trade Rule at 78 FR 32888 (May 31, 2013).

[300] This was a structural change to reflect the proposed removal of existing appendices A through C.

[301] *See* proposed § 43.6(e)(4), discussed below in section II.F.4.

[302] Due to the re-numbering described throughout this section, the post-initial appropriate minimum block sizes will be re-numbered as § 43.6(c) instead of § 43.6(b) as the Commission proposed in the Proposal.

[303] *See* Block Trade Rule at 78 FR 32872 (May 31, 2013).

[304] ICE SDR at 8.

[305] *Id.*

[306] *See* § 43.6(c)(1), (2), and (3), respectively. Each methodology ensures that within a swap category, the stated percentage of the sum of the notional amounts of all swap transactions in that category are disseminated on a real-time basis. The instructions for each of the calculations require the Commission to select all reliable publicly reportable swap transactions within a swap category using one year's worth of data, converting them to the same currency and, using a trimmed data set, determine the sum of the notional amounts of swaps in the trimmed data set, multiply the sum of the notional amounts by 50, 67, or 75 percent, rank the results from least to greatest, calculate the cumulative sum of the observations until it is equal to or greater than the 50, 67, or 75-percent notional amount, select and round the notional amount, and set the appropriate minimum block size equal to that amount.

[307] The initial period refers to the period of no less than one year after an SDR started collecting reliable data for a particular asset class as determined by the Commission and prior to the effective date of a Commission determination to establish applicable post-initial cap sizes.

[308] *See* § 43.6(e).

[309] *See* § 43.6(f)(2).

[310] *See* § 43.4(h)(1).

[311] *See* § 43.4(h)(2)(ii). As discussed above in section II.D.4, the Commission is adopting some changes to the process to determine cap sizes in § 43.4(h), but will use the 75-percent notional amount calculation for cap sizes.

compliance period for the changes to § 43.6, the Commission has decided to leave the existing regulations for the 50-percent notional amount calculation, while adding the new updated regulations for appropriate minimum block sizes during the post-initial period that were proposed in the Proposal. Therefore, the Commission is not removing the reference to the 50-percent notional calculation, but is moving it to § 43.6(d)(3). In addition, due to retaining the existing swap categories in § 43.6(b), the Commission is renumbering § 43.6(c) as § 43.6(d).

The Commission is also adopting minor changes to the 50-percent, 67-percent and 75-percent notional amount calculations. The Commission is updating certain steps of the statistical calculations set forth in existing § 43.6(c)(2)(i) through (ix) to improve clarity and sharpen their application. Existing § 43.6(c)(2)(i) requires the Commission to select all publicly reportable swap transactions within a specific swap category using a one-year window of data. As re-designated, § 43.6(d)(1)(i) will require the Commission to select all reliable SDR data for at least a one-year period for each relevant swap category to simplify the language and clarify that the Commission would be using SDR data in its calculations.

Existing § 43.6(c)(2)(ii) requires the Commission to convert to the same currency or units and use a trimmed data set, but does not specify what is being converted. As re-designated, § 43.6(d)(1)(ii) will clarify the Commission will convert the notional amount to the same currency or units and use a trimmed data set to improve readability.

The Commission is updating the definition of ''trimmed data set'' in § 43.2 to mean a data set that has had extraordinarily large notional transactions removed by transforming the data into a logarithm with a base of 10, computing the mean, and excluding transactions that are beyond two standard deviations above the mean for the other commodity asset class and three standard deviations above the mean for all other asset classes. The Commission explains the change in this section because the trimmed data set is used in § 43.6(d)(2)(ii).

Trimming the data set avoids having outliers skew the data set, which could lead to inappropriately high appropriate minimum block sizes.[312] In applying the existing methodologies to update to the block thresholds and cap sizes, Commission staff found that excluding commodity transactions beyond four standard deviations above the mean led to including extraordinarily large notional transactions that could skew results. With commodity swaps in particular, the Commission is concerned that the wide variation in how reporting counterparties report notional amounts led to more outliers that should be excluded from the trimmed data set. Commission staff has found a similar issue with four standard deviations for the other asset classes, but to a lesser extent than commodities, that the Commission believes will be addressed by moving from four standard deviations to three.

The Commission is also changing the rounding rules in the methodology. Existing § 43.6(d)(2)(viii) directs the Commission to round the notional amount of the observation discussed in § 43.6(d)(2)(vii) ''to'' two significant digits,[313] or if the notional amount is already significant ''to'' two digits, increase the notional amount to the next highest rounding point of two significant digits.[314] The Commission is revising § 43.6(d)(2)(viii) to specify that the Commission rounds the notional amount of the observation ''up to'' two significant digits, or if it is already significant ''to only'' two digits, increase the notional amount to the next highest rounding point of two significant digits. The Commission believes changing ''to'' to ''up to'' and ''to only,'' respectively, in § 43.6(d)(2)(viii) clarifies the Commission's intent consistent with the above example.

Finally, the Commission is replacing the individual instructions for the 75-percent and 50-percent notional amount calculations contained in existing § 43.6(c)(1) and (3) with a cross-reference to the procedures set out in § 43.6(d)(1). Since the steps for the calculations are the same, cross-referencing the procedures in proposed § 43.6(d)(1) will reflect the calculation steps are the same.

The Commission did not receive any comments on the changes to § 43.6(d). For the reasons discussed above, the Commission is adopting the changes as proposed.

4. § 43.6(e)—Process To Determine Appropriate Minimum Block Sizes

Existing § 43.6(e) and (f) set forth the processes for the Commission to set appropriate minimum block size in the initial[315] and post-initial period. Existing § 43.6(f) directs the Commission to establish the post-initial appropriate minimum block size by swap categories.[316] The regulation directs the Commission to update those appropriate minimum block sizes no less than once each calendar year thereafter.[317] For the swap categories listed in existing § 43.6(e)(1), § 43.6(f)(2) requires the Commission to apply the 67-percent notional amount calculation.[318] Swaps in the FX category in existing § 43.6(b)(4)(ii) are to be eligible for block trade or LNOFS treatment, as applicable.[319] Existing § 43.6(f)(4) directs the Commission to publish the post-initial appropriate minimum block sizes on its website and states the appropriate minimum block sizes will be effective on the first day of the second month following the date of publication.[320]

Prior to the Proposal, the Commission had not published any post-initial appropriate minimum block sizes. As the condition specified in § 43.6(f)(1) has been met, *i.e.,* more than one year's worth of reliable SDR data has been collected for the particular asset classes, the Commission is moving to the post-initial period and raising the block threshold to 67% and the cap sizes to 75%.

However, in the Proposal, the Commission proposed removing the regulations for initial appropriate minimum block sizes in § 43.6(e) and replacing them with new regulations for appropriate minimum block sizes in the post-initial period. To avoid removing regulations that still need to be effective during the compliance period for the changes to § 43.6, the Commission has decided to leave the substance of the existing regulations for the initial appropriate minimum block sizes in § 43.6(e) but move it to § 43.6(f),[321]

[312] *See* Block Trade Rule at 78 FR 32895 (May 31, 2013).

[313] Significant digits means the number of digits in a figure that express the precision of a measurement instead of its magnitude. In a measurement, commonly the in-between or embedded zeros are included but leading and trailing zeros are ignored. Non-zero digits, and leading zeros to the right of a decimal point, are always significant.

[314] *See* Block Trade Rule at 78 FR 32892 (May 31, 2013), n. 241, which provided the following example to explain the rounding instructions in § 43.6(c)(2)(viii): ''if the observed notional amount is $1,250,000, the amount should be increased to $1,300,000. This adjustment is made to assure that at least 67 percent of the total notional amount of transactions in a trimmed data set is publicly disseminated in real time.''

[315] The initial period ended April 10, 2014 when SDRs had collected one year's worth of reliable data.

[316] *See* § 43.6(f)(1).

[317] *Id.*

[318] *See* § 43.6(f)(2).

[319] *See* § 43.6(f)(3).

[320] *See* § 43.6(f)(5).

[321] In place of existing § 43.6(e), the Commission is adding the regulations that specify there are no appropriate minimum block sizes for swaps in the

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while updating the regulations for appropriate minimum block sizes during the post-initial period that were proposed in the Proposal in renumbered § 43.6(g). The Commission discusses the new regulations in § 43.6(g) in this section.

Renumbered § 43.6(g)(1) will state the Commission shall establish appropriate minimum block size, by swap categories, as described in § 43.6(g)(2) through (6). Renumbered § 43.6(g)(2) states the Commission shall determine the appropriate minimum block size for the swap categories described in § 43.6(c)(1)(i), (c)(2)(i) through (xii), (c)(4)(i), and (c)(5)(i) by applying the 67-percent notional amount methodology in proposed § 43.6(d)(1). Re-designated § 43.6(g)(2) also clarifies that if the Commission is unable to determine an appropriate minimum block size for any swap category described in § 43.6(c)(1)(i), the Commission shall assign an appropriate minimum block size of zero to such category.[322] The Commission is keeping the requirement for the Commission to recalculate the cap size no less than once each calendar year in re-designated § 43.6(g)(1).[323]

New § 43.6(g)(3) sets forth the method for determining appropriate minimum block sizes for FX swaps. New § 43.6(g)(3) specifies that the parties to an FX swap described in § 43.6(c)(4)(ii) may elect to receive block treatment if the notional amount of either currency would receive block treatment if the currency were paired with USD. In other words, for each currency underlying the FX swap, the counterparties will determine whether the notional amount of either currency will be above the block threshold if paired with USD, as described in § 43.6(c)(4)(i). If either notional amount paired with USD is greater than the block threshold, the swap described in § 43.6(c)(4)(ii) will qualify for block treatment.

As discussed above in section II.F.2, the Commission is setting the appropriate minimum block size of all swaps in certain swap categories[324] at zero and treating them as block trades in proposed § 43.6(g)(4). Finally, the Commission is keeping existing § 43.6(f)(5), renumbered as § 43.6(g)(6), which provides the effective date of post-initial appropriate minimum block sizes.

Aside from the new swap categories, the substantive import of § 43.6(g) is the Commission's move to the post-initial block threshold prescribed in the Block Trade Rule; raising thresholds is not implementing novel thresholds. More specifically, the Commission is implementing thresholds adopted in 2013 after notice and comment and that, by regulation, were to be implemented after an SDR had collected data for a year, a threshold that has been met and surpassed since April 2014.

These amendments thus reflect a policy continuation that effectuates the essential substance of what the Commission deemed appropriate in originally promulgating § 43.6. As supported by a refreshed analysis described below—including information not available to the Commission in 2013—the Commission continues to view the fundamental policy judgments that supported its 2013 decision to prescribe a 67-percent notional amount calculation after an initial introductory phase in period (now elapsed) as sound. For reasons discussed below, the Commission does not find comments to the contrary to be persuasive.

When it promulgated the requirement in 2013 that the notional amount calculation be raised from 50-percent to 67-percent, the Commission's goal was to increase market transparency by decreasing the portion of swaps within a category that qualified for block treatment and thus increasing the number of trades reported in real time.[325] The Commission anticipated that this enhanced transparency would improve market integrity and price discovery, while reducing information asymmetries enjoyed by market makers in predominately opaque swap markets.[326] The Commission also anticipated that enhanced price transparency would encourage market participants to provide liquidity (*e.g.,* through the posting of bids and offers), particularly when transaction prices move away from the competitive price.[327] In the Commission's view, using the 67-percent notional amount calculation in the post-initial period also would minimize the potential impact of real time public reporting on liquidity risk.[328]

The Commission continues to believe that transparency will increase liquidity, improve market integrity and price discovery, while reducing information asymmetries enjoyed by market makers. As explained in section V.C. below, this belief is supported by an extensive review of the academic literature. In addition, the Commission received a number of comments noting the importance of transparency in regard to lowering trading costs and pointing to a significant body of academic literature that empirically demonstrated this effect.[329]

When the Commission promulgated existing § 43.6(f)(2), it recognized that increasing the appropriate minimum block size notional amount calculation from 50-percent to 67-percent could make it more difficult for SDs to hedge the exposure created by trading a large swap because real-time reporting and public dissemination will be required.[330] Without a 15-minute pause before a large trade is revealed, other market participants could potentially anticipate the trades of the SD trying to hedge its position and act accordingly to their own advantage, and this could increase costs to SDs and other market participants. However, the Commission finalized existing § 43.6(f)(2) given the significant benefits of market transparency.

Notably, when § 43.6(f)(2) was finalized, the Commission determined that the 67-percent was appropriate.[331] However, in response to comments advocating for a gradual phase-in for attaining that threshold, the Commission adopted the 50-percent threshold as a temporary bridge measure.[332] The Commission believed this allowed for a more gradual phase-in of the 67 percent notional amount calculation for determining block thresholds in the post-initial period than what had been proposed.[333]

The Commission continues to believe that raising the notional amount calculation from 50-percent to 67-percent strikes an appropriate balance between the benefits of transparency and the costs to SDs and other market participants. Further, the Commission believes that the cost of raising the threshold is more limited today than it

equity asset class. This means the Commission has to move existing § 43.6(e) and (f) to § 43.6(f) and (g).

[322] The proposed appropriate minimum block size tables published by the Commission indicated that the 67-percent notional amount calculation does not result in an appropriate minimum block size for 15 IRS categories. There was insufficient swap transaction and pricing data for the Commission to determine an appropriate minimum block size for those 15 IRS categories. The Commission is setting the appropriate minimum block size for such IRS categories at zero, the same appropriate minimum block size being assigned to other IRS with limited trading activity.

[323] The Commission discusses this decision in section II.F.1 above.

[324] These categories of swaps are in § 43.6(c)(1)(ii), (c)(2)(xiii), (c)(4)(iii), and (c)(5)(ii).

[325] 78 FR 32893, 32894 (May 31, 2013).

[326] *Id.* at 32894.

[327] *Id.*

[328] *Id.*

[329] *See, e.g.,* MIT at 1–2; Carnegie Mellon at 2–4; SMU at 4–5; and Citadel at 5.

[330] 78 FR 32919–20 (May 31, 2013).

[331] *Id.* at 32920.

[332] *Id.*

[333] *Id.*

was in 2013. The ability of traders to profitably anticipate the hedging demands resulting from LNOFSs (which in turn, discourages market making) is inversely related to market liquidity. The 67-percent calculation will be applied to categories of swaps which the Commission has determined are relatively liquid. As noted above, the Commission has moved some illiquid swaps from the categories that were established in 2013 into more appropriate categories.

However, as discussed in the Compliance section, the Commission recognizes it would be challenging for market participants to come into compliance with the post-initial appropriate minimum block size at the same time they have to come into compliance with significant aspects of some of the additional changes to § 43.6, including the new swap categories. As a result, the Commission is providing a compliance period of 18-months for the changes to the part 43 rules except for § 43.4(g) and § 43.6. In the Proposal, the Commission proposed removing the regulations for initial appropriate minimum block sizes and replacing them with new regulations for appropriate minimum block sizes. To avoid removing regulations that still need to be effective during the compliance period for the changes to § 43.4(g) and § 43.6, the Commission has decided to leave the existing regulations for the initial appropriate minimum block sizes in § 43.6, while adding the new updated regulations for appropriate minimum block sizes during the post-initial period that were proposed in the Proposal.

As shown below, the Commission carefully reviewed the comments opposed to the higher notional amount calculations and does not find them to be persuasive. The Commission discusses the comments received on the changes to § 43.6(g) thematically in the following sections.

a. Increase in Block Trade Thresholds

The Commission received four comments supporting raising the block threshold to 67%. Better Markets believes the proposed increase is overdue and should be adopted.[334] Chris Barnard supports raising the thresholds from 50% notional to a minimum of 67% notional based on updated analysis.[335] Citadel supports the move from 50% to 67% to balance market transparency and information leakage risks, unlike the current approach, where one-half of trading activity (by notional) is eligible for a public reporting deferral.[336] Citadel further notes this approach is more consistent with the European approach.[337] Clarus believes the proposal will remove information asymmetries from the markets.[338]

Two commenters raised concerns about the March 2020 volatility as a basis for their opposition to raising the block thresholds. PIMCO believes their counterparties were simply unable to quote markets for block trades in otherwise liquid products, in part, based on their own inability to efficiently manage the risks associated with transacting in larger sizes in a volatile market.[339] In other cases, the bid-ask spreads grew sufficiently large so as to render the block trades economically unfavorable and PIMCO believes the dissemination of pre-trade information in this manner further exacerbated the winning counterparty's ability to efficiently hedge its risk in an illiquid market.[340] SIFMA AMG believes the 67% block test and the 75% cap test are each substantially too high and would adversely affect markets during periods of high volatility or lower liquidity and respectfully requests the Commission to include data from the recent COVID–19 downturn in their review and analysis to determine whether the higher limits are indeed advisable.[341]

The Commission is not persuaded by PIMCO's and SIFMA AMG's comments that the threshold should not be raised because it would be inappropriate in periods of extreme volatility, such as those experienced in March 2020. The block trade levels are not designed to address periods of extreme volatility. Moreover, in March 2020, Commission staff heard opposing views from market participants, some of whom believed the block thresholds did not need to be lowered during the period of volatility.[342] As noted above, the Commission also determined that it will not establish appropriate minimum block sizes for stressed market conditions. By their nature, markets may be stressed for different reasons and to different levels, and thus, the appropriate minimum block sizes cannot be determined in advance.

Three commenters raised concerns about the Commission's analysis as a basis for their opposition. Vanguard believes changing the thresholds needs to be supported by data to confirm that a change in the appropriate minimum block size is now justified, or, if justified, what percentage change is justified.[343] ISDA–SIFMA (Blocks) have previously stated the 67% calculation is arbitrary because it focuses on sorting swaps in a particular market by their notional amount and determining (without providing any economic analysis) that a certain percentage of the largest notional trades should be blocks.[344] ICI believes the Commission should have done a fresh evaluation of the 67% and 75% calculations, given the passage of time since 2013, and the Commission does not quantify the costs and benefits associated with the trading impacts.[345]

The Commission does not believe that the threshold is arbitrary and is not based on a data-driven analysis. Under the current 50-percent threshold, while the number of swap reported in real-time is large (87 and 82 percent for IRS and CDS, respectively), this accounts for less than half of total notional traded (46 and 39 percent for IRS and CDS, respectively).[346] For IRS, under the 67% threshold, the Commission estimates 94% of trades, or 65% of IRS notional, would be reported in real-time. For CDS, under the 67% threshold, the Commission estimates 95% of trades, or 62% of CDS notional, would be reported in real-time. The Commission is implementing the 67-percent threshold, as required by existing § 43.6(f)(2), based on its determination that the higher threshold properly balances the benefits of increased transparency with costs to SDs and their customers. The threshold is applied to categories that comprise liquid swaps as determined by an analysis based on recent data.

Four commenters raised concerns about SEF execution methods as a basis for their opposition. SIFMA AMG and ISDA–SIFMA (Blocks) are concerned that large trades that fall between the current block trade thresholds and the newer, larger proposed block trade thresholds may now be subject to the risk of information leakage as such trades, to the extent they are subject to

[334] Better Markets at 2.

[335] Chris Barnard at 1.

[336] Citadel at 9.

[337] *Id.*

[338] Clarus at 2.

[339] PIMCO at 3–4.

[340] *Id.*

[341] SIFMA AMG at 2–4.

[342] The Commission notes there were also public reports about transparency helping during the March volatility. *See, e.g.,* Chris Barnes, Is transparency helping markets function?, Clarus Financial Technology Blog, (Mar. 2020), *available at https://www.clarusft.com/is-transparency-helping-markets-function/.*

[343] Vanguard at 3.

[344] ISDA–SIFMA (Blocks) at 3–4.

[345] ICI at 6–7.

[346] Percentages computed using the set of transactions for IRS and CDS from May 1, 2018 to April 30, 2019. This is the same information used to study the swap categories and compute block and cap thresholds.

the trade execution requirement, will now be subject to the RFQ-to-three process.[347] Vanguard contends that for most product types, the magnitude of the proposed increase in appropriate minimum block size would have an adverse impact on liquidity with respect to existing block trades, which would no longer benefit from RFQ-to-one [348] and delayed reporting.[349] ICI believes subjecting more large transactions to a higher level of transparency through the RFQ-to-three requirement may significantly impair liquidity for funds and other buy-side participants in stressed market conditions and may increase the risk of pre-trade leakage of valuable information about a fund's holdings and trading strategy.[350]

The Commission recognizes the potential that some degree of information leakage and liquidity impairment could result from market participants now being required to execute some large-notional MAT swap transactions—*i.e.,* transactions that fall within the window between the prior and now-implemented thresholds (50 percent to 67 percent) that could previously be executed as blocks and through non-competitive means of execution—on a SEF or DCM through competitive means of execution. However, more compelling in the Commission's view is the likelihood that the bids and offers associated with these large-notional MAT swap transactions could, through increased transparency and competition, stimulate more trading and thereby enhance liquidity and pricing. Further, the Commission expects that commenters' concern regarding information leakage and liquidity impairment resulting from being required to execute some large-notional MAT swap transactions on a SEF or DCM through competitive means of execution will be mitigated by the fact that the appropriate minimum block size is being raised for relatively liquid products.

One commenter raised concerns about putting SEFs at a competitive disadvantage as a basis for their opposition. ISDA–SIFMA (Blocks) believe unattainably high block thresholds will put SEFs at a competitive disadvantage with non-U.S. trading platforms and shift execution (and trading business) away from the U.S.[351] Further, ISDA–SIFMA (Blocks) believe the Commission could calculate separate and distinct block sizes for the SEF requirements, using only MAT instruments where the impacts of high thresholds are particularly detrimental.[352]

In response to the ISDA–SIFMA (Blocks) comment that higher block sizes will put SEFs at a competitive disadvantage with non-U.S. trading platforms,[353] the Commission recognizes that there is a possibility that some SDs could choose to execute MAT swap transactions that will no longer receive block treatment on a European trading facility through a non-competitive means of execution in order to avoid executing the swap on a SEF or DCM through a competitive means of execution. However, the prospect of transaction migration from the U.S. to Europe is entirely speculative, and one for which ISDA–SIFMA provide no estimate or data (*e.g.,* the number of transactions likely to migrate offshore) to gauge its likelihood or severity. The Commission believes that most SDs will continue to utilize U.S. markets which have substantial liquidity and other benefits that outweigh the information leakage cost of executing a swap RFQ-to-3 as opposed to RFQ-to-1. The Commission does not intend to create opportunities for regulatory arbitrage that could impair liquidity or transparency in U.S. markets or competitively disadvantage U.S. SEFs. The Commission will monitor trading in the markets affected by the final rule for any such migration or arbitrage.

Four commenters raised concerns about using risk metrics for appropriate minimum block sizes as a basis for their opposition. ISDA–SIFMA (Blocks) believe the proposed thresholds do not properly account for risk sensitivity and if the Commission needs to pursue a notional-based framework, the levels should be established through a risk-based approach by using risk metrics such as DV01 to account for the fact that they are only proxies for true risk.[354] SIFMA AMG states that rather than adopting a 67% test for all products, the Commission should analyze whether a dollar value change test (a ''DV01 Test'') would be a more appropriate standard for interest rate products.[355] ISDA–SIFMA (Blocks) believe the number of true block trades in a given swap category should depend on the relevant level of liquidity and risk.[356] Credit Suisse supports ISDA–SIFMA (Block)'s concerns around changes to the block thresholds, including relying on notional amounts may not sufficiently account for risk sensitivity.[357] ALCI recommends that the Commission apply a risk-based analysis to interest rate products with a tenor of 10 years and greater and, based on this analysis, reduce the appropriate minimum block size for such swaps.[358]

The Commission is neither persuaded by comments that appropriate minimum block sizes should be linked to risk by metrics such as DV01, nor suggestions that the number of true block trades in a given swap category should depend on the relevant level of liquidity and risk. Although basing appropriate minimum block size on DV01 theoretically might be appropriate, the commenters have not explained how this could be accomplished in practice, nor are the means for doing so apparent to the Commission. For example, the commenters have not explained whether DV01 would be the only criteria, or if other factors would be utilized. In addition, DV01 changes daily and there is no guidance on how often thresholds should be adjusted. Most significantly, the commenters have not demonstrated that the appropriate minimum block sizes that would result from their risk-based approach would be more appropriate than those that result from the Commission's approach, nor that their approach would be less costly to implement. Rather, as explained in section V.C., the Commission believes its approach is superior as the ultimate goal in establishing thresholds is to focus on liquidity differences across swap categories, not risk-transfer *per se.*

One commenter raised concerns specifically about FX swaps as a basis for their opposition. GFMA was not expecting such significant changes between existing and proposed FX block and cap sizes.[359] For the ''other currency bucket,'' GFMA believes that the $150 million cap size, which is higher than the cap for more liquid currencies, listed in the table will result in the illogical outcome of more transparency for less liquid currency pairs.[360] GFMA believes more transparency for these less liquid currencies will create challenges for

[347] SIFMA AMG at 3 and ISDA–SIFMA (Blocks) at 5. RFQ-to-three is the requirement for a market participant to transmit a request for a bid or offer to no less than three market participants who are not affiliates of, or controlled by, the requester or each other. *See* 17 CFR 37.9(a)(2)(B) and (3).

[348] RFQ-to-one allows counterparties to bilaterally negotiate a block trade between two potential counterparties, without requiring disclosure of the potential trade to other market participants on a pre-trade basis.

[349] Vanguard at 3–4.

[350] ICI at 7.

[351] ISDA–SIFMA (Blocks) at 5.

[352] *Id.*

[353] *Id.*

[354] *Id.* at 4.

[355] SIFMA AMG at 4.

[356] ISDA–SIFMA (Blocks) at 4.

[357] Credit Suisse at 3.

[358] ACLI at 3–4.

[359] GFMA at 7, 10.

[360] GFMA at 7–8.

market participants to hedge in these currencies.[361]

The Commission disagrees with GFMA's comment because the category includes less liquid currency pairs.[362] Categories of swaps will necessarily combine more and less liquid swaps. As discussed above in II.F, the Commission arrived at the number of swap categories by balancing the increased cost of additional categories with the more finely tuned block and cap sizes. Further, simply comparing the cap sizes for different currency pairs, as GFMA does, may be inappropriate as the underlying distribution of currency pairs may be different.

One commenter raised concerns the block threshold should be higher than 67% as a basis for their opposition. Clarus believes the appropriate minimum block size levels should be set at 75%–90% and that the current 50% level confers an unfair information asymmetry to large SD banks who act as liquidity providers for these large swaps.[363] Clarus states that, given that there is strong evidence that block trades have had no more market impact in 2020 than smaller trades, it seems to provide an unfair advantage to large liquidity providers.[364] Clarus also believes that adding extra transparency for large trades would provide market participants with clearer signs of liquidity and reduce information asymmetry, which, during crisis times, provides even greater reassurance that markets are not ''seizing up.'' [365]

At this time, given the data available to it, the Commission disagrees with Clarus that the appropriate minimum block size levels should be set at 75% to 90%. The Commission agrees that adding extra transparency for large trades would provide market participants with clearer signs of liquidity and reduce information asymmetry, which, during crisis times, provides even greater reassurance that markets are not ''seizing up.'' However, the Commission believes that the adverse impact on SDs and their customers of setting the threshold at 75 to 90% may be too significant to justify setting the threshold at this level.

PIMCO is concerned the premature dissemination of block trade details transmits sensitive proprietary information to short-term speculators before SDs are able to hedge and otherwise manage their risk and could lead to market liquidity decreases, bid-ask spreads widening, and costs to PIMCO's clients.[366]

As explained above in the introduction to the § 43.6(e) discussion, the Commission specifically considered PIMCO's concerns that raising the notional amount calculation from 50-percent to 67-percent could adversely impact SDs and their clients because the swaps would no longer benefit from delayed reporting both in the 2013 rulemaking and in the current rulemaking. The Commission has determined to raise the notional amount calculation to obtain the benefits of increased transparency.

b. Block Size of Zero

The Commission received three comments related to appropriate minimum block sizes of zero. Clarus strongly opposes the Commission's proposal to set the block threshold at zero for any instrument that the Commission currently considers ''relatively illiquid.'' [367] Clarus believes that price discovery is just as important for minor currencies as for major currencies—possibly more so given the fragmented nature of less liquid markets—for example, IRS denominated in CHF, on the grounds that instruments must be closely monitored during the planned transition away from London Interbank Offered Rate (''LIBOR'') to risk-free rates.[368] GFMA believes the proposed zero appropriate minimum block size for the other currency bucket is ''not unwelcome.'' [369] FXPA supports the creation of a category for relatively low liquidity FX swaps that will benefit from an appropriate minimum block size of zero.[370]

With respect to the proposed zero appropriate minimum block sizes, the Commission agrees with Clarus that price discovery is important for illiquid products. However, the Commission must weigh the goal of public transparency against the concern that post-trade reporting would reduce market liquidity. In illiquid markets, transactions occur infrequently and the benefit of real-time information is limited. For example, if transactions occur throughout the day and less than every ten minutes on average, knowing the price of a swap immediately after execution will provide little additional benefit than knowing the price of a swap fifteen minutes after execution. However, other market participants could potentially anticipate the trades of the SD trying to hedge its position and act accordingly to their own advantage, and this could increase costs to SDs and other market participants. Accordingly, the Commission has determined that zero appropriate minimum block sizes are appropriate for the swap categories with illiquid swaps.

c. Cross-Border Concerns

The Commission received one comment addressing cross-border concerns. GFMA believes the Commission needs to coordinate with its foreign regulator peers regarding block and cap thresholds.[371] GFMA notes data that may be deemed market-sensitive in one jurisdiction should not be made public in another, especially for FX, which is a global market.[372]

In response to cross-border concerns raised by GFMA, the Commission anticipates that it will address the cross-border application of the reporting rules in a separate rulemaking.

5. § 43.6(f)—Required Notification

The Commission is re-designating existing § 43.6(g) as § 43.6(h) to reflect the Commission's decision to retain § 43.6(e) and (f) but add new § 43.6(c). Existing § 43.6(g) sets forth the requirements for parties to notify their execution venue (*i.e.,* SEF or DCM) of the parties' block trade election or notify their SDR of the parties' LNOFS election.

Existing § 43.6(g)(1)(i) requires the parties to a publicly reportable swap transaction with a notional amount at or above the appropriate minimum block size to notify the SEF or DCM of their election to have the publicly reportable swap transaction treated as a block trade. The current phrasing suggests parties must elect to have a qualifying publicly reportable swap transaction treated as a block trade, instead of letting parties choose. The Commission believes having the option is important, as some counterparties may not object to having their block trade disseminated in real-time. To give them the option, the Commission is changing § 43.6(h)(1)(i) to state if the parties make such an election, the reporting counterparty must notify the SEF or DCM.[373]

Existing § 43.6(g)(1)(ii) requires the SEF or DCM to notify the SDR of a block trade election when transmitting swap transaction and pricing data to the SDR in accordance with § 43.3(b)(1). The Commission is retaining the substance of existing § 43.6(g)(1)(ii) in re-

[361] *Id.*

[362] GFMA at 7–8.

[363] Clarus at 8–9.

[364] *Id.*

[365] *Id.*

[366] PIMCO at 2.

[367] Clarus at 9.

[368] *Id.*

[369] GFMA at 7.

[370] FXPA at 2.

[371] GFMA at 9.

[372] *Id.*

[373] The Commission is also making minor non-substantive technical edits for clarity.

designated § 43.6(h)(1)(ii), but is removing the specific reference to § 43.3(b)(1) and streamlining the language to state the SEF or DCM, as applicable, shall notify the SDR of a block trade election when reporting the swap transaction and pricing data to such SDR in accordance with part 43.

The Commission is adding new § 43.6(h)(1)(iii) to clarify that SEFs and DCMs may not disclose block trades prior to the expiration of the applicable dissemination delay in § 43.5(c) to avoid ambiguity.

Existing § 43.6(g)(2) states that reporting parties executing an off-facility swap with a notional amount at or above the appropriate minimum block size shall notify the applicable registered SDR that such swap transaction qualifies as an LNOFS concurrently with the transmission of swap transaction and pricing data in accordance with part 43. The Commission is clarifying in § 43.6(g)(2), re-designated as § 43.6(h)(2), that the parties to a publicly reportable swap transaction that is an off-facility swap with a notional at or above the appropriate minimum block size can elect to have the publicly reportable swap transaction treated as a LNOFS. If the parties make such an election, the reporting counterparty will notify the SDR. However, because the Commission is keeping the term ''large notional off-facility swap'' in § 43.2, the Commission is keeping the reference to ''large notional off-facility swap'' in the rule.

The Commission received one comment on the proposed amendments to block trade notifications. Chatham believes they provide more clarity to reporting counterparties for how such trades should be reported. Chatham believes confusion currently exists regarding whether the SDR may make the calculation or whether the reporting counterparty must do so. If the Commission does not adopt this change, Chatham encourages the Commission to further clarify the SDRs also make the block trade calculations.[374] The Commission agrees with Chatham that the amendments will address ambiguity around electing block treatment.

6. § 43.6(h)—Special Provisions Relating to Appropriate Minimum Block Sizes and Cap Sizes

The Commission is re-designating existing § 43.6(h) as § 43.6(i) in response to retaining § 43.6(e) and (f).[375] The Commission is also not adopting the proposal to remove existing § 43.6(h)(5) (which will now be in renumbered § 43.6(i)(5)), which contains a provision for determining the appropriate currency classification for currencies that succeed super-major currencies. Existing § 43.6(h)(5) is still necessary due to the need to retain § 43.6(b) during the compliance period. As a result of keeping § 43.6(h)(5), the Commission is keeping existing § 43.6(h)(6) as § 43.6(h)(6) and making substantive changes.

Existing § 43.6(h)(6) generally prohibits the aggregation of orders for different accounts to satisfy minimum block trade size or cap size requirements but contains an exception for orders on SEFs and DCMs by certain commodity trading advisors (''CTAs''), investment advisers, and foreign persons performing a similar role or function. The Commission believed such a prohibition was necessary to ensure the integrity of block trade principles and preserve the basis for the anonymity associated with establishing cap sizes.[376]

While the aggregation prohibition in existing § 43.6(h)(6) is intended to incentivize trading on SEFs and DCMs, this incentive is nonexistent for swaps that are not listed or offered for trading on a SEF or DCM.[377] The Commission is therefore amending the aggregation prohibition to provide for swaps not listed or offered for trading on a SEF or DCM.

Existing § 43.6(h)(6)(ii) conditions the exception from the aggregation prohibition on a CTA, investment adviser, or foreign person having more than $25 million in assets under management. In adopting this condition, the Commission explained that the $25 million threshold would help ensure that persons allowed to aggregate orders were appropriately sophisticated, while at the same time not excluding an unreasonable number of CTAs, investment advisers, and similar foreign persons.[378]

However, the Commission has come to believe the $25 million threshold may be excluding more participants from taking advantage of the exception than initially expected.[379] Therefore, the Commission is removing the $25 million threshold in existing § 43.6(h)(6)(ii), even though the threshold was a condition of DMO relief in NAL No. 13–48.

Finally, the Commission is making several non-substantive changes throughout § 43.6(i)(6) for clarity, updating cross-references, and specifying the aggregated transaction is reported as a block trade or LNOFS, as applicable, and the aggregated orders are executed as one swap transaction.

The Commission received one comment on the proposed amendments to § 43.6(h), which will be adopted in § 43.6(i). ICI agrees with the Commission's policy goal behind removing the aggregation prohibition in § 43.6(h)(6), because the exception to the prohibition does not exist for swaps that are not listed or offered for trading on a SEF or DCM.[380] In addition, ICI strongly supports removing the $25 million aggregation threshold as advisers with less than $25 million in assets under management have a valid need to engage in block trades on behalf of the funds they manage.[381]

The Commission has determined removing the $25 million aggregation threshold is appropriate because the existing rule excludes appropriately sophisticated CTAs, investment advisers, or foreign persons from aggregating trades and is adopting § 43.6(h) as proposed in renumbered § 43.6(i). As noted above, the Commission intended to change existing § 43.6(h) to permit aggregation for swaps not listed on a SEF or DCM, but continue to require aggregation on a SEF or DCM if the swap is listed on a SEF or DCM. The Proposal inadvertently eliminated the existing requirement aggregation occur on a SEF or DCM if the swap is listed on a SEF or DCM. Accordingly, the Commission is adding a condition to final § 43.6(i)(6) to clarify aggregation must occur on a SEF or DCM if the swap is listed on a SEF or DCM.

7. § 43.6(i)—Eligible Block Trade Parties

The Commission is renumbering § 43.6(i) as § 43.6(j) in response to the changes above related to retaining certain existing regulations. In addition, to conform to the proposed revisions to § 43.6(i)—specifically the removal of the

[374] Chatham at 2.

[375] In the Proposal, the Commission proposed a related conforming change in § 43.6(a). Currently, that paragraph cross-references § 43.6(h). The Commission is updating that provision so it cross-references § 43.6(i) to reflect the re-designation.

[376] *See* Block Trade Rule at 32904.

[377] In 2013, DMO granted indefinite no-action relief extending the exception to swaps that are not listed or offered for trading on a SEF or a DCM. *See* No-Action Relief For Certain Commodity Trading Advisors and Investment Advisors From the Prohibition of Aggregation Under Regulation 43.6(h)(6) for Large Notional Off-Facility Swaps, Commission Staff Letter No. 13–48 (Amended), (Aug. 6, 2013), *available at https://www.cftc.gov/sites/default/files/idc/groups/public/@lrlettergeneral/documents/letter/13-48.pdf* (''NAL No. 13–48''). The Commission is incorporating this no-action relief, along with its related conditions (with one exception discussed below), into § 43.6(g)(5).

[378] Block Trade Rule at 78 FR 32905 (May 31, 2013).

[379] Proposal at 85 FR 21540 (Apr. 17, 2020).

[380] ICI at 9.

[381] *Id.*

$25 million threshold in existing § 43.6(i)(6)(ii)—the Commission is removing the $25 million threshold in existing § 43.6(i)(1)(iii) (*i.e.,* § 43.6(j)(1)(iii), as re-designated). The Commission is also making several non-substantive ministerial changes, such as correcting cross-references and capitalization.

As discussed above, ICI supports removing the $25 million threshold requirement to engage in block trades and removing the condition requiring that orders be on SEFs and DCMs.[382] The Commission agrees with ICI and for above-described reasons discussed in the Proposal, the Commission is adopting § 43.6(j) as proposed.

G. § 43.7—Delegation of Authority

The Commission is adopting several changes to § 43.7, which governs Commission delegation of certain authority to the DMO Director or such other employee or employees as the DMO Director may designate from time to time (''DMO staff''). The Commission is adding new (a)(1) to delegate the authority to publish the technical specification providing the form and manner for reporting and publicly disseminating the swap transaction and pricing data elements in appendix A as described in §§ 43.3(d)(1) and 43.4(a). If it chooses to, the Commission may, pursuant to § 43.7(c), which the Commission did not propose to amend, exercise any authority delegated pursuant to proposed § 43.7(a)(1) (or any other authority delegated pursuant to § 43.7(a)) rather than permit the DMO Director or DMO staff to exercise such authority.

Because there currently is a § 43.7(a)(1), the Commission is renumbering existing § 43.7(a)(1) as § 43.7(a)(3). The Commission is further renumbering existing § 43.7(a)(2) as § 43.7(a)(4) and replacing the reference to § 43.6(f) with a reference to § 43.6(e).[383] However, the Commission is retaining the references to the initial and post-initial periods, to avoid removing regulations in effect during the compliance period. Additionally, the Commission is renumbering existing § 43.7(a)(3) as § 43.7(a)(2).[384]

The Commission did not receive any comments on the changes to § 43.7. For reasons discussed above, the Commission is adopting the changes as proposed.

[382] *See id.*

[383] The Commission discusses the changes to post-initial appropriate minimum block sizes above in section II.F.3.

[384] The Commission discusses the changes to post-initial cap sizes above in section II.D.4.

III. Swap Transaction and Pricing Data Reported to and Publicly Disseminated by Swap Data Repositories

The Commission is revising the list of swap transaction and pricing data elements in appendix A to update it[385] to further standardize the swap transaction and pricing data being reported to, and publicly disseminated by, SDRs. The swap transaction and pricing data elements are currently found in appendix A, which states that, among other things, SDRs must publicly disseminate the information in appendix A in a ''consistent form and manner'' for swaps within the same asset class.

Existing appendix A includes a description of each field, in most cases phrased in terms of ''an indication'' of the data that must be reported and disseminated and an example illustrating how the field could be populated. For example, the description of the ''Asset class'' field in table A1 of appendix A calls for an indication of one of the broad categories as described in § 43.2(e), and the example provided states IR (*e.g.,* IRS asset class).

In adopting appendix A, the Commission believed consistency could be achieved in the data, but intentionally avoided prescriptive requirements in favor of flexibility in reporting the various types of swaps.[386] The Commission recognizes that over the years each SDR has increasingly standardized the swap transaction and pricing data reported and disseminated. However, SDRs have implemented the field list in appendix A in different ways, causing publicly disseminated messages to appear differently depending on the SDR. As such, the Commission believes a significant effort must be made to standardize swap transaction and pricing data across SDRs.

The Commission has reviewed the data fields in appendix A to update the existing list and provide further specifications on reporting and public dissemination. This assessment was part of a larger review of the parts 43 and 45 data the Commission requires to be reported to, and publicly disseminated by, SDRs. The Commission reviewed the swap transaction and pricing data data fields in appendix A and the swap data elements in appendix 1 to part 45 to determine if any currently required data elements should be eliminated and if any data elements should be added. As part of this process, the Commission also reviewed the part 45 swap data elements to determine whether any differences could be reconciled across parts 45 and 43.[387] The Commission proposed the swap transaction and pricing data elements to be publicly disseminated would be a subset of the part 45 swap data elements required to be reported in appendix 1 to part 45.

After determining the set of swap data and swap transaction and pricing data elements, the Commission reviewed the CDE Technical Guidance to determine which data elements the Commission could adopt according to the CDE Technical Guidance.[388] From there, the Commission set out to establish definitions, formats, standards, allowable values, and conditions. After completing this assessment, the Commission proposed to list the swap transaction and pricing data elements required to be publicly disseminated by SDRs pursuant to part 43 in appendix C. In a separate proposal for part 45, the Commission proposed to list the swap data elements required to be reported to SDRs pursuant to part 45 in appendix 1 to part 45.

DMO also published a draft technical specification, along with validation conditions, on the Commission's website at *www.cftc.gov* contemporaneously with the publication of the Proposal so market participants could comment on the Proposal and technical specification at the same time.

The Commission proposed appendix C would contain the list of swap transaction and pricing data elements required to be publicly disseminated by SDRs, but the Commission recognized that SDRs would need additional part

[385] The Commission proposed deleting appendix C and updating the list of swap transaction and pricing data elements in existing appendix A and moving them to appendix C. The Commission is not adopting that proposal. Instead, the Commission is revising the list of swap transaction and pricing data elements in appendix A, and leaving appendix C as it is.

[386] *See* Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1224 (Jan. 9, 2012).

[387] The Commission had intended that the data elements in appendix A would be harmonized with the data elements required to be reported to an SDR for regulatory purposes pursuant to part 45. *See* Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1226 (Jan. 9, 2012) (noting that it is important that the data fields for both the real-time and regulatory reporting requirements work together). However, the Commission did not require linking the two sets of data elements.

[388] *See* Committee on Payments and Market Infrastructures (''CPMI'') and the International Organization of Securities Commissions (''IOSCO''), Technical Guidance, Harmonization of Critical OTC Derivatives Data Elements (other than UTI and UPI) (Apr. 2018) (''CDE Technical Guidance''). The Commission discusses the CDE Technical Guidance, and the Commission's role in its development, in the February 2020 notice of proposed rulemaking relating to the Commission's regulations in parts 45, 46, and 49. *See* Swap Data Recordkeeping and Reporting Requirements, 85 FR 21578 (Apr. 17, 2020).

45 swap data elements reported along with these swap transaction and pricing data elements. These swap data elements include identifying information like the identity of the reporting counterparty, the USI or unique transaction identifier (''UTI''), and the submitter. However, DMO noted these swap data elements separately in the technical specification published on *https://www.cftc.gov* to simplify the list of publicly disseminated swap transaction and pricing data elements in appendix A.

The Commission discusses comments received on the swap transaction and pricing data elements in appendix A [389] required to be publicly disseminated by SDRs below. As the part 43 swap transaction and pricing data elements will be a subset of the part 45 swap data elements, most of these data elements are discussed in more depth in the related part 45 adopting release.

A. Swap Transaction and Pricing Data Elements

As a preliminary matter, the swap transaction and pricing data elements in appendix A do not include swap transaction and pricing data elements specific to swap product terms. The Commission is heavily involved in separate international efforts to introduce UPIs.[390] The Commission expects UPIs will be available within the next two years.[391] Until the Commission designates a UPI pursuant to § 45.7, the Commission proposed SDRs continue to accept and disseminate, and reporting counterparties continue to report, the product-related data elements unique to each SDR. The Commission believes this temporary solution would have SDRs change their systems only once when UPI becomes available, instead of twice if the Commission adopted standardized product data elements before UPIs are available.

In addition, the Commission notes that it has adopted the CDE Technical Guidance data elements as closely as possible. This means that some terms may be different for certain concepts. For instance, ''derivatives clearing organization'' is the Commission's term for registered entities that clear swap transactions, but the CDE Technical Guidance uses the term central counterparty.

To help clarify, DMO has placed footnotes in the technical specification to explain these differences in at least four terms as well as provide examples and jurisdiction-specific requirements. However, the Commission is not including these footnotes in appendix A. In addition, the definitions from CDE Technical Guidance data elements included in appendix A sometimes reference allowable values in the CDE Technical Guidance, which may not be included in appendix A but can be found in DMO's technical specification.

Finally, the CDE Technical Guidance did not harmonize many data elements that would be particularly relevant for commodity and equity swap asset classes (*e.g.,* unit of measurement for commodity swaps). CPMI and IOSCO have set out governance arrangements for CDE data elements (''CDE Governance Arrangements'').[392] The CDE Governance Arrangements address both implementation and maintenance of CDE, together with their oversight. One area of the CDE Governance Arrangements includes updating the CDE Technical Guidance, including the harmonization of certain data elements and allowable values that were not included in the CDE Technical Guidance (*e.g.,* data elements related to events, and allowable values for the following data elements: Price unit of measure and Quantity unit of measure).

The Commission invited comment on all of the swap transaction and pricing data elements proposed in appendix A. The Commission discusses the swap transaction and pricing data elements below by category to simplify the organization of comments received. To the extent any comment involved data elements adopted according to the CDE Technical Guidance, however, the Commission anticipates raising issues according to the CDE Governance Arrangements procedures to help ensure that authorities follow the established processes for doing so. In addition, the Commission anticipates updating its rules to adopt any new or updated CDE Technical Guidance.

1. Category: Clearing

The Commission proposed requiring SDRs to publicly disseminate one data element related to clearing: Cleared (1). This data element is currently being publicly disseminated by SDRs according to the field in existing appendix A ''Cleared or uncleared.''

The Commission received four comments on clearing data elements. Clarus and Citadel believe the name of the DCO (or exempt DCO) where the transaction is cleared should be publicly disclosed given that this is a key data element that affects transaction pricing.[393] CME is unaware of any challenges market participants would face in reporting additional clearing data elements like the identity of the DCO but believes it is unclear how any additional clearing data elements would enhance transparency and price discovery.[394] ISDA–SIFMA comments that reporting terminated alpha swaps on the public tape would create a certain level of ''noise'' on the public tape with little incremental value.[395]

The Commission is adopting the clearing data element in appendix A as proposed. The Commission is not adopting an additional data element identifying the DCO at which the swap would be cleared. Most publicly reportable swap transactions are original swaps, which means they are swaps that the counterparties or exchange will submit for clearing. In many instances, the counterparties may not yet know the DCO to which they will submit the original swap for clearing. As a result, the Commission is concerned this ambiguity could either encourage counterparties to report unreliable data or generally inconsistent reporting.

2. Category: Custom Baskets

The Commission proposed requiring SDRs to publicly disseminate a custom basket indicator.[396] The Commission believes this data element would help market participants identify that a disseminated price is associated with a custom basket. The Commission clarified that this data element is not a field to indicate an otherwise exotic swap.

The Commission did not receive any comments on the custom basket indicator data element in appendix A and for reasons articulated in the Proposal and reiterated above, is adopting the data element as proposed.

[389] The Commission is not adopting the proposal to move the part 43 swap transaction and pricing data elements to appendix C. Instead, the Commission is updating the data elements in existing appendix A. The Commission will only reference appendix A in the rest of this discussion.

[390] *See* FSB, Governance arrangements for the UPI: Conclusions, implementation plan and next steps to establish the International Governance Body (Oct. 9, 2019), *available at https://www.fsb.org/2019/10/governance-arrangements-for-the-upi/.*

[391] *See id.* The FSB recommends that jurisdictions undertake necessary actions to implement the UPI Technical Guidance and that these take effect no later than the third quarter of 2022.

[392] CPMI and IOSCO, Governance Arrangements for critical OTC derivatives data elements (other than UTI and UPI), (Oct. 2019), *available at: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD642.pdf.*

[393] Citadel at 10; Clarus at 10.

[394] CME at 11.

[395] ISDA–SIFMA at 54.

[396] This data element is Custom basket indicator (25) in appendix A.

3. Category: Events

The Commission proposed requiring SDRs to publicly disseminate four data elements related to events.[397] Reporting counterparties currently report this information to SDRs, but the Commission proposed further standardizing how this information is reported across SDRs. The existing event fields in appendix A include cancellation and correction. The Commission believes more specific event information would help market participants understand why certain swap changes to publicly reportable swap transactions are being publicly disseminated.

The Commission received two comments on the events data elements. Citadel supports the Commission adding a flag to identify swaps that result from risk reduction services, given that these may be publicly reported with off-market prices.[398] Clarus believes providers of any compression-type activity should report trade level details to SDRs and mark them on the public tape as compressions or risk-reduction exercises.[399] As explained in section II.B.2, the Commission is clarifying swaps resulting from post-trade, risk reduction exercises performed by automated systems that are market risk neutral are not publicly reportable swap transactions. As these swaps will no longer appear on the public tape, a flag to identify such swaps is not necessary.

The Commission is adopting the events data elements in appendix A as proposed, with a modification. The Commission is adding an amendment indicator data element to flag changes to a previously submitted transaction.

4. Category: Notional Amounts and Quantities

The Commission proposed requiring SDRs publicly disseminate eleven data elements related to notional amounts and quantities.[400] SDRs are currently publicly disseminating information related to notional amounts, but the Commission proposed standardizing how this information is reported across SDRs. The notional data elements in existing appendix A include notional currency and rounded notional. SDRs would continue to cap and round the notional amounts as required by § 43.4.

The Commission did not receive any comments on adding or removing notional amounts and quantities data elements in appendix A and for reasons articulated in the Proposal and reiterated above, is adopting the notional amounts and quantities data elements in appendix A as proposed, with the addition of three notional amount schedule data elements to appendix A.[401]

5. Category: Packages

The Commission proposed requiring SDRs to publicly disseminate four data elements related to package transactions.[402] The Commission received four comments related to package transactions. Citadel supports the ''package identifier'' data element, but recommends the Commission clarify that the definition of a package includes transactions that are executed using ''list'' functionality offered by a SEF, where several transactions are grouped together for pricing and execution purposes.[403]

ISDA–SIFMA do not support additional package related data elements being disseminated on the public tape because they are exceptionally complex.[404] Further, ISDA–SIFMA believe reporting package transactions to the tape can result in fingerprinting since definitions of ''package'' vary across firms and there is no consistent approach for industry participants.[405] CME also does not support additional package related data elements because although they would not create implementation challenges for SDRs, it is unclear how doing so would enhance transparency and price discovery.[406] FXPA encourages the Commission to provide examples with respect to package data elements to facilitate compliance, including a particular example for reporting data element Package transaction price notation.[407]

The Commission is adopting the package data elements in appendix A as proposed, but is declining to require the package identifier for part 43 reporting. Further, the Commission is adding three package transaction swap data elements to appendix A from the CDE Technical Guidance: Package transaction spread; Package transaction spread currency; and Package transaction spread notation. The Commission will also add a package indicator data element to appendix A.

The Commission believes Citadel's recommendation should be addressed through the CDE governance process to ensure jurisdictions adopt the data element consistently. Finally, the Commission does not believe the package data elements require examples, but DMO will monitor their implementation and add examples to the technical specification if they would be beneficial in the future.

6. Category: Payments

The Commission proposed requiring SDRs to publicly disseminate eight data elements related to payments.[408] SDRs are currently publicly disseminating information related to payments, but the Commission proposed further standardizing how this information is reported across SDRs. The payment fields in existing appendix A include payment frequency and reset frequency, and day count convention.

The Commission did not receive any comments on the payments data elements in appendix A and for reasons articulated in the Proposal and reiterated above, is adopting the data elements as proposed.

7. Category: Prices

The Commission proposed requiring reporting counterparties to report seventeen data elements related to swap prices for SDRs to publicly disseminate.[409] SDRs are currently publicly disseminating information related to prices, but the Commission proposed further standardizing how this information is reported across SDRs. The payment fields in existing appendix A include payment price, price notation, and additional price notation.

In the price category, the Commission proposed a Post-priced swap indicator (68), in connection with the proposed

[397] In appendix A, these data elements are: Action type (26); Event type (27); Event identifier (29); and Event timestamp (30).

[398] *Id.*

[399] Clarus at 2.

[400] In appendix A, these data elements are: Notional amount (31); Notional currency (32); Call amount (36); Call currency (37); Put amount (38); Put currency (39); Notional quantity (40); Quantity frequency (41); Quantity frequency multiplier (42); Quantity unit of measure (43); and Total notional quantity (44).

[401] Notional amount schedule is three data elements in the CDE Technical Guidance.

[402] In appendix A, these data elements are: Package identifier (46); Package transaction price (47); Package transaction price currency (48); and Package transaction price notation (49).

[403] Citadel at 10.

[404] ISDA–SIFMA at 55.

[405] *Id.*

[406] CME at 11.

[407] FXPA at 3.

[408] In appendix A, these data elements are: Day count convention (53); Floating rate reset frequency period (55); Floating rate reset frequency period multiplier (56); Other payment type (57); Other payment amount (58); Other payment currency (59); Payment frequency period (63); and Payment frequency period multiplier (64).

[409] In appendix A, these data elements are: Exchange rate (65); Exchange rate basis (66); Fixed rate (67); Post-priced swap indicator (68); Price (69); Price currency (70); Price notation (71); Price unit of measure (72); Spread (73); Spread currency (74); Spread notation (75); Strike price (76); Strike price currency/currency pair (77); Strike price notation (78); Option premium amount (79); Option premium currency (80); and First exercise date (82).

rules permitting a delay for reporting PPS.[410]

The Commission did not receive any comments on the price data elements in appendix A and for reasons articulated in the Proposal and reiterated above, is adopting the data elements as proposed.

8. Category: Product

The Commission proposed requiring SDRs publicly disseminate two data elements relating to products, and has included a placeholder data element for the UPI.[411] As discussed above, the Commission believed that SDRs should continue publicly disseminating any product fields they are currently publicly disseminating until the Commission designates a UPI according to § 45.7. Existing appendix A includes a similar placeholder field for UPI.

The Commission received one comment on the UPI. FXPA believes the Commission should carefully review, or consider guidance with respect to, the unique product identifier data element (87) as there are several related product taxonomies in use today.[412]

The Commission is adopting the products data elements in appendix A as proposed. As explained above, the placeholder reflects the Commission's decision for reporting counterparties to continue to report product-related data elements as they currently do until the Commission designates a UPI in the next two years.

9. Category: Settlement

The Commission proposed requiring SDRs to publicly disseminate one data element related to settlement: Settlement currency (89). Existing appendix A contains a field for settlement currency.

The Commission did not receive any comments on the settlement data element in appendix A and for reasons articulated in the Proposal and reiterated above, is adopting the data element as proposed, with the addition of the CDE Technical Guidance data element for Settlement location to appendix A. This would help the Commission collect information on trades involving offshore currencies.

10. Category: Transaction-Related

The Commission proposed requiring SDRs to publicly disseminate seven transaction-related data elements.[413] The transaction-related fields in existing appendix A include execution timestamp, indication of other price affecting term, block trade indicator, execution venue, and start and end date. The Commission proposed one new indicator, Prime brokerage transaction indicator, in connection with the proposed rules for reporting mirror swaps.[414]

The Commission received one comment on the Prime broker transaction indicator data element. ISDA–SIFMA believe the prime broker transaction indicator should not be subject to public dissemination if a trigger swap is reported upon the occurrence of the pricing event because the public receives the pricing data in real time like for any other part 43 reportable trade.[415]

The Commission received one comment related to Platform identifier. Citadel believes the MIC code of the venue should be publicly disclosed to assist market participants in understanding current market dynamics and locating active liquidity pools.[416] Further, Citadel believes transactions on EU MTFs and OTFs that the Commission has deemed equivalent should not be considered ''off-facility transactions'' since it would allow CFTC and market participants to assess the impact of equivalence assessments.[417]

The Commission is adopting the transaction-related date elements in appendix A as proposed. With respect to ISDA–SIFMA's comment on Prime brokerage indicator, the Commission believes that the data element provides appropriate notice to the public about transactions that may not be reported because they are part of a prime brokerage arrangement. With respect to Citadel's comment, the Commission notes that it adopting Platform identifier according to the CDE Technical Guidance. Any comments on the data element should be addressed through the CDE governance process.

IV. Compliance Date

A. General

In the Proposal, the Commission suggested that the compliance date would be at least one year from the date that the last one of such final Roadmap rulemakings was published in the **Federal Register**.

The Commission received two comments regarding the compliance date. ICE DCOs believes the Commission should adopt a ''realistic compliance implementation period that allows for industry-wide coordination and roll-out.'' [418] GFMA believes twelve months from publication of the Final Rules should be the minimum implementation period and changes to part 43 technical specification should be implemented for some period of time before validations on such fields are implemented.[419]

The Commission also received many comments related to the compliance date in response to the other Roadmap proposals. Those comments are discussed in the **Federal Register** releases for the Roadmap proposals as they were received, but the Commission considered the comments for all three Roadmap proposals together. The Commission discusses the compliance date comments at greater length in the **Federal Register** release for the part 45 rules.

The Commission appreciates the comments received on the compliance date for the Proposal and for all of the Roadmap proposals. Based on the many comments that requested one compliance date for all aspects of the Roadmap proposals and the many comments that requested a compliance date that is more than one year from the date the Roadmap proposals are finalized, the Commission will, except as discussed below, extend a unified compliance date for this Final Rule that is 18 months from the date of publication in the **Federal Register**, which matches the compliance date for all three Roadmap proposals. To accommodate an extended compliance date for changes to the block thresholds and cap sizes in § 43.4(h) and § 43.6 discussed in the next section, the Commission encourages market participants to comply with the existing part 43 rules until the end of the 18-month compliance period.

B. Changes to the Appropriate Minimum Block Sizes and Cap Sizes

The Commission will extend the compliance date for the post-initial block thresholds and cap sizes in § 43.4(h) and § 43.6 separate from those of the rest of the part 43 rules for an additional twelve months. In this instance, the Commission believes market participants should have the chance to adapt to the changes to part 43, including the new swap categories and capping and rounding rules, before

[410] The Commission discusses PPS, including the indicator, in section II.C.2 above.

[411] In appendix A, these data elements are: Index factor (85); Embedded option type (86); and Unique product identifier (87).

[412] FXPA at 3.

[413] In appendix A, these data elements are: Non-standardized term indicator (92); Block trade election indicator (93); Effective date (94); Expiration date (95); Execution timestamp (96); Platform identifier (98); and Prime brokerage transaction indicator (99).

[414] The Commission discusses mirror swaps in section II.C.4 above.

[415] ISDA–SIFMA at 54.

[416] Citadel at 11.

[417] *Id.*

[418] ICE DCOs at 1–2.

[419] GFMA at 12.

having to comply with new block and cap sizes.

In addition, the Commission recognizes the changes to its part 43 rules in this release, along with the changes to the part 45 rules in a separate release, will provide the Commission with an enhanced, standardized data set that will help the Commission best calibrate the appropriate minimum block sizes when applying the 67-percent and 75-percent thresholds. Given the robust improvements to swap data the Commission expects to realize from the part 45 reforms and the intervening period in which market participants will need to update their systems to comply with aspects such as the new swap categories, the Commission expects to use the new and improved data to analyze the best way to apply the thresholds and make any adjustments as appropriate.

Since the Commission has to recalculate the appropriate minimum block sizes and cap sizes no less than once each calendar year, the additional twelve months will give the Commission the opportunity to recalculate the appropriate minimum block sizes and cap sizes using the publicly reportable swap transactions in the new part 45 data to help ensure the levels are appropriately calibrated. The Commission intends to take action, as necessary, to ensure the appropriate minimum block sizes and cap sizes are appropriately tailored. Moreover, the additional time avoids creating additional operational or compliance challenges at the end of the 18-month compliance period when market participants begin compliance with the updated part 43 rules.

Therefore, while the changes to the rest of part 43 rules will have a compliance period of 18 months, §§ 43.4(h) and 43.6 and the new, post-initial block and cap sizes, calculated according to the 67-percent and 75-percent notional amount calculations, will have a compliance date of one year after the 18-month compliance period (for a total of 30 months) for the rest of the part 43 rule changes.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities.[420] The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.[421] The changes to part 43 adopted herein will have had a direct effect on the operations of DCMs, DCOs, MSPs, PBs,[422] reporting counterparties, SDs, SDRs, and SEFs. The Commission has previously certified that DCMs,[423] DCOs,[424] MSPs,[425] SDs,[426] SDRs[427], and SEFs[428] are not small entities for purpose of the RFA.

Various changes to part 43 would have a direct impact on all reporting counterparties. These reporting counterparties may include SDs, MSPs, DCOs, and non-SD/MSP/DCO counterparties. Regarding whether non-SD/MSP/DCO reporting counterparties are small entities for RFA purposes, the Commission notes that section 2I of the CEA prohibits a person from entering into a swap unless the person is an eligible contract participant (''ECP''), except for swaps executed on or pursuant to the rules of a DCM.[429] The Commission has previously certified that ECPs are not small entities for purposes of the RFA.[430]

The Commission has analyzed swap data reported to each SDR[431] across all five asset classes to determine the number and identities of non-SD/MSP/DCOs that are reporting counterparties to swaps under the Commission's jurisdiction. A recent Commission staff review of swap data, including swaps executed on or pursuant to the rules of a DCM, identified nearly 1,600 non-SD/MSP/DCO reporting counterparties. Based on its review of publicly available data, the Commission believes that the overwhelming majority of these non-SD/MSP/DCO reporting counterparties are either ECPs or do not meet the definition of ''small entity'' established in the RFA. Accordingly, the Commission does not believe the Final Rule will affect a substantial number of small entities.

Based on the above analysis, the Commission does not believe that this Final Rule will have a significant economic impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, pursuant to 5 U.S.C. 605(b), hereby certifies that the Final Rules will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The PRA of 1995[432] imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. The rule amendments adopted herein would result in the revision of a collection of information for which the Commission has previously received a control number from the Office of Management and Budget (''OMB''): OMB Control Number 3038–0070 (relating to real-time swap transaction and pricing data).

The Commission did not receive any comments regarding its PRA burden analysis in the preamble to the Proposal. The Commission is revising the information collection to reflect the adoption of amendments to part 43, as discussed below, including changes to reflect adjustments that were made to the Final Rules in response to comments on the Proposal (not relating to PRA). In the Proposal, the Commission omitted the aggregate reporting burden for proposed § 43.3 and § 43.4 in the preamble and instead provided PRA

[420] *See* 5 U.S.C. 601 *et seq.*

[421] *See* Policy Statement and Establishment of ''Small Entities'' for Purposes of the Regulatory Flexibility Act, 47 FR 18618 (Apr. 30, 1982) (''1982 RFA Release'').

[422] The Commission understands that all PBs currently acting as such in connection with swaps are SDs. Consequently, the RFA analysis applicable to SDs applies equally to PBs.

[423] *See* 1982 RFA Release.

[424] The Commission has previously certified that DCOs are not small entities for purposes of the RFA. *See* DCO General Provisions and Core Principles, 76 FR 69334, 69428 (Nov. 8, 2011).

[425] *See* SD and MSP Recordkeeping, Reporting, and Duties Rules, 77 FR 20128, 20194 (Apr. 3, 2012) (basing determination in part on minimum capital requirements).

[426] *See id.*

[427] *See* Swap Data Repositories, 75 FR 80898, 80926 (Dec. 23, 2010) (basing determination in part on the central role of SDRs in swaps reporting regime, and on the financial resource obligations imposed on SDRs).

[428] *See* Core Principles and Other Requirements for SEFs, 78 FR 33476, 33548 (June 4, 2013).

[429] *See* 7 U.S.C. 2(e).

[430] *See* Opting Out of Segregation, 66 FR 20740, 20743 (Apr. 25, 2001). The Commission also notes that this determination was based on the definition of ECP as provided in the Commodity Futures Modernization Act of 2000. The Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') amended the definition of ECP by modifying the threshold for individuals to qualify as ECPs, changing an individual who has total assets in an amount in excess of to an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of. Therefore, the threshold for ECP status is currently more restrictive than it was when the Commission certified that ECPs are not small entities for RFA purposes, meaning that there are likely fewer entities that could qualify as ECPs today than could qualify when the Commission first made the determination.

[431] The sample data sets varied across SDRs and asset classes based on relative trade volumes. The sample represents data available to the Commission for swaps executed over a period of one month. These sample data sets captured 2,551,907 FX swaps, 603,864 equity swaps, 357,851 other commodity swaps, 276,052 IRS, and 98,145 CDS.

[432] *See* 44 U.S.C. 3501.

estimates for all of part 43. The Commission is now including PRA estimates for final § 43.3 and § 43.4 below.[433] In addition, the Commission is revising the information collection to include burden estimates for one-time costs that SDRs, SEFs, DCMs, and reporting counterparties could incur to modify their systems to adopt the changes to part 43, as well as burden estimates for these entities to perform any annual maintenance or adjustments to reporting systems related to the changes. The Commission does not believe the rule amendments as adopted impose any other new collections of information that require approval of OMB under the PRA.

Under the PRA, Federal agencies must obtain approval from OMB for each collection of information they collect or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 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** for each proposed collection of information before submitting the collection to OMB for approval. The Commission is publishing a 60-day notice (''60-day Notice'') in the **Federal Register** concurrently with the publication of this Final Rule in order to solicit comment on burden estimates for part 43 that were not included in the Proposal.

1. Swap Transaction and Pricing Data Reports to SDRs—§ 43.3

Existing § 43.3 requires reporting counterparties, SEFs, and DCMs to send swap reports to SDRs ASATP after execution of a publicly reportable swap transaction. The Commission is adopting changes that would add new § 43.3(a)(4) to give reporting counterparties more time to report PPS to SDRs. Currently, some entities report PPS using a placeholder price, and then send a swap report later amending the price. Those entities would experience a reduction in the number of swap reports they are required to send pursuant to § 43.3 under the Final Rules. The Commission estimates 50 SD/MSP reporting counterparties would reduce the number of PPS reports they report to SDRs by 100 reports per respondent annually or 5,000 reports in the aggregate.

The Commission is also amending § 43.3 to establish new requirements for reporting prime brokerage swaps in § 43.3(a)(6). New § 43.3(a)(6) will not require SDRs to publicly disseminate ''mirror swaps.'' Reporting counterparties will continue to report mirror swaps to SDRs pursuant to part 45, but the amendment to § 43.3 will reduce the number of reports SDRs are required to publicly disseminate pursuant to § 43.4. The amendment to the requirement for SDRs in § 43.4 is discussed in the next section below.

The Commission is also adding a new requirement in new § 43.3(a)(5) for DCOs to report swap transaction and pricing data for clearing swaps that are publicly reportable swap transactions. Currently, § 43.3 does not account for DCOs in the hierarchy of entities required to report to SDRs. This would be a new requirement for DCOs to send swap transaction and pricing data reports to SDRs, to the extent they are not currently required to do so. DCOs would only be required to do so when reporting swaps associated with clearing member defaults. However, the Commission, recognizing the importance of the DCO clearing member default process, decided to exempt these swaps from the definition of ''publicly reportable swap transaction,'' with the result being there will be no reporting requirement for DCOs. As such, there is now no PRA burden.

Existing § 43.3(h) requires timestamping by multiple entities.[434] The Commission is removing § 43.3(h). Removing § 43.3(h)(1) would reduce the amount of time SDs, MSPs, and registered entities spend reporting swap reports to SDRs, but would not amend the number of reports they send. Removing § 43.3(h)(2) would reduce the amount of time SDRs spend publicly disseminating swap reports, but would not amend the number of reports they send. Removing § 43.3(h)(3) would reduce the amount of time SDs and MSPs spend reporting off-facility swaps to SDRs, but would not reduce the amount of reports they send. Finally, removing § 43.3(h)(4) would remove the recordkeeping burden for these entities.

As a result of the removal of § 43.3(h), the Commission is removing the current recordkeeping burden of 5,854 hours from the collection. The estimated aggregate reporting burden for § 43.3 is as follows:

Estimated number of respondents: 1,729 SEFs, DCMs, and reporting counterparties.

Estimated number of reports per respondent: 2,998.

Average number of hours per report: .067.

Estimated gross annual reporting burden: 725,696.

The Commission did not include any burden estimates in the Proposal related to the modification or maintenance of systems in order to be in compliance with the proposed amendments to § 43.3. The Commission estimates that the cost for a reporting entity, including DCMs, DCOs, MSPs, non-SD/MSPs, SDs, and SEFs, to modify their systems and maintain those modifications going forward to adopt the Final Rule could range from $24,000 to $74,000. There are an estimated 1,732 reporting entities, for a total estimated cost of $84,868,000. The estimated cost range is based on a number of assumptions that cover tasks required to design, test, and implement an updated data system based on the new swap data elements contained in part 43. The Commission estimates it would take a reporting entity an estimated total of 500 to 725 hours per reporting to perform the necessary tasks. The Commission estimates that the cost for an SDR to modify their systems, including their data reporting, ingestion, and validation systems, and maintain those modifications going forward may range from $144,000 to $510,000 per SDR. There are currently three SDRs, for an estimated total cost of $981,000. The estimated cost range is based on assumptions that cover the set of tasks required for the SDR to design, test, and implement a data system based on the list of swap data elements contained in part 43. These numbers assume that each SDR will spend approximately 3,000–5,000 hours to establish a relational database to handle such tasks. As noted above, the Commission is soliciting comments on the revised burden estimates for part 43, including the estimated costs related to the modification or maintenance of systems

[433] PRA estimates for all of part 43 are included in the supporting statement being filed with OMB. The Commission is not including PRA estimates for all of part 43 below as the Final Rule affects PRA estimates for § 43.3 and § 43.4.

[434] Existing § 43.4(h)(1) requires registered entities, SDs, and MSPs to timestamp real-time swap reports with the time they receive the data from counterparties, as applicable, and the time at which they transmit the report to an SDR. Registered entities, SDs, and MSPs then send these timestamps to the SDR. Existing § 43.3(h)(2) requires SDRs to timestamp the swap reports they receive from SEFs, DCMs, and reporting parties, and then timestamp the report with the time they publicly disseminate it. SDRs then place these timestamps on the reports they publicly disseminate. Existing § 43.3(h)(3) requires SDs and MSPs to timestamp all off-facility swaps they report to SDRs. SDs and MSPs then report these timestamps to SDRs. Existing § 43.3(h)(4) requires that records of all timestamps required by § 43.3(h) be maintained for a period of at least five years from the execution of the publicly reportable swap transaction. The Commission is adopting changes to eliminate the recordkeeping requirements in § 43.3(h)(4). This would result in the removal of the recordkeeping burden from collection 3038–0070, which is currently 5,854 hours in the aggregate.

in order to be in compliance with the amendments to § 43.3 that are being adopted in the Final Rule.

2. Swap Transaction and Pricing Data Reports Disseminated to the Public by SDRs

As discussed above, existing § 43.3 requires reporting counterparties to send swap reports to SDRs ASATP after execution. The Commission is adopting changes to § 43.3 to establish new requirements for reporting prime brokerage swaps in § 43.3(a)(6). The amended rules would establish that ''mirror swaps'' would not need to be publicly disseminated by SDRs. Reporting counterparties would continue to report mirror swaps to SDRs pursuant to part 45, but the amendment to § 43.3 would reduce the number of reports SDRs would be required to publicly disseminate according to § 43.4.

The Commission estimates that the amendments would reduce the number of mirror swaps SDRs would need to publicly disseminate by 100 reports per each SDR, for an aggregate burden hour reduction of 20.10 hours.

The estimated aggregate reporting burden total for § 43.4, as adjusted for the reduction in reporting by SDRs of mirror swaps, is as follows:

Estimated number of respondents: 3.

Estimated number of reports per respondent: 1,499,900.

Average number of hours per report: .009.

Estimated gross annual reporting burden: 40,497.

The Commission did not include any burden estimates in the Proposal related to the modification or maintenance of systems in order to be in compliance with the proposed amendments to § 43.4. To avoid double-counting, the Commission included the costs associated with updates to § 43.3, discussed above, as they would be captured in the costs of updating systems based on the list of swap data elements in part 43. As noted above, the Commission is soliciting comments on the revised burden estimates for part 43 that are being adopted in the Final Rule.

C. Cost-Benefit Considerations

1. Statutory and Regulatory Background

Section 15(a) [435] of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

Generally, the Commission expects that, taken together, the revisions and additions to part 43 will improve the real-time public reporting regime for reporting counterparties, SEFs, DCMs, SDRs, and market participants that use real-time public data, with some attendant costs. The discussion below considers the costs and benefits the Commission—informed by commenters—foresees resulting from the particular substantive amendments it is adopting.[436] Specifically, these are the amendments to: § 43.3(a)(4) (post-priced swaps); § 43.3(a)(5) (clearing swaps); § 43.3(a)(6) (prime broker swaps); § 43.3(c) (availability of swap transaction and pricing data to the public); § 43.3(a)(4); § 43.3(f) (data validation acceptance message); § 43.4(f) (process to determine appropriate rounded notional or principal amounts); and §§ 43.4(h) and 43.6 (cap sizes and block trades). The Commission considers these costs and benefits relative to the baseline established by the requirements of its existing regulations, or, where there are none, relative to the baseline of current industry practice.

The Commission lacks precise cost data to quantify the costs and benefits considered below.[437] The Commission provides a range estimate where feasible, including programming costs associated with the rule changes, for instance. The Commission requested comments to help refine its estimates for quantifiable costs and benefits, but received no comments providing specific data or information regarding how to quantify costs. Regarding changes requiring technical updates to reporting systems, where significant, Commission staff estimated the hourly wages market participants will likely pay software developers to implement each change to be between $48 and $101 per hour.[438] Relevant amendments below will list a low-to-high range of potential costs as determined by the number of developer hours estimated by technical subject matter experts (''SMEs'') in the Commission's Office of Data and Technology (''ODT''). Quantifying other costs and benefits, such as liquidity impacts and price spread variances resulting from changes in price transparency from a rule change, are inherently harder to measure, rendering quantification infeasible in many cases. In addition, quantification of effects relative to current market practice may not fully represent future activity if participants change their trading behavior in response to rule changes. Again, while the Commission requested comments to help it quantify these impacts, it did not receive any responsive comments. Accordingly, the Commission discusses costs and benefits qualitatively when quantification remains infeasible, after taking into account relevant input of commenters, or the lack thereof.

The discussion in this section is based on the understanding that swap markets often extend across geographical regions. Many swap transactions involving U.S. firms occur across international borders. Some Commission registrants are headquartered outside of the U.S., with the most active participants often conducting operations both within and outside the U.S. Where the Commission does not specifically refer to matters of location, the discussion of costs and benefits refers to the rules' effects on all swaps activity, whether by virtue of the activity's physical location in the U.S. or by virtue of the activity's connection

[435] 7 U.S.C. 19(a).

[436] Because the Commission does not foresee material cost-benefit impact resulting from the non-substantive amendments it is also adopting, these amendments are not discussed. Also, the proposed, but not adopted, changes to the block delays provided in § 43.5 are not discussed, since there is no resultant change relative to the status quo baseline.

[437] As explained in the Proposal, many of the rule changes will likely affect a wide variety of proprietary reporting systems developed by SDRs and reporting entities, putting SDRs and industry participants in the best position to estimate computer programming costs of changing the reporting requirements.

[438] The Commission estimated hourly wage rates from the Software Developers and Programmers category of the May 2019 National Occupational Employment and Wage Estimates Report produced by the U.S. Bureau of Labor Statistics, *available at https://www.bls.gov/oes/current/oes_nat.htm.* The 25th percentile was used for the low range and the 90th percentile was used for the upper range ($36.89 and $78.06, respectively). Each number was multiplied by an adjustment factor of 1.3 for overhead and benefits (rounded to the nearest whole dollar) which is in line with adjustment factors the Commission has used for similar purposes in other final rules. *See, e.g.,* 77 FR at 2173 (Jan. 13, 2012) (using an adjustment factor of 1.3 for overhead and other benefits). These estimates are intended to reflect U.S. developer hourly rates market participants are likely to pay when complying with the adopted changes. Individual entities may, based on their circumstances, incur costs substantially greater or less than the estimated averages.

with or effect on U.S. commerce under CEA section 2(i).[439]

2. Costs and Benefits

a. § 43.3—Method and Timing for Real-Time Public Reporting

i. § 43.3(a)(4)—Post-Priced Swaps

New § 43.3(a)(4) establishes requirements for reporting PPSs, which the Commission defines as off-facility swaps for which the price has not been determined at the time of execution.[440] New § 43.3(a)(4)(i) permits reporting counterparties to delay reporting trades identified as PPSs to SDRs until the earlier of: (i) The price being determined; and (ii) 11:59:59 p.m. eastern time on the execution date.[441] For swaps for which the price is known at execution but some other term is left for future determination (*e.g.,* quantity), reporting parties remain obligated to report the swap ASATP after execution, even absent the as-yet undetermined terms.

The new requirements help address a challenge reporting counterparties face, and, in doing so, remedy an impediment to the quality of the real-time tape. Under existing regulations, reporting parties must report all trades ASATP after execution. Existing rules do not address how reporting parties represent unknown trade terms in swap reports to SDRs or whether SDRs must accept trade reports missing values or with zero values in fields. SDRs often reject these trades, which means reporting counterparties cannot accurately report PPSs in real time. The current lack of specific requirements creates inconsistencies in how and when reporting counterparties report PPSs.

As expressed in the Proposal—and undisputed by commenters—the Commission believes that while some variable term swaps, including PPS, are reported shortly after execution, these swaps also account for a significant but unknown percentage of swaps not reported to SDRs in a timely manner.[442] While the Commission understands anecdotally that untimely PPS reporting is occurring, it cannot clearly identify which swaps reported to date would be classified as PPSs under the current regulations.[443] Consequently, the Commission cannot reliably estimate the magnitude of the new requirements' impact with a reasonable degree of certainty. However, under the updated list of data elements in appendix A, reporting parties will have to indicate that a swap is a PPS, which will give the Commission and the public a clearer view of PPS activity.[444]

As discussed in section II.D.2, above, and incorporated by reference for purposes of the Commission's consideration of costs and benefits here, the Commission received a number of comments concerning new § 43.3(a)(4). Some commenters oppose delaying PPS reporting. For example, Citadel suggests the Commission instead require real-time reporting and dissemination of PPSs with an identifier for PPSs on the public tape.[445] Citadel believes an identifier would address the concern that the real-time publication of PPSs confuses market participants.[446]

Other commenters believe the Commission should delay PPS reporting by a day or more. For example, ISDA–SIFMA suggest delaying PPS reporting until the earlier of (a) the price being determined, or (b) 11:59:59 p.m. eastern time on the next business day following the execution date.[447] ISDA–SIFMA believe reporting PPSs earlier may increase the costs of hedging by signaling to other participants that a SD will be hedging a particular large notional trade the following day.[448] ISDA–SIFMA believe a T+1 cutoff will significantly reduce potential unnecessary hedging costs by reducing the number of PPSs reported without a price.[449]

The Commission considered the costs and benefits of delaying PPS reporting. The Commission agrees that dissemination of swap transaction and pricing data immediately after execution increases price transparency. But this benefit is limited where the price of a swap is not known.

The Commission also believes that, because the PPS price is determined after execution, SDs face unique risks hedging a PPS. For example, the price of some PPSs is tied to a reference price that is not determined until the end of the trading day. Publishing swap transaction data before the price is determined presents unique and heightened risks of front running, as market participants will be able to transact in swaps ahead of the event on which the price is contingent. This could increase hedging costs, disadvantaging the SD and the counterparty to the PPS, and potentially cause market participants to forego the use of such swaps, thereby materially reducing swap market liquidity. Thus, there is significant benefit delaying reporting until after price has been determined.

The Commission has determined that the final rules provide an appropriate balance. Citadel's faster reporting could have a significant impact on the ability of SDs to hedge their position, while ISDA–SIFMA's delayed reporting would have a significant negative effect on price transparency.

CME and FIA opposed reporting and disseminating PPSs until all terms are known, not only price.[450] CME believes there is no value in reporting swap transaction and pricing data prior to all variable terms being determined.[451] While the Commission recognizes the merit in these alternatives, the Commission is concerned the delays suggested by CME and FIA would be long enough to impede the Commission's price transparency goals. As a result, the Commission does not believe that PPS reporting should be delayed after price is known.

Baseline: The current regulations require reporting parties to report all swaps ASATP after execution; this baseline does not contain an exception for swaps with terms that have not been determined at the time of execution, a category of swaps which includes PPSs.

[439] *See* 7 U.S.C. 2(i). CEA section 2(i) limits the applicability of the CEA provisions enacted by the Dodd-Frank Act, and Commission regulations promulgated under those provisions, to activities within the U.S., unless the activities have a direct and significant connection with activities in, or effect on, commerce of the U.S.; or contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of the CEA enacted by the Dodd-Frank Act. Application of section 2(i)(1) to the existing part 43 regulations with respect to SDs/MSPs and non-SD/MSP counterparties is discussed in the Commission's Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 FR 45292 (July 26, 2013).

[440] The Commission discusses PPSs further in section II.C.2 above.

[441] The Commission understands that PPSs can arise in a variety of settings. One such setting is where the price of the swap is tied to a reference price that is not yet determined at the time of the trade. Examples of this could include the daily settlement price of a stock index or crude oil futures or a benchmark such as the Argus WTI Midland price.

[442] 85 FR at 21522 (Apr. 17, 2020).

[443] It may be possible to identify PPSs by searching part 43 data to determine how many swaps are reported with a missing price with a reporting time close to execution time. However, the Commission understands not all reporting counterparties report PPSs close to execution and instead wait until determining a price. It may also be possible to assume swaps with a price but a large difference between reporting time and execution time are PPSs, but this may include swaps with other non-price varying terms, such as quantity. Finally, it may be possible to check parts 43 and 45 data for differences in the reported price. Since all of these options are potentially over- or under-inclusive, the Commission is currently unable to reliably identify PPSs.

[444] The Commission discusses the data element for ''post-priced swap indicator'' in section III.

[445] Citadel at 10.

[446] Id.

[447] ISDA–SIFMA at 50.

[448] *Id.*

[449] *Id.*

[450] CME at 3–4, FIA at 11.

[451] CME at 3–4.

As noted above, this potentially conflicts with SDR standards, which often mandate values in certain fields, such as fields related to prices. Perhaps reflecting this conflict, it appears many PPSs and other swaps with terms that have not been determined at the time of execution are not reported until all terms have been determined.

Benefits: This rule will establish a bright-line standard for when PPSs and other swaps with terms that have not been determined at the time of execution need to be reported for public dissemination. By explicitly defining obligations for PPSs and other swaps with terms that have not been determined at the time of execution, the rule creates consistency in reporting and reduces uncertainty. This would strengthen market participant's confidence in the real-time public data.

Another benefit to the final regulations it that the final requirements would permit parties to hedge the positions they acquire in a more cost-effective way. For example, if a client asks an SD to take the long side of a large swap, the SD may be able to hedge that position with less price impact if other traders are unaware of the SD's hedging need. This ability to hedge while mitigating price impact can often translate to better pricing for the client. Thus, the Commission anticipates final § 43.3(a)(4) would decrease SDs' hedging costs, especially for large or non-standardized trades, improve customer pricing, and increase market participants' willingness to take positions.[452]

Costs: Delayed reporting of PPSs may reduce the amount of information available to market participants and, as a result, frustrate the goal of price transparency. In particular, other market participants would have a less-precise estimate of intraday trading volume in real-time, which can introduce information asymmetry. For example, a SD may be willing to make markets in equity PPSs and non-PPS on a similar underlying equity index. Access to real-time information on activity in both markets would be equally important and potentially allow for cross-market arbitrage. With the delay in PPS, the SD could be disadvantaged by a lack of information related to PPS activity. However, the realities of the market and the reporting of PPSs today reduce the cost burden linked to the reporting delay.[453] Further, the benefits of reporting swap data immediately after execution is limited where price is not known.

Another potential cost is that § 43.3(a)(4) might encourage traders to trade more PPSs and fewer swaps for which the price is known at execution. For example, if choosing between two swaps with comparable terms except one has a price determined at the end of the day, if the size is large relative to the rest of the market, the delay could encourage the counterparties to select the swap with an unknown price. The incentive to choose PPSs for a delay would reduce transparency with fewer trades reported ASATP after execution.

The Commission is adopting § 43.3(a)(4) to specify the requirements for reporting PPSs. Notwithstanding the potential costs identified above, the Commission believes this change is warranted in light of the anticipated benefits.

ii. § 43.3(a)(5)—Clearing Swaps

Final § 43.3(a)(5) adds DCOs to the reporting counterparty hierarchy for clearing swaps that are publicly reportable swap transactions. DCOs do not typically report swap transaction and pricing data under part 43, because cleared swaps have already been reported at execution: SEFs, DCMs, and reporting counterparties report the original, market-facing swap to SDRs for public dissemination while sending the swap to a DCO for clearing. Final § 43.3(a)(5) covers the limited cases where a DCO executes a publicly reportable swap transaction that has not already been reported under part 43. However, the Commission is adopting an alternative to § 43.3(a)(5) raised by commenters that would lead to maintaining the status quo. ICE DCOs and CME believe the Commission should also amend the definition of ''publicly reportable swap transaction'' in § 43.2 to exclude swaps created through DCO default management processes to avoid allowing front-running if the processes span multiple days.[454] These commenters believe § 43.3(a)(5) would be impractical as the default management process may be achieved through the sale at the portfolio (not individual swap) level, which ''does not lend itself'' to part 43 reporting.[455] Also, these commenters believe the prices disseminated for default management swaps would be irrelevant as the prices are affected by the DCO's priority to take timely action.[456]

While the Commission is adopting final § 43.3(a)(5), the Commission is also adopting the alternative proposed by ICE DCOs and CME because the Commission shares these commenters' concerns that the new requirement could impede the efficacy or ability of DCOs to complete default management exercises.

Baseline: The existing rules do not expressly require DCOs to submit swap transaction and pricing data to SDRs for public dissemination.

Benefits: Final § 43.3(a)(5) will clarify that, while DCOs have an obligation to report swaps meeting the definition of publicly reportable swap transactions, they are not required to report swaps resulting from default management processes, based on the important role these processes play for DCOs in managing risk.

Costs: New § 43.3(a)(5) would have imposed minor costs for DCOs as the reporting counterparties for publicly reportable swap transactions. However, with the Commission's decision to exempt swaps related to default management processes from public reporting, DCOs and SDRs should incur no additional costs from the new requirements.[457]

iii. § 43.3(a)(6)—Prime Broker Swaps

Final § 43.3(a)(6) establishes rules for publicly reporting PB swaps.[458] The new rule distinguishes between two types of PB swap transactions for the purposes of publicly reportable swap transactions subject to real-time public reporting: Mirror swaps, which are not publicly reportable swap transactions, and trigger swaps, which are. Further, the Commission is adding a data element to appendix A to require an indicator flagging a swap as part of a prime brokerage transaction. These changes are explained in more detail in sections II.C.4 and III.A above.

Banks typically offer prime brokerage services to large, sophisticated customers. Customers that avail themselves of this service enter into an agency agreement with their PB by which the PB agrees to serve as the counterparty for at least two off-setting swaps: A trigger swap with its customer,

[452] The Commission estimates for PRA purposes that there would be a moderate decrease in the burden incurred by market participants, as discussed in the PRA section.

[453] For example, PPSs are not standardized in how they are reported. If, for example, all PPSs traded at a specified differential from the daily settlement price, this would allow for more useful real-time data. The data limitations ultimately reduce the usefulness of PPS information, thus reducing the cost of delays related to this swap transaction and pricing data.

[454] ICE DCOs at 2; CME at 7–8.

[455] *Id.*

[456] *Id.*

[457] The Commission estimates for PRA purposes that there would be no burden incurred by market participants, as discussed in the PRA section.

[458] As newly defined in § 43.2 a ''prime broker swap'' is any swap to which a swap dealer acting in the capacity as prime broker—a separate, specifically defined term—is a party.

and a flip-side mirror swap with a third party, often referred to as an executing broker;[459] although it will not be a direct counterparty to the mirror swap, the customer negotiates its terms (which must fall within acceptable parameters set forth in the agency agreement) with the executing broker.[460] This arrangement facilitates an end-user's ability to lay off risk through swaps that it directly negotiates with third-party executing brokers, while foregoing the need to have a separate ISDA agreement (a necessity for direct-facing counterparties to uncleared swaps) with each executing brokers against which it executes a swap.[461] Instead, the PB essentially stands in the middle of the exchange negotiated between its customer and the executing broker. Because the PB is counterparty to both a trigger swap and a mirror swap, it has two offsetting exposures that should leave it market risk neutral. The PB does, however, take on counterparty credit risk from both its customer and the executing broker.

Existing part 43 does not expressly address mirror swaps or trigger swaps, and, as a result, both are currently required to be reported to an SDR and publicly disseminated ASATP as a publicly reportable swap transaction.[462] Existing part 43 also contains no data elements to identify if a swap is related to a prime brokerage agreement and, if so, distinguish between the mirror and trigger swaps. To the extent that both mirror and trigger swaps are being currently reported, the Commission is concerned this creates a false sense of market depth on the public tape and therefore harms price discovery. A simple example illustrates how reporting both mirror and trigger swaps can adversely affect price discovery: If both swaps are reported, the public sees double the trade count and double the notional amount. Furthermore, as these prices are expected to be similar, the market may appear more liquid and efficient than it actually is. If, on the other hand, only one swap is reported, the public tape accurately reflects the trade count and notional size following the negotiated terms of trade.

Compounding the Commission's transparency concerns under existing part 43 is its understanding, based on anecdotal information, that PB swaps are reported, to an unclear degree, inconsistently. In particular, the Commission is concerned mirror swaps are currently under-reported because some market participants, believing that reporting mirror swap terms is duplicative of the corresponding trigger swap and would distort price discovery.[463] Because there is no data element indicating which swaps represent trigger or mirror swaps in the public reporting requirements, the Commission cannot reliably identify how common these swaps may be. As such, potential non-reporting of mirror swaps under the existing regulations makes it difficult to quantify how many swap trades and open positions result from PB activity.[464] This creates challenges for anyone seeking to use swap transaction and pricing data for analysis or historical studies of market activity.

Pursuant to new § 43.3(a)(6)(i), a mirror swap would fall outside the obligations for ASATP reporting and SDR public dissemination,[465] though it would still be reported to an SDR pursuant to part 45. In contrast, the trigger swap would remain subject to both ASATP reporting and SDR public dissemination under part 43 as well as reporting under part 45.

As discussed in sections II.C.4 and III above, and incorporated by reference for purposes of the Commission's consideration of costs and benefits herein, the Commission received several comments concerning new § 43.3(a)(6), including its associated definitions and new prime broker transaction indicator in appendix A.[466] To the extent these comments expressly address the Proposal's cost-benefit assessment or otherwise raised issues with material cost-benefit implications, they are considered below in the discussions of benefits and costs. Comments also addressed significant alternatives—including Citadel's recommendation to require both mirror and trigger swap reporting with an indicator to identify that a swap was a mirror swap,[467] and ISDA–SIFMA's recommendation to relax trigger swap reporting requirements—are discussed separately below as well. The Commission did not receive any comments that estimate the number of mirror swaps or provide information to quantify the swaps resulting from prime brokerage activity, or more generally, the rule's costs or benefits. ISDA–SIFMA expressly notes that ''strict internal policies'' on information-sharing among firms preclude it from speaking to mirror swap percentages and that it is ''difficult to quantifying the cost or benefit in monetary terms.''[468]

Baseline: Existing part 43 provides the baseline for assessing the costs and benefits of new § 43.3(a)(6) and its attendant definitions and new prime brokerage transaction indicator data element in appendix A. Existing part 43 contains no express provision for mirror swaps, trigger swaps, or PB transactions generally. Rather, because both trigger and mirror swaps fall within the current definition of publicly reportable swap transactions, real-time public reporting of both swaps is required. As described above, this is true even though there is no way to determine from reported data if and when swaps may be associated with each other as trigger and mirror swaps, or even the degree to which mirror swaps are not reported. As also discussed above, this undermines price transparency and complicates the ability of both market participants and the Commission to assess, and draw conclusions from, the real-time data.

Benefits: The Commission believes that by excluding mirror swaps from real-time reporting while requiring real-time reporting for trigger swaps, final § 43.3(a)(6) will enhance price discovery for market participants who monitor the public tape by preventing the duplicative reporting of mirror swaps that reflect the same economic terms as trigger swaps. Generally speaking, the Commission does not believe mirror swaps, as they are currently reported, improve price discovery. Several comments support this conclusion.[469]

[459] It is possible to observe a difference in the reported price between the mirror and trigger swaps as the mirror swap may include an adjustment resulting from the prime brokerage servicing fees. If so, it provides further support for SDRs only disseminating trigger swaps to the public.

[460] As ISDA–SIFMA notes, these arrangements may involve multiple mirror swaps associated with a trigger swap. *See* ISDA–SIFMA at 58.

[461] Executing an underlying ISDA agreement can be costly, and most end users will have an ISDA agreement with few, if any, banks other than their PB. The PB, however, already will have an ISDA agreement with a large number of SDs. Further, because the PB will be the counterparty to the negotiated mirror swap, the executing broker will quote a price based on the PB's credit rating, not the customer's, which can result in more favorable pricing than the customer would receive if transacting directly.

[462] § 43.3(a)(1) and (b)(2).

[463] This would be the case if all the primary economic terms are the same for, for instance, a trigger swap and a single mirror swap. By reporting both the mirror and the trigger swap, market participants may assume that the volume of price-forming trade activity is higher than it actually is.

[464] The swap transaction and pricing data elements in appendix A would include a new data element ''Prime brokerage transaction indicator.''

[465] *See* § 43.3(a)(1) and (b)(2).

[466] Citadel at 10; CME at 5; FXPA at 4; ISDA–SIFMA at 51–53, 64–66; GFMA at 1, 5–6.

[467] Citadel at 10.

[468] ISDA–SIFMA at 58.

[469] ISDA–SIFMA at 52, 57 (mirror swaps ''do not represent new pricing events'' that enhance price discovery; ''real-time reporting of mirror swaps would not enhance price transparency nor serve any price discovery purpose given that there would be no new or additional pricing information released to the market''); GFXD at 6 (supporting ISDA–SIFMA response); CME at 5 (it ''does not

Rather, inclusion of such duplicative records can distort price discovery by creating a false impression of market volume at a particular price.[470]

In reaching this conclusion, the Commission acknowledges marginal transparency imperfections due to PB swaps will remain. As discussed below in the cost context, there are aspects of mirror swap reporting that could theoretically inform price discovery to some degree regarding market participant credit risk, total price (including PB fees that reflect credit intermediation costs), and that, in some cases, a single trigger swap's notional value may be offset by multiple mirror swaps. However, relative to distortion from mirror swap double counting, the Commission views these potentially beneficial aspects of mirror swap reporting as less impactful to the integrity of the public tape. Further, since mirror swaps are currently required to be reported without any flag indicative of their status or association with a trigger swap, whatever information they now convey on the public tape is likely more akin to distortive ''noise'' than helpful to inform market participants. Accordingly, the Commission believes that, overall, excluding mirror swaps from real-time reporting will improve the quality of the real-time tape, thereby enhancing price discovery relative to the status quo.

The Commission also foresees benefits from establishing clear rules for PB swap reporting to alleviate reporting ambiguity, but the price discovery value of mirror swaps remaining unclear. Uncertainty as to how market participants are reporting PB swaps can challenge the public tape's quality, as well as undermine its price discovery utility. Further, to the extent some market participants may not be fully reporting PB swaps, while others may be fully reporting these swaps, § 43.3(a)(6) should level the playing field. Finally, as one commenter notes, to the extent some market participants are now reluctant to engage in PB swaps because of regulatory uncertainty, § 43.3(a)(6) ''should bring increased liquidity to OTC swaps markets'' by countering this uncertainty.[471]

Costs: Mirror swaps may have information value in the following areas: (i) Credit risk, because the PB establishes open positions between itself and the executing broker, with offsetting economic terms facing the client;[472] (ii) total price, because the price may reflect PB fees that reflect PBs' credit intermediation costs paid by PBs' clients; and (iii) mirror swap multiplicity, because some mirror swaps may not contain the same economic terms as the trigger swap.

The informative value of each of the above, however, is largely dependent on a market participant's ability to recognize whether a reported swap is a mirror swap. This is currently impossible to determine because part 43 does not require mirror swaps to be reported with any indicator. Accordingly, relative to the status quo baseline, the Commission views any lost-transparency cost from not requiring mirror swap reporting as largely theoretical.[473]

Separately, eliminating mirror swap dissemination could incentivize the use of more complex mirror swaps to avoid public reporting, increasing the possibility of more complicated, risky swaps being created. But the Commission expects such risk to be minimal, given that all trigger swaps associated with prime brokerage transactions will still be reported to SDRs pursuant to part 45. Further, with the benefit of part 45 data, the Commission is well-positioned to monitor, and respond as appropriate, should PB swap activity appear to be evolving as a real-time reporting avoidance strategy.

Alternatives: The Commission considered two significant alternatives to the approach reflected in § 43.3(a)(6), neither of which it finds preferable on cost-benefit grounds for the reasons discussed below.

Citadel advocates for the first alternative approach, *i.e.,* to retain the current requirement for reporting both trigger and mirror swaps while adding a required indicator to flag mirror swaps.[474] This alternative would provide market participants with real-time visibility into mirror swap activity. It, however, would not correct the double-counting problem—a problem that Citadel does not dispute in its comment—but rather would tolerate it in exchange for some potential incremental added insight deducible from knowledge of whether a particular swap is a mirror swap. Moreover, the Commission sees merit in ISDA–SIFMA's concern that the public dissemination of mirror swaps with an associated flag is more likely to ''create noise on the tape'' than meaningfully improve price transparency, and is unlikely to result in a regulatory oversight benefit commensurate with its ''added costs and complexity to prime broker reporting.''[475]

ISDA–SIFMA's preferred alternative would relax the ASATP timeframe for reporting trigger swaps if the reporting obligation falls on the PB, *i.e.,* where the trigger swap counterparty is not an SD. Rather than require a PB to report a trigger swap ASATP after the pricing event for a trigger swap—the point at which its material terms are determined and reporting is most impactful for price discovery—ISDA–SIFMA instead advocates for requiring ASATP reporting based off of a later, indeterminate point when the PB accepts the trigger swap.[476] Trigger swap acceptance can happen in a variable timeframe that ISDA–SIFMA believes should not exceed T + 1 relative to the pricing event.[477] ISDA–SIFMA justifies this alternative on grounds that reporting the pricing event ASATP in circumstances where the PB is the reporting counterparty will sacrifice liquidity because it is not practicable for PBs to meet the requirement.[478] The Commission is unconvinced that any liquidity cost that might result if PBs find it impractical to report certain trigger swaps ASATP after the pricing event—a technical problem that § 43.3(a)(6) could incentive PBs and their customers to work to remedy—is more compelling than the negative impacts to price transparency and discovery that will likely result if trigger swap reporting is delayed for some indeterminate, variable time beyond the pricing event.

Notwithstanding potential costs, the Commission believes new § 43.3(a)(6) is warranted in light of the anticipated benefits.

believe that publishing information regarding mirror swaps would provide any information of value to market participants'').

[470] *See* FXPA at 4 (agreeing ''with Commissioner Berkowitz's assessment that '[d]uplicate reporting can create a false signal of swap trading volume and potentially obscure price discovery by giving the price reported for a single prime brokerage swap twice as much weight relative to other non-prime brokerage swaps.' '').

[471] FXPA at 4.

[472] Although the execution of the trigger swap results in a change in the market risk position between the PB and the executing broker, and the execution of the mirror swap results in a change in the market risk position between the PB and its customer, the PB does not have any net market exposure (because its market position is flat). However, because the market risk position between the PB and each of its counterparties changed, the trigger swap and mirror swap both are currently publicly reportable swap transactions.

[473] The Commission estimates for PRA purposes that there would be a moderate decrease in the burden incurred by market participants, as discussed in the PRA section.

[474] Citadel at 10.

[475] ISDA–SIFMA at 57.

[476] *Id.* at 52.

[477] *Id.* at 52, 66 n.113.

[478] *Id.* at 52.

iv. § 43.3(c)—Availability of Swap Transaction and Pricing Data to the Public

Existing § 43.3(d)(1) and (2) specify the format in which SDRs make swap transaction and pricing data available to the public and require that disseminated data must be made ''freely available and readily accessible'' to the public. Substantively, amended § 43.3(c) changes these requirements to specify that SDRs shall make such data publicly available on their websites for at least one year after dissemination, and provide instructions on how to download, save, and search the data. As noted above in section II.C.7, the Commission understands a one-year data availability time-frame is current practice for at least a majority of SDRs. However, in that this is not a current requirement, potential remains for an SDR to elect to remove the data at some point in the future, thereby depriving market participants of extended data access that may be useful as a tool to assess market conditions.

The Commission received several comments, all generally supportive of amended § 43.3(c). None raised cost-benefit issues, advocated an alternative, or disputed the Proposal's assessment that costs will likely be negligible because SDRs already make the public reports available for more than one year.

Baseline: Current § 43.3(d)(1) and (2), and the market conditions attendant to them as described above, provide the baseline for assessing the costs and benefits of amended § 43.3(c).

Benefits: In that the Commission believes SDRs are now for the most part voluntarily doing what amended § 43.3(c) will now require, the provision will provide a small incremental benefit. That is, it will help assure that, going forward, the status quo market conditions that the Commission considers a positive for price transparency are not reversed.

Costs: In that the Commission believes that SDRs are now for the most part voluntarily doing what amended § 43.3(c) will now require, it does not foresee material costs resulting from the amendment.

v. § 43.3(d)—Data Reported to SDRs

The Commission is adopting revisions to § 43.3(d), including on how reporting counterparties, SEFs, and DCMs report data to SDRs for public dissemination, as well as respond to SDR notifications of missing or incomplete data.[479] These requirements should help improve the quality of data on the public tape. Specifically, the rules require reporting counterparties, SEFs, and DCMs, when reporting swap transaction and pricing data to an SDR, to: (i) Report data as described in the elements in appendix A in § 43.3(d)(1); (ii) satisfy SDR validation procedures in § 43.3(d)(2); and (iii) use the facilities, methods, or data standards provided or required by the SDR in § 43.3(d)(3). New § 43.3(d)(1) will require reporting entities to adjust their reporting systems to comply with the new list of data elements in appendix A. As discussed in a separate release, these data elements in appendix A will be a subset of the data elements reported to SDRs pursuant to part 45. The Commission believes a separate regulatory requirement in part 43 avoids confusion by having overlapping parts 43 and 45 requirements only in part 45. However, for cost-benefit purposes, this means most of the costs and benefits associated with this change in part 43 have been analyzed by the Commission in a separate part 45 release being adopted at the same time. This cost-benefit analysis will consider the costs to SDRs for disseminating the updated appendix A data elements, keeping in mind the majority of the costs have been accounted for in the part 45 release.

New § 43.3(d)(2) will require the reporting counterparty, SEF, or DCM to satisfy the data validation procedures of the SDR for each required data element listed in appendix A. Since § 43.3(d)(2) is closely related to new data validation requirements in § 43.3(f)(1) and the cost considerations to validate overlap significantly with initial design costs, most, if not all, of the costs discussion here will overlap with new § 43.3(f).

Baseline: Current § 43.3(d)(1) specifies that SDRs disseminate data ''in a consistent, usable, and machine-readable electronic format that allows the data to be downloaded, saved and analyzed.'' Regarding required data elements, existing appendix A, entitled ''Data Fields for Public Dissemination,'' describes the data fields reporting counterparties are required to report and provides guidance for such reporting. For each data field, there is a corresponding description, example, and, where applicable, an enumerated list of allowable values. Furthermore, under existing regulations, SDRs are not required to apply any data validations on the reports they receive. In addition, the Commission understands that at least some SDRs have flexible application programming interfaces (''APIs'') that allow reporting counterparties to report data for part 43 purposes in many ways, making standardization difficult, especially across SDRs.[480]

Benefits: As mentioned above, the Commission discusses the benefits of updated and standardized data elements in a separate release adopting changes to part 45, as the part 43 data elements in appendix A will be a subset of the part 45 data elements in appendix 1. For the public, increased consistency will afford market participants a more easily-accessible, accurate view of activity across all Commission-regulated swaps markets. The Commission expects the general public would also benefit when the standardized information is more easily combined across SDRs.

Along with the expected benefits that will arise from the standardization and uniformity of information reported in real-time, the Commission expects additional benefits related to the new swap transaction and pricing data elements in appendix A. For example, there is a new data element allowing users to identify whether a swap is a PPS or if the swap is considered a bespoke swap. This additional information will allow for additional options in processing and studying market information.

Costs: The Commission expects reporting entities and SDRs to incur some initial costs to incorporate new reporting guidance into their reporting infrastructure (*e.g.,* programming costs). The Commission is adopting the changes to part 43 concurrently with a release adopting changes to part 45; meaning the changes to parts 43 and 45 would largely require technological changes that could merge two different data streams into one. For example, SDRs will have to make adjustments to their extraction, transformation, and loading (''ETL'') process in order to accept feeds that conform to the new technical specification and validation conditions.

The Commission expects many of the changes related to part 43 will be planned and developed in accordance with changes required under new regulations in part 45. While the Commission cannot apportion shares of the aggregate total between these two rules, the costs attributable to part 43 would be some smaller proportional share of the indicated aggregate total since the list of data elements subject to real-time reporting is a small subset of

[479] Current § 43.3(d)(1) only requires SDRs disseminate ''data in a consistent, usable, and machine-readable electronic format that allows the data to be downloaded, saved and analyzed.'' The remaining text is how the data is made available to the public and is being moved in the new final rule text.

[480] The Commission believes the lack of specificity in reporting has encouraged using flexible APIs.

the full set reported under part 45. For this reason, the costs described below may most accurately represent the full technological cost of satisfying the requirements for both rules, with the majority of the costs being allocated to compliance with the part 45 rules.

ODT SMEs, using experience designing data reporting, ingestion, and validation systems, estimates the cost per SDR range from $144,000 to $510,000.[481] ODT SMEs based this estimate on assumptions that cover the set of tasks required for the SDR to design, test, and implement a data system based on the list of swap data elements in appendix A and any related guidebooks.[482] These numbers assume that each SDR will spend approximately 3,000–5,000 hours to establish ETL into a relational database on such a data stream.[483]

For reporting entities, ODT SMEs estimate the cost per reporting entity to range from $24,000 to $74,000.[484] ODT SMEs base this estimate on a number of assumptions that cover tasks required to design, test, and implement an updated data system based on the new swap data elements, any guidebooks, and validation conditions.[485] These tasks include defining requirements, developing an extraction query, developing of an interim extraction format (*e.g.,* CSV), developing validations, developing formatting conversions, developing a framework to execute tasks on a repeatable basis, and finally, integration and testing. Staff estimates it would take a reporting entity 200 to 325 hours to implement the extraction. Including validations and formatting conversions would add another 300 to 400 hours, resulting in an estimated total of 500 to 725 hours per reporting entity.[486]

However, the Commission reiterates that these costs have been accounted for in the separate part 45 adopting release. The Commission repeats the analysis here, but cautions the cost to SDRs in updating their systems to disseminate the updated data elements in appendix A, most of which the SDRs are already disseminating, would be a smaller portion of the costs just described.

In summary, new § 43.3(d) places regulations on the reporting counterparty, SEF, or DCM related to how data is reported to SDRs along with requirements to satisfy the data validation procedures of the SDR. Taking into account the anticipated costs, the Commission believes the rules are warranted in light of the anticipated benefits.

vi. § 43.3(f)—Data Validation Acceptance Message

New § 43.3(f) establishes requirements for SDRs to validate real-time public data by sending SEFs, DCMs, and reporting counterparties data validation acceptance or rejection messages. Validation requirements, for each data element required under part 43, will be fully described in a guidebook published by DMO. The Commission expects SDRs to implement these validations while designing their reporting systems to reflect the newly required data elements discussed above in § 43.3(d).

Currently, the Commission does not require validations by SDRs, and therefore has not provided any guidance on either the content or format of the messages associated with these validations. New validations will help ensure reported data is accurate and consistent across SDRs. While the Commission does not currently require validations, the Commission can observe activity related to market participants cancelling and correcting publicly disseminated trade information.[487] While the new data validation process will require increased communication between the reporting entity and the SDR, the Commission expects these lines of communication are already well established through the current reporting regime.

Baseline: SDRs are not currently required to validate data sent by reporting entities. However, the Commission understands that SDRs currently employ their own validations for swap transaction and pricing data reporting.

Benefits: The Commission expects § 43.3(f) will result in improved quality of data reported to SDRs and disseminated to the public. Improved data quality helps market participants make trading decisions and enables better market oversight by regulators. More accurate and complete data also helps researchers learn about swaps markets, which in turn can inform future market and regulatory decisions.[488]

It is difficult to estimate how many trades are reported with errors under the current system. The Commission estimates more than 10% of trades are subsequently corrected or cancelled. In

[481] To generate the included estimates, ODT SMEs used a bottom-up estimation method based on internal Commission expertise. In brief, ODT SMEs anticipate the task for the SDRs will be significantly more complex than it is for reporters. On several occasions, the Commission has developed an ETL data stream similar to the anticipated parts 43 and 45 data streams. These data sets consist of 100–200 fields, similar to the number of fields in appendix 1.

[482] These assumptions include: (1) At a minimum, the SDRs will be required to establish an ETL process. This implies that either the SDR will use a sophisticated ETL tool, or will be implementing a data staging process from which the transformation can be implemented. (2) It is assumed that the SDR would require the implementation of a new database or other data storage vehicle from which their business processes can be executed. (3) While the record structure is straight forward, the implementation of a database representing the different asset classes may be complex. (4) It is assumed that the SDR would need to implement a data validation regime typical of data sets of this size and magnitude. (5) It is reasonable to expect that the cost to operate the stream would be lower due to the standardization of incoming data, and the opportunity to automatically validate the data may make it less labor intensive.

[483] The lower estimate of $144,000 represents 3,000 working hours at the $48 rate. The higher estimate of $510,000 represents 5,000 working hours at the $102 rate.

[484] To generate the included estimates, a bottom-up estimation method was used based on internal Commission expertise. On several occasions, the Commission has created data sets that are transmitted to outside organizations. These data sets consist of 100–200 fields, similar to the number of fields in the appendix A.

[485] These assumptions include: (1) The data that will be provided to the SDRs from this group of reporters largely exists in their environment, as the back-end data is currently available. (2) The data transmission connection from the firms that provide the data to the SDR currently exists. The assumption for the purposes of this estimate is that reporting firms do not need to set up infrastructure components such as FTP servers, routers, switches, or other hardware because these are already in place. (3) Implementing the requirement does not cause reporting firms to create back-end systems to collect their data in preparation for submission. It is assumed that firms that submit this information have the data available on a query-able environment today. (4) Reporting firms are provided with clear direction and guidance regarding form and manner of submission. A lack of clear guidance will significantly increase costs for each reporter. (5) There is no cost to disable reporting streams that will be made for obsolete by the change in part 43.

[486] The lower estimate of $24,000 represents 500 working hours at the $48 rate. The higher estimate of $74,000 represent 725 working hours at the $102 rate.

[487] For example, based on a three week study in January 2020, Commission staff found 11% of IRS records linked to a ''Cancel'' action type and 8% of records linked to a ''Correct'' action type. For CDS, staff found 7% and 6% of records linked to a ''Cancel'' and ''Correct'' action type, respectively. These percentages are much larger for commodity swaps and also appear to have a higher share related to uncleared swaps.

[488] The Commission is aware of at least two publicly-available studies that discuss problems with the current part 43 data. The first study found that about 10% of CDS traded in their data set had missing or zero prices. Y.C. Loon, and Z. (Ken) Zhong, ''Does Dodd-Frank affect OTC transaction costs and liquidity? Evidence from real-time trade reports,'' *Journal of Financial Economics* (2016), *available at http://dx.doi.org/10.1016/j.jfineco.2016.01.01.* The second reported a number of fields that were routinely null or missing, making it difficult to analyze swap market volumes. *See* Financial Stability Report, Office of Financial Research (Dec. 15, 2015) at 84–85, *available at https://financialresearch.gov/financial-stability-reports/files/OFR_2015-Financial-Stability-Report_12-15-2015.pdf.*

addition to trades corrected or cancelled, trades are reported with errors (such as missing or zero prices) that are not corrected, as errors are not required to be corrected until they are discovered. As such, the Commission expects the updated requirements to help ensure accurate data is reported for public dissemination, by disallowing the reporting of swap transaction and pricing data that does not satisfy the validations. The Commission expects the improvements in accuracy to increase transparency and improve price discovery.

Costs: The Commission expects the requirement to send and receive data validation messages will create costs for SEFs, DCMs, reporting counterparties, and SDRs, but the majority of these costs will be related to building systems to accept and report data. The Commission discussed these costs above in the analysis of § 43.3(d). The Commission expects the additional cost to send a message once the validation process is complete will be minimal as SDRs already have developed lines of communications with reporting entities.

While the Commission acknowledges there will some costs associated with this regulation, additional flexibility has been provided to allow SDRs options in how they perform validations. Based on a comment from DTCC, the Commission changed the rule text by replacing ''transmitting'' with ''making available'' to allow SDRs the flexibility to establish more efficient lines of communication to ensure the validation occurs with the least possible disruption.[489]

The Commission is adopting § 43.3(f) to establish requirements for SDRs to validate real-time public data. Taking into consideration the anticipated costs, the Commission believes this change is warranted in light of the anticipated benefits.

b. § 43.4—Swap Transaction and Pricing Data To Be Publicly Disseminated in Real-Time [490]

i. § 43.4(f)—Process To Determine Appropriate Rounded Notional or Principal Amounts

The Commission is changing the § 43.4(f) rules for rounding actual notional or principal amounts of a swap before disseminating such swap transaction and pricing data. The Commission requires SDRs to disseminate rounded notional or principal amounts of swaps to conceal the exact notional of swap transactions in order to preserve the anonymity of counterparties. Absent some degree of concealment, disseminating the exact notional of a swap could allow market participants to more easily discern the identity of the counterparties and gain insight into the counterparties' trading strategies, which would potentially discourage market participants from executing swaps and harm liquidity.

Final § 43.4(f)(8) requires SDRs to round the notional value of swap transactions so that the revealed amount is more precise. For example, final § 43.4(f)(8) requires trades with a notional or principal amount less than 100 billion but equal to or greater than one billion to be rounded to the nearest 100 million; the existing regulation requires rounding to nearest billion. Similarly, final § 43.4(f)(9) requires SDRs to round trades with a notional or principal amount greater than 100 billion to the nearest 10 billion before disseminating such swap transaction and pricing data; the existing requirement is round to the nearest 50 billion. The Commission did not receive any comments on the proposal.

This change effectively means that market participants will have more precise measures of the size of large trades. The effects of this change on anonymity are mitigated by the fact that most of swaps to which these changes will apply will also be eligible for block and/or cap treatment. If a trade is subject to cap treatment, no information will be revealed about the trade size above the capping level, such that this change will have no anonymity impact in many cases. For trades with a cap above one billion, this change in § 43.4(f)(8) will allow for a more precise estimate of total traded notional or principal amounts, and thereby help market participants achieve a more accurate estimate of general market trading activity.

Baseline: For both changes, the baseline is the existing rule regarding appropriate rounding (*e.g.,* to the nearest $1 billion if the swap is between $1 billion and $100 billion).

Benefits: The rule changes will give market participants more precise information about the relationship between pricing and size for large trades to improve price discovery and lead to more competitive markets.

Costs: The Commission expects actual implementation costs to be negligible. The Commission acknowledges the rule may make it more likely market participants, or competitors, can identify the counterparties to a specific trade. It may also make it more difficult for traders to hedge positions they acquire in large trades. If either were to occur, some counterparties to the trades could experience higher trading costs.

As noted above, the benefits and costs of the changes in § 43.4(f)(8) are mitigated by the fact that change is only relevant when cap sizes are above one billion. Since the cap sizes for CDS and FX are well below the one billion mark for all swap categories, the change will have no effect in those asset classes. Only shorter-tenor IRS categories have cap sizes above one billion.

The Commission is amending the rules for rounding actual notional or principal amounts of a swap. Notwithstanding the anticipated costs, the Commission believes this change is warranted in light of the anticipated benefits to increased transparency.

d. § 43.6—Block Trades

Section 43.6 specifies how the Commission sets appropriate minimum block sizes—thresholds determining whether a transaction qualifies as either a block trade or LNOFS [491] eligible for a real-time public-reporting delay under § 43.5—as well as cap sizes protecting counterparty identity by truncating the transaction size displayed on the public tape.[492] As such, § 43.6 is an important piece of the real-time reporting structure that seeks to enhance price discovery while giving due concern to liquidity and counterparty anonymity as required by CEA section 2(a)(13)(E).[493]

The cornerstones of current § 43.6 are subsections (b) prescribing the swap categories for which appropriate minimum block sizes (also referred to as block thresholds) and caps must be set, and (c)–(h), which specify the process, methodology and other details for how the block thresholds and caps are determined for the categories specified in subsection (b). The Commission is updating two primary areas of § 43.6: (1) The swap categories; and (2) the

[489] DTCC at 4.

[490] The Commission discusses the costs and benefits related to cap size changes in § 43.4(h) in the block thresholds discussion in § 43.6.

[491] As defined in § 43.3(2), both block trades and LNOFSs must have a notional or principal amount above the appropriate minimum block size, though the former are transacted on a SEF or DCM, while the latter are transacted off-facility. Unless otherwise indicated, for purposes of this discussion they are collectively referred to as ''block trades.'' Appropriate minimum block sizes are also at times referred to as ''block thresholds'' in this discussion.

[492] *See* current § 43.4(h), and amended § 43.4(g) as being adopted through this release.

[493] The delay allows for greater liquidity for large size trades, often by allowing SDs time to hedge positions established to facilitate client transactions. In addition to reporting delays, the Commission has determined the largest trades should receive additional protection by truncating the size displayed on the public tape, *i.e.,* caps. In promulgating rules for blocks and caps in Block Trade Rule, the Commission considered the benefits of delayed reporting and anonymity against the costs of reduced transparency. The Commission considers the same factors for the changes adopted in this release.

methodologies and process for calculating appropriate minimum block size and cap sizes.[494]

As discussed above, the Commission established a phased-in approach for the block thresholds and cap sizes. In general, the first phase involved using a 50-percent notional amount calculation for block thresholds and a 67-percent notional amount calculation for cap sizes. In this release, the Commission is moving to the second and final phase by using a 67-percent notional calculation for block thresholds and a 75-percent notional calculation for cap sizes. Using the 67-percent and 75-percent notional calculations will generally result in higher block thresholds and larger cap sizes, but, as applied to the better calibrated swap categories in § 43.6(c), will result in some transactions qualifying as blocks that previously would not have, while others that previously did may not going forward. The Commission provides additional background on its economic assessment of the updated § 43.6(c) swap categories, and their interplay with appropriate minimum block size and cap sizes, below.

As discussed at length in section II.F, the Commission is changing the swap categories in § 43.6(c) to alleviate concerns the current categories are too broad and would result in an undesirable impact on certain categories of swaps when appropriate minimum block sizes and cap sizes are calculated using the 67-percent and 75-percent notional calculations, respectively. The Commission believes the new categories: (1) Group together swaps with similar quantitative or qualitative characteristics that warrant being subject to the same appropriate minimum block size thresholds and cap sizes; and (2) minimize the number of swap categories within an asset class in order to avoid unnecessary complexity in the determination process.[495]

As the Commission did in creating the existing swap categories, the Commission is grouping products with similar characteristics. For example, the Commission believes products are typically related when: The products are complements of, or substitutes for, one another; one product is a significant input into the other product(s); the products share a significant common input; or the prices of the products are influenced by shared external factors. The Commission believes this is how market participants assign products to larger swap categories, including DCOs when portfolio margining. Further, the Commission recognizes some market participants trade related products, and the Commission did not want to create a block rule that would disadvantage one product for another product by influencing market participants to trade in the illiquid products.

The adoption of § 43.6(c) will expand the number of swap categories the Commission uses to calculate block thresholds.[496] For example, there will be 136 distinct IRS categories with distinct block thresholds, compared to 27 categories under the current rule. The Commission believes the IRS categories will better reflect trading patterns for IRS by depending on specific currencies.[497]

The Commission is adopting similar changes for other asset classes. For CDS, the new swap categories are no longer based on observed spreads with multiple tenor groups, but instead on well-defined products (*e.g.,* CDXIG, CMBX, iTraxx) for a single tenor range between four to six years (designed to pick up the most actively traded five year on-the-run CDS).

Further, in response to commenters, the Commission found a notable difference in the distribution of trade sizes between non-option and option CDS. As such, the Commission is giving certain option CDS their own categories to avoid skewing the appropriate minimum block size threshold and cap size calculations higher in CDS categories in which they remained combined with non-option CDS (thereby resulting in more non-option CDS falling under the thresholds, precluding them from a block reporting delay or notional-amount capping). For example, the average option notional trade size is three-to-six times larger than non-option trades for certain CDS. This results in clear differences in block and cap treatment between option and non-option swaps as 97-percent of total notional for CDXIG options are eligible for block and cap treatment, as compared to 66-percent for non-options.[498] For CDXIG, if options are excluded, the calculated block and cap thresholds decrease by 50- and 63-percent, respectively (*e.g.,* the new block threshold is $500 million with options trades included and $250 million with these trades removed). As such, the Commission separated the option activity into distinct swap categories for CDXIG and CDXIG-options.

FX swap categories include a list of 22 currencies exchanged for USD along with the set of 180 swap categories, comprised of each unique pairwise combination of these 22 currencies. This differs from the current set of 84 swap categories comprised of 22 currencies exchanged for one of the super-major currencies (EUR, GBP, JPY, or USD).[499] Finally, the Commission changed the swap categories related to ''Other Commodity'' to represent the underlying commodity instead of references to specific futures contracts and exchanges.

The adoption of § 43.6(c) will result in an appropriate minimum block size of zero for swaps excluded from the defined swap categories.[500] This will result in all trades for some types of swaps (*e.g.,* off-the-run CDS and certain major and non-major currencies in the IRS and FX asset classes) being eligible for block treatment. For example, there are IRS trades linked to 37 currencies, but only 15 currencies that are explicitly placed in a category. This subset was primarily chosen based on trading volume.[501] Similarly, for CDS, all trades in off-the-run series for major indices along with other less active indices will also be eligible for complete block status with delayed reporting.[502]

As discussed in section II.F. above, and incorporated by reference for purposes of the Commission's consideration of costs and benefits herein, the Commission received numerous comments concerning the block threshold and cap size amendments. Many concern issues of

[494] As discussed in section II.F.1, existing § 43.6(f)(1) through (3) requires the Commission to establish post-initial appropriate minimum block size using a one-year window of reliable SDR data recalculated no less than once each calendar year using the 67-percent notional amount calculation for most swap categories. Similarly, existing § 43.4(h)(2) requires the Commission to establish post-initial cap sizes using a one-year window of reliable SDR data recalculated no less than once each calendar year using the 75-percent notional amount calculation described in § 43.6(c)(3).

[495] Proposal at 85 FR 21534 (Apr. 17, 2020).

[496] The same logic applies to cap size calculations.

[497] For instance, this bucketing results in block levels for the most active USD IRS products that differ from levels for the still active, but slightly less common JPY or GBP IRS products, where trade sizes are lower. All currencies not included in one of the 15 groups have a block size of zero—essentially allowing this small subset of IRS to receive full block treatment.

[498] Note that a few index CDS categories, including CDXEM and CMBX, do not have any option trades during the time period that comprises the data sample, so no adjustment is necessary.

[499] While there are 84 current swap categories for FX, 40 of these have a block size of zero.

[500] The Final Rule also adjusts the fixed cap size applied to currencies without swap categories by a move from the current $250 million to $150 million.

[501] For example, the 15 currencies that are explicitly placed in a category make up 96% of the total population of IRS trades.

[502] The majority of off-the-run activity is linked to IG indexes. Other indexes without defined swap categories includes iTraxx Asia Ex-Japan, iTraxx Australia, and iTraxx Japan.

cost-benefit consequence, including the trade-off between price transparency and liquidity, which the Commission considers below in the specific discussions of costs and benefits.[503] Comments also addressed two significant alternatives: (1) Lowering appropriate minimum block size and cap thresholds rather than raising them,[504] and (2) risk-adjusting notional values before determining block and cap thresholds.[505] The Commission discusses the costs and benefits of these two alternatives below. The Commission did not receive any comments quantifying the rule's costs or benefits, nor did it receive comments providing data to help it do so.

In addition to the block threshold and cap size amendments, the Commission is changing the provisions for order aggregation in existing § 43.6(h) and revising the block trade definition in § 43.2.[506] Order aggregation concerns how individual orders can be aggregated to result in a transaction eligible for block treatment. Amended § 43.6(f) will expand aggregation to include swaps that are not yet available for trading on a SEF or DCM. It will also remove the existing requirement for at least $25 million in assets under management for the aggregator, thus allowing more market participants to aggregate individual orders and receive block treatment. The revised block trade definition will enable market participants to execute block trades on a SEF, which will allow FCMs to conduct pre-execution credit screenings in accordance with § 1.73.[507]

Baseline: The Commission considers the cost and benefits of its amendments relative to the baseline of what its regulations currently require. As discussed in section II.F.2, existing § 43.6(f)(1) and § 43.4(h)(2), respectively, provide that after the collection of at least one year of reliable SDR data collection—a threshold now crossed—appropriate minimum block sizes be calculated using a 67-percent notional formula and caps be calculated using a 75-percent notional formula as applied to swap categories set out in existing § 43.6(b).[508] The Commission extensively analyzed the costs and benefits of the 50-percent threshold and 67-percent threshold when it adopted the phased-in approach.[509] Accordingly, this state in which the Commission should already be in, defines the baseline against which the costs and benefits of § 43.4(h) and § 43.6(c) are considered below. In addition, for the changes to the block trade definition, the existing block trade definition requires that block trades be executed away from a SEF, pursuant to the rules of the SEF.[510]

Benefits: Large trades receive dissemination delays because large trades often require intermediaries to take large positions, albeit temporarily. The costs to these intermediaries to subsequently hedge the trade are reduced by allowing the intermediaries some period to hedge, prior to the initial trade becoming public knowledge. A trade is ''large'' in this sense when it is substantial relative to typical trade size and daily volume in that instrument. Similarly, for the largest trades, the Commission allows for the truncation of displayed notionals in order to preserve anonymity and reduce hedging costs. For this reason, blocks and caps should account for instruments' market characteristics.

The Commission has recognized ''the optimal point in [the transparency/liquidity interplay] defies precision.''[511] However, the optimal point remains the Commission's goal, and the Commission believes the new swap categories, in combination with raised block thresholds and cap sizes, help the Commission get closer to this goal. Generally speaking, thresholds determined in the context of swap categories that better account for product characteristics—as the Commission believes the expanded thresholds in § 43.6(c) do—result in higher thresholds for instruments for which large trades can readily be hedged, which can improve transparency with minimal impact on liquidity. Conversely, in categories in which large trade hedging is likely to be more difficult, the resulting thresholds should be lower, accommodating liquidity.

The Commission expects the changes to the swap categories will better achieve the intention of the Block Trade Rule to group swaps with similar characteristics together, thereby improving the transparency/liquidity optimization. The block thresholds and cap sizes applied in the context of § 43.6(c)'s swap categories will result in levels that better reflect current liquidity for each type of swap. For example, USD IRSs currently represent most of the actual trades in the IRS Super-Major category, such that the current appropriate minimum block size for JPY IRS swaps (also in the Super-Major category) is based largely on USD trades. The new categories, which separate JPY IRS from USD IRS will result in an appropriate minimum block size that better reflects the size distribution of JPY rate swaps. This will mean that instruments like the JPY IRS, with fewer large trades (than USD IRS) will have lower thresholds, meaning that smaller trades will be eligible for block treatment and have lower caps for such instruments than if swap categories were not changed. This will benefit relatively large JPY IRS trades. The move from spread-based (*i.e.,* price-based) to product-based swap categories

[503] *See, e.g.,* Clarus at 2 and Citadel at 9 (transparency/liquidity trade-off favors higher thresholds) and PIMCO at 3–4 and SIFMA AMG at 2–4. (transparency/liquidity trade-off favors lower thresholds).

[504] *See, e.g.,* PIMCO at 3–4; SIFMA AMG at 2–4; Vanguard at 3 ISDA–SIFMA (Blocks) at 3–4; and ICI at 6–7.

[505] *See, e.g.,* ISDA–SIFMA (Blocks) at 4; Credit Suisse at 3; and ACLI at 3–4.

[506] The remaining changes in § 43.6 are non-substantive and do not involve material costs or benefits. Accordingly, the Commission does not consider them. For example, § 43.6(d) discusses the method for determining the appropriate minimum block size, but the only change from the current rule relates to the new definition for a ''trimmed data set,'' which does not have material costs or benefits.

[507] This would effectively allow SEFs to offer a ''RFQ-to-one'' functionality that allows counterparties to bilaterally negotiate a block trade, without requiring disclosure of the potential trade to other market participants on a pre-trade basis. The ability to trade bilaterally on SEFs may be particularly relevant for parties trading Made Available for Trade (''MAT'') instruments, which are required to be traded on SEFs.

[508] The relative costs and benefits of not implementing the 67-percent and 75-percent notional amount calculations required under existing §§ 43.6(f)(1) through (3) and 43.4(h)(2) are considered in the discussion of alternatives, below. Given the Commission currently enforces a 50-percent threshold, the Commission considered using a 50-percent baseline and 67-percent as an alternative threshold. The Commission did not do so. Because the 67-percent threshold is required by existing regulations and the Commission did not propose amending the rule, the Commission uses a baseline of 67-percent and below considers an alternative threshold of 50-percent. This baseline does not impact the cost benefit consideration, as the economic analysis and conclusion using a 50-percent baseline with a 67-percent alternative threshold or a 67-percent baseline and a 50-percent alternative threshold are identical.

[509] 78 FR 32866 at 32918–24 (May 31, 2013). In that release, the Commission considered extensive comments, the CEA's factors for providing price transparency, concerns about liquidity, anonymity, competition, and the general benefits and drawbacks of transparency. Based on those considerations, the Commission has endeavored in this release to adopt the 67-percent block threshold with certain updates to reflect the Commission's experience with block trade delays since 2013, including adjusting how the Commission applies the notional amount calculations to CDS with optionality, and providing guidance that certain risk-reduction exercises are not publicly reportable swap transactions to calibrate appropriate minimum block sizes so as to mitigate any costs to market participants.

[510] As a practical matter, market participants are currently relying on no-action relief (NAL No. 17–60) to execute on a SEF block trades that are intended-to-be-cleared (''ITBC''). The relief allows the market participants to use any execution method that is not an order book, as defined in § 37.3(a).

[511] 78 FR at 32917 (May 31, 2013).

for CDSs is expected to achieve similar results, as the trade distribution is often much more homogenous within a product group than a spread category. This change will have the additional benefit of decoupling prices and categories. Under the existing rules, a product could move into a different cap/block regime if its price changed, which could disrupt markets. The new categories are not price-dependent.

The amendment to the block trade definition will enable market participants to execute block trades on SEFs. These trades may be executed bilaterally so that a party wishing to make a large trade on a SEF can choose to reveal the would-be trade to a single selected counterparty.[512] In addition, it would allow a 15-minute reporting delay on such trades. The Commission believes that permitting swap block trades to be executed on SEFs pursuant to Commission regulation would provide tangible benefits to market participants by allowing them to further utilize a SEF's trading systems and platforms with the exception of the order book, as defined in § 37.3(a). To the extent that a SEF provides the most operationally- and cost-efficient method of executing swap block trades, the amendment to the block trade definition would help market participants to continue realizing such benefits. Additionally, allowing market participants to execute swap block trades on a SEF helps to facilitate the pre-execution screening of transactions against risk-based limits in an efficient manner through SEF-based mechanisms.[513] The amendments would preclude the need for market participants to expend additional resources to negate those changes. Further, incorporating the current no-action relief in the Commission's regulations would promote the statutory goal in CEA section 5h(e) of promoting swaps trading on SEFs. Finally, the amendment would permit SEFs to extend the benefits of executed swap block trades on-SEF to swaps not-ITBC as well as ITBC swaps.

Regarding the ability to aggregate orders into a large single trade, the Commission expects the rule changes will expand the opportunity to aggregate across more products and market participants. By removing the $25-million requirement, the Commission expects to create a more equal and accessible market by allowing the opportunity to aggregate regardless of the aggregator's size. Extending the aggregation policy to additional products will allow more equal treatment across products, potentially reducing an entity's incentive to trade a product because of the differential regulation.

Costs: The Commission recognizes that some market participants could experience some costs associated with the expanding swap categorization, but views them as less consequential relative to the benefits described above. As noted by some commenters, one such potential cost is that traders may find it more difficult to determine from § 43.6(c)'s expanded lists which category is relevant for their swaps.[514]

Further, there will be operational costs for reporting parties adjusting their systems, by writing and implementing new code, for instance. The Commission expects the operational costs of these changes to vary by asset class and the activity level of the reporting entity, but believes that the more granular bucketing of block categories will help mitigate costs. Costs may also differ depending on the type of cost. For instance, the Commission expects market participants specializing in a single swap category to face smaller operational costs relative to those operating across multiple categories, given the single-category market participants will likely only need to adjust their operational systems (where necessary) for a more limited number of categories.

The Commission does not expect the block trade definition amendment will impose significant costs on market participants. The change does not reduce choices, but instead provides block trade counterparties with the additional choice of executing block on SEFs. For counterparties choosing to execute trades on SEFs, there will be no increase in reporting costs as the existing regulation requires counterparties to report transactions to a SEF after a block is executed. The final regulation simply allows counterparties to report the trade to the SEF before it is executed. FCMs will also not incur greater expenses as they currently use SEFs to conduct pre-trade credit checks. Finally, SEFs are not expected to incur greater costs processing block trades before execution than they incur processing block trades after execution as the entire process is automated and already in place.

The Commission expects minimal costs resulting from changes in how market participants aggregate orders into a single large order to obtain block treatment. As this ability is already available to the largest market participants, the Commission expects the new increase in activity will be small relative to current activity. Regardless, any increase due to greater aggregation will result in a reduction of transparency, which can create inhibit price discovery. Moreover, to the extent that some entities, such as asset managers, may encourage trading by their clients in order to have sufficient volume to meet the block threshold, the rule may lead to increased agency issues.

Notwithstanding the potential costs, the Commission believes the substantive changes to §§ 43.4(h), 43.6, and 43.2's definition of block trade change are warranted in light of the anticipated benefits.

Alternatives: Multiple commenters suggest maintaining block and cap levels at the initial-period levels instead of raising them.[515] The primary reason is the expected difficulty executing large trades between the existing 50-percent and new 67-percent block thresholds.[516] This section discusses the cost and benefits of this alternative relative to those of the relevant rules amended herein. This alternative assumes the new swap categories in § 43.6(c) and cap sizes are maintained at the current initial-period levels.

Maintaining the existing threshold would, all else being equal, increase the number of swaps eligible for block delays. For those trades, SDs could find it less difficult to hedge the exposure

[512] Curtailing the number of entities that know its trading plans can mitigate a ''winner's curse'' problem for the trader, allowing it to get better pricing. *See, e.g.,* Riggs, et al., ''Swap Trading after Dodd-Frank: Evidence from Index CDS'' 137 J of Fin. Econ. 857 (2020), *available at: https://doi.org/10.1016/j.jfineco.2020.03.008.*

[513] The Commission also recognizes that many SEFs and market participants have already expended resources to implement technological and operational changes needed to avail themselves of the no-action relief under NAL No. 17–60.

[514] *See* ISDA–SIFMA at 6, Citadel at 9.

[515] For example, PIMCO ''urges the CFTC not to adopt increases to block and cap size, for purposes of real time reporting delays, as these changes would directly and adversely impact liquidity for block products and increase prices for PIMCO's clients.'' ISDA–SIFMA and Credit Suisse express similar concerns. On the other side, Citadel supports the increase as this ''more appropriately balances market transparency and information leakage risks than the current approach'' and also ''increases harmonization with the EU post-trade transparency framework.''

[516] ISDA–SIFMA and PIMCO use the extreme volatility observed at the start of the COVID–19 pandemic to justify current levels and even suggest lower appropriate minimum block size levels. The Commission believes using this sample to define block and cap thresholds would be a mistake since this is an extreme outlier to historical market activity. The Commission notes the sample used to define block and cap thresholds does include a more reasonable period of elevated volatility, such as during the end of 2018. ISDA–SIFMA further point to the significant increase in CDS, which is now no longer an accurate comparison as new option categories have dropped CDXIG from $550mm to $250mm.

created by trading a large swap, with ASATP reporting and public dissemination no longer required. For example, without a 15-minute delay, other market participants could potentially anticipate the trades of the SDs who are trying to hedge their positions and act accordingly to their own advantage (*e.g.,* taking long positions to eventually resell to the SDs). As multiple commenters suggest, if SDs face increased difficulties hedging client demands, they could increase the trading costs offered to clients or, potentially, stop trading in the relevant notional range, which in turn could contribute to a decrease in liquidity.[517] This in turn could increase price volatility and the bid-ask spread facing some end-users.

The idea that SDs could experience higher hedging costs if their intentions were widely known has a long history. Harris (2003), for example, suggests other traders anticipating SDs hedging trades could result in higher trading costs for SDs.[518] While none of the comments to the Proposal quantified the magnitude of this effect for swaps, there is empirical research in other financial markets on the effect of providing some advantages to SDs in hedging their trades. For example, one study examined the effect of a Canadian regulation that made equity trading more difficult for high-frequency traders (who are often seen as traders who anticipate orders in equity markets).[519] The policy change reduced trading. It also led to a reduction of about 15% in the impact on prices of the trades of large institutional traders, which the authors suggests may be due to the reduction in trading by high-frequency traders. At the same time, the authors found evidence bid-ask spreads rose after the regulatory change, such that execution costs rose for small institutional traders, while falling for larger institutional traders (especially those trading on information), as a result of enhanced protection against front-runners.[520] Similarly, a study of equity trading in Sweden found that high-frequency traders eventually do trade in the direction of informed traders, leading to higher trading costs.[521] Another study found that a London Stock Exchange (''LSE'') rule that reduced post-trade transparency led to reduced bid-ask spreads and execution costs on the LSE, especially for illiquid stocks, consistent with the order anticipation hypothesis.[522] Conversely, an older study that looked specifically at changes in the reporting delay afforded to block trades on the LSE found little evidence that delaying the reporting of trade data reduces customers' cost of trading large blocks.[523]

In sum, a certain body of academic literature suggests more information released in some circumstances can negatively impact SDs' hedging costs, and consequently, the prices offered by SDs to large traders. However, the magnitude of these effects in swaps markets is not precisely known. Further, as discussed below, there is an offsetting body of academic literature indicating that, in at least some circumstances, increased transparency lowers trading costs.

The Commission believes maintaining existing block thresholds would reduce transparency in swaps markets by increasing the overall number of trades eligible for block delays and decreasing the number of swaps reported in real time. This would lead to decreased accuracy in the real-time tape.

In the Proposal, the Commission characterized the costs and benefits of changing the cap and blocks thresholds in regard to the potential effects on liquidity of large blocks and on price transparency. The Commission received a number of comments that discussed these liquidity and transparency effects.[524] With respect to transparency, several commenters note the importance of transparency in regard to lowering trading costs, and pointed to a significant body of academic literature that empirically demonstrated this effect.[525] While none of the literature cited by the commenters studied the markets at issue here, they did evaluate a variety of financial markets, and generally found that better price information leads to lower trading costs. Some commenters cite the example of the experiment for analyzing the effect of transparency that was the Trade Reporting and Compliance Engine (''TRACE'') program. TRACE required dealers to report all bond trades (including price data) to the National Association of Securities Dealers (''NASD''), and the NASD made prices for a subset of those bonds available to traders. Three papers in leading finance journals studied the effect of this pricing information, and all found evidence that the availability of pricing data from TRACE lowered the costs of trading bonds.[526] Another example of increased transparency occurred when new reporting requirements came into effect for single-name CDS, and the authors of a subsequent study found that the enhanced price transparency lowered trading costs in these markets.[527]

These studies analyze a change in information-related regulation based on appropriate data before and after the regulatory change. Without a similar study for block and cap changes for swaps, the Commission bases its conclusion that greater transparency will benefit the market on findings in related markets.

The ideal appropriate minimum block size balances the benefits of large size blocks—increased transparency, price discovery, and swaps market competitiveness with their costs—increased trading costs for SDs and their customers and less liquidity. After providing notice to the public of proposed methods, considering public comments and considering costs and benefits of the proposed and alternative methods, the Commission determined in 2013 to adopt a 67-percent notional amount calculation method, but to implement a 50-percent notional amount calculation method as a conservative, transitionary level to allow the market time to adjust before moving to the more appropriate 67-percent method.

As discussed in section II.F.4 above, the Commission continues to believe the 67-percent method provides a better outcome than the 50-percent method as

[517] PIMCO at 2. Similar concerns were expressed in ICI at 7, Vanguard at 4, SIFMA AMG at 2–4, and ISDA–SIFMA at 5.

[518] Harris, Larry (2003), *Trading and Exchanges: Market Microstructure for Practitioners. See also* Brunnermeier, Markus and Lasse Pedersen (2005), ''Predatory trading'' *J. of Fin,* 60, 825–63, for a theoretical treatment of this analysis.

[519] Korajczyk, Robert and Dermot Murphy (2019) ''High-Frequency Market Making to Large Institutional Trades'' *Rev. of Fin. Stud.,* 32, 1034–10.

[520] *See id.*

[521] *See* van Kervel, Vincent and Albert Menkveld (2019), ''High-Frequency Trading around Large Institutional Orders'', *J of Fin.,* 74, 1091–1137.

[522] *See* Friederich, Sylvain and Richard Payne (2014) ''Trading Anonymity and Order Anticipation'', *J of Fin Markets,* 21, 1–24.

[523] *See* Gemmill, Gordon (1996), ''Transparency and Liquidity: A Study of Block Trades on the London Stock Exchange under Different Publication Rules'' *J of Fin,* 51, 1765–1790.

[524] *See, e.g.,* Citadel at 9; GFMA at 7, 10; ICI at 4–5; SIFMA AMG at 6.

[525] MIT at 1–2; Carnegie Mellon at 2–4; SMU at 4–5; and Citadel at 5.

[526] Bessembinder, Hendrick, William Maxwell and Kumar Venkataraman (2006) ''Market transparency, liquidity externalities, and institutional trading costs in corporate bonds'' *J of Fin. Econ.,* 82, 251–288, Edwards, Amy, Larry Harris, and Michael Piwowar (2007) ''Corporate Bond Market Transaction Costs and Transparency'' *J. of Fin.* 62, 1421–1451, Goldstein, Michael, Edith Hotchkiss, and Eric Sirri (2007), ''Transparency and Liquidity: A Controlled Experiment on Corporate Bonds'' *The Rev. of Fin. Stud.,* 20, 235–273.

[527] Loon, Yee Cheng, and Zhaodong Ken Zhong (2014), ''The impact of central clearing on counterparty risk, liquidity, and trading: Evidence from the credit default swap market,'' *J. of Fin. Econ.* 112, 91–115.

it more appropriately balances the tradeoff between transparency and hedging costs, among other issues. The initial conservative threshold resulted in a wide band of swaps receiving block treatment, to the detriment of transparency, price discovery, and swaps market competitiveness. The Commission acknowledges, as comment letters discuss, that the increased transparency caused by the 67-percent method potentially may result in higher market costs for some market participants and less liquidity. However, the Commission has not been presented with evidence that the 50-percent notional amount calculation method is clearly superior to the 67-percent notional amount calculation for appropriate minimum block size and the 75-percent notional amount calculation for caps, and the Commission continues to believe that the 67-percent and 75-percent methods provides a superior balance of the benefits and costs of blocks and capped notionals.[528] This is particularly true given that the 67-percent and 75-percent notional calculation methods will be applied in the context of recalibrated swap categories set out in § 43.6(c)—a factor not taken into account in comments advocating for the lower-threshold alternative. Applied in the context of the new swap categories, the Commission believes the 67-percent and 75-percent notional thresholds will be more responsive to liquidity needs, including through separate option and non-option CDS categories, adjusting certain CDS appropriate minimum block sizes around the roll months, the expansion of zero-block size categories, and clarifying certain risk reduction exercises are not publicly reportable swap transactions.

A second alternative advocated in comments relates to risk adjusting notional values before determining block and cap thresholds (*e.g.,* AGLI and ISDA–SIFMA). Comments argue that, all else being equal, longer-tenor contracts have more risk-transfer and the thresholds should reflect those differences. For example, if thresholds are the same for all tenors of an asset class, the risk transfer of swaps at the threshold value will be very different across tenors. This is particularly relevant for IRS, where there is significant variation in tenor and different tenors represent different amounts of risk transfer.

Although basing appropriate minimum block size on DV01 theoretically might be appropriate, the commenters have not explained how this could be accomplished in practice, nor are the means for doing so apparent to the Commission. Moreover, the ultimate goal in establishing thresholds is to focus on liquidity differences across swap categories, not risk-transfer *per se* (although risk transfer may be a factor influencing liquidity). In addition, the Commission notes risk adjusting across tenors would imply that thresholds would be higher for shorter-tenor swaps than longer-tenor ones. For the most part, the rule reflects this principle, since for IRS, block thresholds are generally decreasing with tenor.

Conclusion: The Commission is adopting the changes above. Notwithstanding the anticipated costs, the Commission believes this change is warranted in light of the anticipated benefits.

3. Section 15(a) Factors

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of the amendments to part 43 with respect to the following factors: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of markets; price discovery; sound risk management practices; and other public interest considerations.

As discussed above, the amendments to part 43 include changes that reflect what the Commission has learned about the technical aspects of reporting as well as changes that alter categories of swaps. The Commission expects that this, along with the data validation requirements in § 43.3(f), will increase the quality and timeliness of swap transaction and pricing data reported and publicly disseminated pursuant to part 43.

a. Protection of Market Participants and the Public

The Commission believes by enhancing transparency, the reporting requirements empower market participants by informing them, in real-time, about the trade prices of a broad set of swap products. This real-time information helps protect these participants from transacting at prices significantly different from the prevailing market. In addition, the Commission believes enhanced transparency allows for better monitoring of the quantity and size of market transactions, leading to improved protection of market participants and the public. As discussed above, several of the changes increase transparency, such as improvements in how swap categories are defined and improvements in reported data. However, these same changes at times may make it more expensive for SDs to hedge large positions they acquire, thereby increasing hedging costs for trades within certain size ranges.

b. Efficiency, Competitiveness, and Financial Integrity of Markets

Real-time reporting of transactions affects the efficiency of markets by quickly providing new information to all market participants in a standardized manner. This real-time information, which is publicly accessible, allows prices to rapidly and efficiently adjust to the prevailing trading conditions. To the extent that these Final Rules reduce the cost of information gathering and processing, as the Commission expects, market efficiency should be improved.

Improvements to real-time reporting may also enhance competition, as market participants may learn about the prices and venues where potential counterparties are executing their transactions. As such, swaps markets may become more competitive because parties will have better access to the prices where most participants are transacting and will be able to use this information to make their own trading decisions.

The Final Rules, through their effects on transparency, are also designed to positively impact the financial integrity of markets, because market participants can verify that they are transacting at or near prevailing market prices. In addition to transparency, the Commission expects changes to part 43 are likely to positively affect financial integrity in other ways. In particular, the Commission believes that more accurate swap transaction and pricing data will lead to greater understanding of liquidity and market depth for market participants executing swap transactions. Also, changes improving part 43 swap transaction and pricing data for the public will expand the ability of market participants to monitor real-time activity by other participants and to respond appropriately.

c. Price Discovery

Section 2(a)(13) of the CEA and the Commission's existing regulations in part 43 implementing CEA section 2(a)(13) require swap transaction and pricing data to be made available to the public in real time. The Commission

[528] The ISDA–SIFMA letter suggests the only reason to raise the threshold is to correct a problem with price discovery and they are not aware of any current problems. This is not a correct interpretation of current part 43. The Commission established requirements to increase block and cap thresholds in 2013 without making them conditional on identifying problems with price discovery.

believes inaccurate and incomplete swap transaction and pricing data hinders the use of the swap transaction and pricing data, which harms transparency and price discovery. The Commission expects market participants will be better able to analyze swap transaction and pricing data as a result of the finalized amendments, because the amendments will make swap transaction and pricing data more accurate and complete. The Commission also expects price discovery to be improved by avoiding duplicative reporting of mirror swaps.

One aspect of the final regulations does hold some potential to dampen price discovery relative to the status quo to a limited degree. Specifically, if § 43.4(a)(4) encourages more PPSs, then this may also reduce price discovery because fewer trades would have prices that are known at the time of execution. But countering this, as noted above, removing mirror swaps from public reporting could remove redundancy false impressions of market activity, thereby promoting the accuracy of the data.

d. Sound Risk Management Practices

The rule changes promulgated here will have a variety of effects on risk management practices. The effect of increasing the threshold for block determinations will result in more rapid dissemination of trade data for trades within specific size ranges. As discussed above, some commenters note that this change may make it more expensive for SDs to manage the risk they take on when accommodating customer trades.[529] If SDs face increased difficulties to hedge client demands, then the SDs may increase the trading costs offered to clients or, potentially, stop trading in the notional range, which in turn can contribute to a decrease in liquidity.[530] These effects may inhibit sound risk management by SDs and their clients, respectively.

Conversely, to the extent the final regulations result in more price transparency for the reasons discussed above, it is likely that trading costs will fall for some swaps, particularly smaller-sized swaps. This effect will enable some market participants to more readily hedge their inherent risk, and thereby improve risk management.

e. Other Public Interest Considerations

More accurate swap transaction and pricing data would be helpful to researchers who may use the data to improve the public's understanding of how swap markets function with respect to market participants, other financial markets, and the overall economy. Higher-quality data would also likely improve the Commission's regulatory oversight and enforcement capabilities.

D. Antitrust Considerations

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and to endeavor to take the least anticompetitive means of achieving the objectives of the CEA, in issuing any order or adopting any Commission rule or regulation.

The Commission does not believe that the amendments to part 43 will result in anti-competitive behavior. The Commission did not receive any comments on the antitrust considerations in the Proposal.

List of Subjects in 17 CFR Part 43

Real-time public swap reporting.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 43 as set forth below:

PART 43—REAL-TIME PUBLIC REPORTING

■ 1. The authority citation for part 43 continues to read as follows:

Authority: 7 U.S.C. 2(a), 12a(5), and 24a, as amended by Pub. L. 111–203, 124 Stat. 1376 (2010).

■ 2. Amend § 43.1 by removing paragraphs (b) and (d), re-designating paragraph (c) as paragraph (b), and revising newly re-designated paragraph (b).

The revision reads as follows:

§ 43.1 Purpose, scope, and rules of construction.

* * * * *

(b) *Rules of construction.* The examples in this part are not exclusive. Compliance with a particular example or application of a sample clause, to the extent applicable, shall constitute compliance with the particular portion of the rule to which the example relates.

■ 3. Revise § 43.2 to read as follows:

§ 43.2 Definitions.

(a) *Definitions.* As used in this part:

Appropriate minimum block size means the minimum notional or principal amount for a category of swaps that qualifies a swap within such category as a block trade or large notional off-facility swap.

As soon as technologically practicable means as soon as possible, taking into consideration the prevalence, implementation, and use of technology by comparable market participants.

Asset class means a broad category of commodities including, without limitation, any ''excluded commodity'' as defined in section 1a(19) of the Act, with common characteristics underlying a swap. The asset classes include interest rate, foreign exchange, credit, equity, other commodity, and such other asset classes as may be determined by the Commission.

Block trade means a publicly reportable swap transaction that:

(1) Involves a swap that is listed on a swap execution facility or designated contract market;

(2) Is executed on a swap execution facility's trading system or platform that is not an order book as defined in § 37.3(a)(3) of this chapter, or occurs away from the swap execution facility's or designated contract market's trading system or platform and is executed pursuant to the swap execution facility's or designated contract market's rules and procedures;

(3) Has a notional or principal amount at or above the appropriate minimum block size applicable to such swap; and

(4) Is reported subject to the rules and procedures of the swap execution facility or designated contract market and the rules described in this part, including the appropriate time delay requirements set forth in § 43.5.

Business day means the twenty-four hour day, on all days except Saturdays, Sundays and legal holidays, in the location of the reporting party or registered entity reporting data for the swap.

Business hours means the consecutive hours of one or more consecutive business days.

Cap size means, for each swap category, the maximum notional or principal amount of a publicly reportable swap transaction that is publicly disseminated.

Economically related means a direct or indirect reference to the same commodity at the same delivery location or locations, or with the same or a substantially similar cash market price series.

Embedded option means any right, but not an obligation, provided to one party of a swap by the other party to the swap that provides the party holding the option with the ability to change any one or more of the economic terms of the swap.

Execution means an agreement by the parties, by any method, to the terms of a swap that legally binds the parties to such swap terms under applicable law.

Execution date means the date of execution of a particular swap.

[529] *See, e.g.,* ISDA–SIFMA at 2.

[530] *See, e.g.,* SIFMA AMG at 3–4; PIMCO at 2–4.

Futures-related swap means a swap (as defined in section 1a(47) of the Act and as further defined by the Commission in implementing regulations) that is economically related to a futures contract.

Large notional off-facility swap means an off-facility swap that has a notional or principal amount at or above the appropriate minimum block size applicable to such publicly reportable swap transaction and is not a block trade as defined in § 43.2.

Major currencies means the currencies, and the cross-rates between the currencies, of Australia, Canada, Denmark, New Zealand, Norway, South Africa, South Korea, Sweden, and Switzerland.

Mirror swap means a swap:

(1) To which—

(i) A prime broker is a counterparty; or

(ii) Both counterparties are prime brokers;

(2) That is executed contemporaneously with a corresponding trigger swap;

(3) That has identical terms and pricing as the contemporaneously executed trigger swap, except:

(i) That a mirror swap, but not the corresponding trigger swap, may include any associated prime brokerage service fees agreed to by the parties; and

(ii) As provided in paragraph (5) of this ''mirror swap'' definition;

(4) With respect to which the sole price forming event is the occurrence of the contemporaneously executed trigger swap; and

(5) The execution of which is contingent on, or is triggered by, the execution of the contemporaneously executed trigger swap. The contractually agreed payments and delivery amounts under a mirror swap may differ from those amounts of the corresponding trigger swap if:

(i) Under all such mirror swaps to which the prime broker that is a counterparty to the trigger swap is also a counterparty, the aggregate contractually agreed payments and delivery amounts shall be equal to the aggregate of the contractually agreed payments and delivery amounts under the corresponding trigger swap; and

(ii) The market risk and contractually agreed payments and delivery amounts of all such mirror swaps to which a prime broker that is not a counterparty to the corresponding trigger swap is a party will offset each other, resulting in such prime broker having a flat market risk position at the execution of such mirror swaps.

Non-major currencies means all other currencies that are not super-major currencies or major currencies.

Novation means the process by which a party to a swap legally transfers all or part of its rights, liabilities, duties, and obligations under the swap to a new legal party other than the counterparty to the swap under applicable law.

Off-facility swap means any swap transaction that is not executed on or pursuant to the rules of a swap execution facility or designated contract market.

Other commodity means any commodity that is not categorized in the interest rate, credit, foreign exchange, equity, or other asset classes as may be determined by the Commission.

Physical commodity swap means a swap in the other commodity asset class that is based on a tangible commodity.

Post-priced swap means an off-facility swap for which the price is not determined as of the time of execution.

Pricing event means the completion of the negotiation of the material economic terms and pricing of a trigger swap.

Prime broker means, with respect to a mirror swap and its related trigger swap, a swap dealer acting in the capacity of a prime broker with respect to such swaps.

Prime broker swap means any swap to which a swap dealer acting in the capacity as prime broker is a party.

Prime brokerage agency arrangement means an arrangement pursuant to which a prime broker authorizes one of its clients, acting as agent for such prime broker, to cause the execution of a prime broker swap.

Prime brokerage agent means a client of a prime broker who causes the execution of one or more prime broker swap(s) acting pursuant to a prime brokerage agency arrangement.

Public dissemination and publicly disseminate means to make freely available and readily accessible to the public swap transaction and pricing data in a non-discriminatory manner, through the internet or other electronic data feed that is widely published. Such public dissemination shall be made in a consistent, usable, and machine-readable electronic format that allows the data to be downloaded, saved, and analyzed.

Publicly reportable swap transaction means:

(1) Unless otherwise provided in this part—

(i) Any executed swap that is an arm's-length transaction between two parties that results in a corresponding change in the market risk position between the two parties; or

(ii) Any termination, assignment, novation, exchange, transfer, amendment, conveyance, or extinguishing of rights or obligations of a swap that changes the pricing of the swap.

(2) Examples of executed swaps that do not fall within the definition of publicly reportable swap may include:

(i) Internal swaps between one-hundred percent owned subsidiaries of the same parent entity;

(ii) Portfolio compression exercises; and

(iii) Swaps entered into by a derivatives clearing organization as part of managing the default of a clearing member.

(3) These examples represent swaps that are not at arm's length and thus are not publicly reportable swap transactions, notwithstanding that they do result in a corresponding change in the market risk position between two parties.

Reference price means a floating price series (including derivatives contract prices and cash market prices or price indices) used by the parties to a swap or swaption to determine payments made, exchanged, or accrued under the terms of a swap contract.

Reporting counterparty means the party to a swap with the duty to report a publicly reportable swap transaction in accordance with this part and section 2(a)(13)(F) of the Act.

Super-major currencies means the currencies of the European Monetary Union, Japan, the United Kingdom, and United States.

Swap execution facility means a trading system or platform that is a swap execution facility as defined in CEA section 1a(50) and in § 1.3 of this chapter and that is registered with the Commission pursuant to CEA section 5h and part 37 of this chapter.

Swap transaction and pricing data means all data elements for a swap in appendix A of this part that are required to be reported or publicly disseminated pursuant to this part.

Swaps with composite reference prices means swaps based on reference prices that are composed of more than one reference price from more than one swap category.

Trigger swap means a swap:

(1) That is executed pursuant to one or more prime brokerage agency arrangements;

(2) To which one counterparty or both counterparties are prime brokers;

(3) That serves as the contingency for, or triggers, the execution of one or more corresponding mirror swaps; and

(4) That is a publicly reportable swap transaction that is required to be

reported to a swap data repository pursuant to this part and part 45 of this chapter. A prime broker swap executed on or pursuant to the rules of a swap execution facility or designated contract market shall be treated as the trigger swap for purposes of this part.

Trimmed data set means a data set that has had extraordinarily large notional transactions removed by transforming the data into a logarithm with a base of 10, computing the mean, and excluding transactions that are beyond two standard deviations above the mean for the other commodity asset class and three standard deviations above the mean for all other asset classes.

(b) *Other defined terms.* Terms not defined in this part have the meanings assigned to the terms in § 1.3 of this chapter.

■ 4. Amend § 43.3 by

■ a. Revising paragraphs (a) through (d), and (f),

■ b. Removing paragraphs (g) and (h),

■ c. Re-designating paragraph (i) as paragraph (g),

■ d. Revising newly re-designated paragraph (g).

The revisions read as follows:

§ 43.3 Method and timing for real-time public reporting.

(a) *Responsibilities to report swap transaction and pricing data in real-time*—(1) *In general.* The reporting counterparty, swap execution facility, or designated contract market responsible for reporting a swap as determined by this section shall report the publicly reportable swap transaction to a swap data repository as soon as technologically practicable after execution, subject to paragraphs (a)(2) through (6) of this section. Such reporting shall be done in the manner set forth in paragraph (d) of this section.

(2) *Swaps executed on or pursuant to the rules of a swap execution facility or designated contract market.* For each swap executed on or pursuant to the rules of a swap execution facility or designated contract market, the swap execution facility or designated contract market shall report swap transaction and pricing data to a swap data repository as soon as technologically practicable after execution.

(3) *Off-facility swaps.* Except as otherwise provided in paragraphs (a)(4) through (6) of this section, a reporting counterparty shall report all publicly reportable swap transactions that are off-facility swaps to a swap data repository for the appropriate asset class in accordance with the rules set forth in this part as soon as technologically practicable after execution. Unless otherwise agreed to by the parties prior to execution, the following shall be the reporting counterparty for a publicly reportable swap transaction that is an off-facility swap:

(i) If only one party is a swap dealer or major swap participant, then the swap dealer or major swap participant shall be the reporting counterparty;

(ii) If one party is a swap dealer and the other party is a major swap participant, then the swap dealer shall be the reporting counterparty;

(iii) If both parties are swap dealers, then the swap dealers shall designate which party shall be the reporting counterparty prior to execution of such swap;

(iv) If both parties are major swap participants, then the major swap participants shall designate which party shall be the reporting counterparty prior to execution of such swap; and

(v) If neither party is a swap dealer or a major swap participant, then the parties shall designate which party shall be the reporting counterparty prior to execution of such swap.

(4) *Post-priced swaps*—(i) *Post-priced swaps reporting delays.* The reporting counterparty may delay reporting a post-priced swap to a swap data repository until the earlier of the price being determined and 11:59:59 p.m. eastern time on the execution date. If the price of a publicly reportable swap transaction that is a post-priced swap is not determined by 11:59:59 p.m. eastern time on the execution date, the reporting counterparty shall report to a swap data repository by 11:59:59 p.m. eastern time on the execution date all swap transaction and pricing data for such post-priced swap other than the price and any other then-undetermined swap transaction and pricing data and shall report each such item of previously undetermined swap transaction and pricing data as soon as technologically practicable after such item is determined.

(ii) *Other economic terms.* The post-priced swap reporting delay set forth in paragraph (a)(4)(i) of this section does not apply to publicly reportable swap transactions with respect to which the price is known at execution, but one or more other economic or other terms are not yet known at the time of execution.

(5) *Clearing swaps.* Notwithstanding the provisions of paragraphs (a)(1) through (3) of this section, if a clearing swap, as defined in § 45.1(a) of this chapter, is a publicly reportable swap transaction, the derivatives clearing organization that is a party to such swap shall be the reporting counterparty and shall fulfill all reporting counterparty obligations for such swap as soon as technologically practicable after execution.

(6) *Prime broker swaps.* (i) A mirror swap is not a publicly reportable swap transaction. Execution of a trigger swap, for purposes of determining when execution occurs under paragraphs (a)(1) through (3) of this section, shall be deemed to occur at the time of the pricing event for such trigger swap.

(ii) With respect to a given set of swaps, if it is unclear which is, or are the mirror swap(s) and which is the related trigger swap (including, but not limited to, situations where there is more than one prime broker counterparty within such set of swaps and situations where the pricing event for each set of swaps occurs between prime brokerage agents of a common prime broker), or if under the prime brokerage agency arrangement, the trigger swap would occur between two prime brokers, the prime broker(s) shall determine which of the prime broker swaps shall be treated as the trigger swap and which are mirror swaps.

(iii) Trigger swaps shall be reported in accordance with the following:

(A) Trigger swaps executed on or pursuant to the rules of a swap execution facility or designated contract market shall be reported pursuant to paragraph (a)(2) of this section; and

(B) Off-facility trigger swaps shall be reported pursuant to paragraph (a)(3) of this section, except that if a counterparty to a trigger swap is a swap dealer that is not a prime broker with respect to that trigger swap, then that swap dealer counterparty shall be the reporting counterparty for the trigger swap.

(7) *Third-party facilitation of data reporting.* Any person required by this part to report swap transaction and pricing data, while remaining fully responsible for reporting as required by this part, may contract with a third-party service provider to facilitate reporting.

(b) *Public dissemination of swap transaction and pricing data by swap data repositories in real-time*—(1) *In general.* A swap data repository shall publicly disseminate swap transaction and pricing data as soon as technologically practicable after such data is received from a swap execution facility, designated contract market, or reporting counterparty, unless such swap transaction and pricing data is subject to a time delay described in § 43.5, in which case the swap transaction and pricing data shall be publicly disseminated in the manner described in § 43.5.

(2) *Compliance with 17 CFR part 49.* Any swap data repository that accepts

and publicly disseminates swap transaction and pricing data in real-time shall comply with part 49 of this chapter.

(3) *Prohibitions on disclosure of data.* (i) If there is a swap data repository for an asset class, a swap execution facility or designated contract market shall not disclose swap transaction and pricing data relating to publicly reportable swap transactions in such asset class, prior to the public dissemination of such data by a swap data repository unless:

(A) Such disclosure is made no earlier than the transmittal of such data to a swap data repository for public dissemination;

(B) Such disclosure is only made to market participants on such swap execution facility or designated contract market;

(C) Market participants are provided advance notice of such disclosure; and

(D) Any such disclosure by the swap execution facility or designated contract market is non-discriminatory.

(ii) If there is a swap data repository for an asset class, a swap dealer or major swap participant shall not disclose swap transaction and pricing data relating to publicly reportable swap transactions in such asset class, prior to the public dissemination of such data by a swap data repository unless:

(A) Such disclosure is made no earlier than the transmittal of such data to a swap data repository for public dissemination;

(B) Such disclosure is only made to the customer base of such swap dealer or major swap participant, including parties who maintain accounts with or have been swap counterparties with such swap dealer or major swap participant;

(C) Swap counterparties are provided advance notice of such disclosure; and

(D) Any such disclosure by the swap dealer or major swap participant is non-discriminatory.

(4) *Acceptance and public dissemination of all swaps in an asset class.* Any swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time for swaps in its selected asset class shall accept and publicly disseminate swap transaction and pricing data in real-time for all publicly reportable swap transactions within such asset class, unless otherwise prescribed by the Commission.

(5) *Annual independent review.* Any swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall perform, on an annual basis, an independent review in accordance with established audit procedures and standards of the swap data repository's security and other system controls for the purpose of ensuring compliance with the requirements in this part.

(c) *Availability of swap transaction and pricing data to the public.* (1) Swap data repositories shall make swap transaction and pricing data available on their websites for a period of time that is at least one year after the initial public dissemination of such data and shall make instructions freely available on their websites on how to download, save, and search such data.

(2) Swap transaction and pricing data that is publicly disseminated pursuant to this paragraph shall be made available free of charge.

(d) *Data reported to swap data repositories.* (1) In reporting swap transaction and pricing data to a swap data repository, each reporting counterparty, swap execution facility, or designated contract market shall report the swap transaction and pricing data as described in the elements in appendix A of this part in the form and manner provided in the technical specification published by the Commission pursuant to § 43.7.

(2) In reporting swap transaction and pricing data to a swap data repository, each reporting counterparty, swap execution facility, or designated contract market making such report shall satisfy the data validation procedures of the swap data repository.

(3) In reporting swap transaction and pricing data to a swap data repository, each reporting counterparty, swap execution facility, or designated contract market shall use the facilities, methods, or data standards provided or required by the swap data repository to which the entity or reporting counterparty reports the data.

* * * * *

(f) *Data validation acceptance message.* (1) A swap data repository shall validate each swap transaction and pricing data report submitted to the swap data repository and notify the reporting counterparty, swap execution facility, or designated contract market submitting the report whether the report satisfied the data validation procedures of the swap data repository as soon as technologically practicable after accepting the swap transaction and pricing data report. A swap data repository may satisfy the requirements of this paragraph by making available data validation acceptance messages as required by § 49.10 of this chapter.

(2) If a swap transaction and pricing data report submitted to a swap data repository does not satisfy the data validation procedures of the swap data repository, the reporting counterparty, swap execution facility, or designated contract market required to submit the report has not satisfied its obligation to report swap transaction and pricing data in the manner provided by paragraph (d) of this section. The reporting counterparty, swap execution facility, or designated contract market has not satisfied its obligation until it submits the swap transaction and pricing data report in the manner provided by paragraph (d) of this section, which includes the requirement to satisfy the data validation procedures of the swap data repository.

(g) *Fees.* Any fee or charge assessed on a reporting counterparty, swap execution facility, or designated contract market by a swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time for the collection of such data shall be equitable and non-discriminatory. If such swap data repository allows a fee discount based on the volume of data reported to it for public dissemination, then such discount shall be made available to all reporting counterparties, swap execution facilities, and designated contract markets in an equitable and non-discriminatory manner.

■ 5. Revise § 43.4 to read as follows:

§ 43.4 Swap transaction and pricing data to be publicly disseminated in real-time.

(a) *Public dissemination of data fields.* Any swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall publicly disseminate the information described in appendix A of this part for the swap transaction and pricing data, as applicable, in the form and manner provided in the technical specification published by the Commission pursuant to § 43.7.

(b) *Additional swap information.* A swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time may require reporting counterparties, swap execution facilities, and designated contract markets to report to such swap data repository information that is necessary to compare the swap transaction and pricing data that was publicly disseminated in real-time to the data reported to a swap data repository pursuant to section 2(a)(13)(G) of the Act or to confirm that parties to a swap have reported in a timely manner pursuant to § 43.3. Such additional information shall not be publicly disseminated by the swap data repository.

(c) *Anonymity of the parties to a publicly reportable swap transaction*—(1) *In general.* Swap transaction and pricing data that is publicly disseminated in real-time shall not disclose the identities of the parties to the swap or otherwise facilitate the identification of a party to a swap. A swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall not publicly disseminate such data in a manner that discloses or otherwise facilitates the identification of a party to a swap.

(2) *Actual product description reported to swap data repository.* Reporting counterparties, swap execution facilities, and designated contract markets shall provide a swap data repository with swap transaction and pricing data that includes an actual description of the underlying asset(s). This requirement is separate from the requirement that a reporting counterparty, swap execution facility, or designated contract market shall report swap data to a swap data repository pursuant to section 2(a)(13)(G) of the Act and 17 CFR chapter I.

(3) *Public dissemination of the actual description of underlying asset(s).* Notwithstanding the anonymity protection for certain swaps in the other commodity asset class in paragraph (c)(4) of this section, a swap data repository shall publicly disseminate the actual underlying asset(s) of all publicly reportable swap transactions in the interest rate, credit, equity, and foreign exchange asset classes.

(4) *Public dissemination of the underlying asset(s) for certain swaps in the other commodity asset class.* A swap data repository shall publicly disseminate swap transaction and pricing data in the other commodity asset class as described in this paragraph.

(i) A swap data repository shall publicly disseminate swap transaction and pricing data for publicly reportable swap transactions in the other commodity asset class in the manner described in paragraphs (c)(4)(ii) and (iii) of this section.

(ii) The actual underlying asset(s) shall be publicly disseminated for the following publicly reportable swap transactions in the other commodity asset class:

(A) Any publicly reportable swap transaction that references one of the contracts described in appendix B to this part;

(B) Any publicly reportable swap transaction that is economically related to one of the contracts described in appendix B of this part; or

(C) Any publicly reportable swap transaction executed on or pursuant to the rules of a swap execution facility or designated contract market.

(iii) The underlying assets of swaps in the other commodity asset class that are not described in paragraph (c)(4)(ii) of this section shall be publicly disseminated by limiting the geographic detail of the underlying asset(s). The identification of any specific delivery point or pricing point associated with the underlying asset of such other commodity swap shall be publicly disseminated pursuant to appendix E of this part.

(d) *Reporting of notional or principal amounts to a swap data repository*—(1) *Off-facility swaps.* The reporting counterparty shall report the actual notional or principal amount of any publicly reportable swap transaction that is an off-facility swap to a swap data repository that accepts and publicly disseminates such data pursuant to this part.

(2) *Swaps executed on or pursuant to the rules of a swap execution facility or designated contract market.* (i) A swap execution facility or designated contract market shall report the actual notional or principal amount for all swaps executed on or pursuant to the rules of such swap execution facility or designated contract market to a swap data repository that accepts and publicly disseminates such data pursuant to this part.

(ii) The actual notional or principal amount for any block trade executed on or pursuant to the rules of a swap execution facility or designated contract market shall be reported to the swap execution facility or designated contract market pursuant to the rules of the swap execution facility of designated contract market.

(e) *Public dissemination of notional or principal amounts.* The notional or principal amount of a publicly reportable swap transaction shall be publicly disseminated by a swap data repository subject to rounding as set forth in paragraph (f) of this section, and the cap size as set forth in paragraph (g) of this section.

(f) *Process to determine appropriate rounded notional or principal amounts.* (1) If the notional or principal amount is less than one thousand, round to nearest five, but in no case shall a publicly disseminated notional or principal amount be less than five;

(2) If the notional or principal amount is less than 10 thousand but equal to or greater than one thousand, round to nearest one hundred;

(3) If the notional or principal amount is less than 100 thousand but equal to or greater than 10 thousand, round to nearest one thousand;

(4) If the notional or principal amount is less than one million but equal to or greater than 100 thousand, round to nearest 10 thousand;

(5) If the notional or principal amount is less than 100 million but equal to or greater than one million, round to the nearest one million;

(6) If the notional or principal amount is less than 500 million but equal to or greater than 100 million, round to the nearest 10 million;

(7) If the notional or principal amount is less than one billion but equal to or greater than 500 million, round to the nearest 50 million;

(8) If the notional or principal amount is less than 100 billion but equal to or greater than one billion, round to the nearest 100 million;

(9) If the notional or principal amount is equal to or greater than 100 billion, round to the nearest 10 billion.

(g) *Initial cap sizes.* Prior to the effective date of a Commission determination to establish an applicable post-initial cap size for a swap category as determined pursuant to paragraph (h) of this section, the initial cap sizes for each swap category shall be equal to the greater of the initial appropriate minimum block size for the respective swap category in appendix F of this part or the respective cap sizes in paragraphs (g)(1) through (5) of this section. If appendix F of this part does not provide an initial appropriate minimum block size for a particular swap category, the initial cap size for such swap category shall be equal to the appropriate cap size as set forth in paragraphs (g)(1) through (5) of this section.—

(1) For swaps in the interest rate asset class, the publicly disseminated notional or principal amount for a swap subject to the rules in this part shall be:

(i) USD 250 million for swaps with a tenor greater than zero up to and including two years;

(ii) USD 100 million for swaps with a tenor greater than two years up to and including ten years; and

(iii) USD 75 million for swaps with a tenor greater than ten years.

(2) For swaps in the credit asset class, the publicly disseminated notional or principal amount for a swap subject to the rules in this part shall be USD 100 million.

(3) For swaps in the equity asset class, the publicly disseminated notional or principal amount for a swap subject to the rules in this part shall be USD 250 million.

(4) For swaps in the foreign exchange asset class, the publicly disseminated notional or principal amount for a swap

subject to the rules in this part shall be USD 250 million.

(5) For swaps in the other commodity asset class, the publicly disseminated notional or principal amount for a swap subject to the rules in this part shall be USD 25 million.

(h) *Post-initial cap sizes.* (1) The Commission shall establish, by swap categories, post-initial cap sizes as described in paragraphs (h)(2) through (8) of this section.

(2) The Commission shall determine post-initial cap sizes for the swap categories described in paragraphs (c)(1)(i), (c)(2)(i) through (xii), (c)(4)(i), and (c)(5)(i) of § 43.6 by utilizing reliable data collected by swap data repositories, as determined by the Commission, based on paragraphs (h)(2)(i) and (ii) of this section. If the Commission is unable to determine a cap size for any swap category described in § 43.6(c)(1)(i), the Commission shall assign a cap size of USD 100 million to such category.

(i) A one-year window of swap transaction and pricing data corresponding to each relevant swap category recalculated no less than once each calendar year; and

(ii) The 75-percent notional amount calculation described in § 43.6(d)(2).

(3) The Commission shall determine the post-initial cap size for a swap category in the foreign exchange asset class described in § 43.6(c)(4)(ii) as the lower of the notional amount of either currency's cap size for the swap category described in § 43.6(c)(4)(i).

(4) All swaps or instruments in the swap category described in § 43.6(c)(1)(ii) shall have a cap size of USD 100 million.

(5) All swaps or instruments in the swap category described in § 43.6(c)(2)(xiii) shall have a cap size of USD 400 million.

(6) All swaps or instruments in the swap category described in § 43.6(c)(3) shall have a cap size of USD 250 million.

(7) All swaps or instruments in the swap category described in § 43.6(c)(4)(iii) shall have a cap size of USD 150 million.

(8) All swaps or instruments in the swap category described in § 43.6(c)(5)(ii) shall have a cap size of USD 100 million.

(9) The Commission shall publish post-initial cap sizes on its website at *http://www.cftc.gov.*

(10) Unless otherwise indicated on the Commission's website, the post-initial cap sizes shall be effective on the first day of the second month following the date of publication of the revised cap size.

■ 6. Revise § 43.5 to read as follows:

§ 43.5 Time delays for public dissemination of swap transaction and pricing data.

(a) *In general.* The time delay for the real-time public reporting of a block trade or large notional off-facility swap begins upon execution, as defined in § 43.2. It is the responsibility of the swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time to ensure that the block trade or large notional off-facility swap transaction and pricing data is publicly disseminated pursuant to this part upon the expiration of the appropriate time delay described in paragraphs (d) through (h) of this section.

(b) *Public dissemination of publicly reportable swap transactions subject to a time delay.* A swap data repository shall publicly disseminate swap transaction and pricing data that is subject to a time delay pursuant to this paragraph, as follows:

(1) No later than the prescribed time delay period described in this paragraph;

(2) No sooner than the prescribed time delay period described in this paragraph; and

(3) Precisely upon the expiration of the time delay period described in this paragraph.

(c) [Reserved]

(d) *Time delay for block trades executed on or pursuant to the rules of a swap execution facility or designated contract market.* Any block trade that is executed on or pursuant to the rules of a swap execution facility or designated contract market shall receive a time delay in the public dissemination of swap transaction and pricing data as follows:

(1) [Reserved]

(2) The time delay for public dissemination of swap transaction and pricing data for all publicly reportable swap transactions described in this paragraph (d) shall be 15 minutes immediately after execution of such publicly reportable swap transaction.

(e) *Time delay for large notional off-facility swaps subject to the mandatory clearing requirement*—(1) *In general.* This paragraph shall not apply to off-facility swaps that are excepted from the mandatory clearing requirement pursuant to section 2(h)(7) of the Act and 17 CFR chapter I, and this paragraph shall not apply to those swaps that are required to be cleared under section 2(h)(2) of the Act and 17 CFR chapter I but are not cleared.

(2) *Swaps subject to the mandatory clearing requirement where at least one party is a swap dealer or major swap participant.* Any large notional off-facility swap that is subject to the mandatory clearing requirement described in section 2(h)(1) of the Act and 17 CFR chapter I, in which at least one party is a swap dealer or major swap participant, shall receive a time delay as follows:

(i) [Reserved]

(ii) The time delay for public dissemination of swap transaction and pricing data for all swaps described in this paragraph (e)(2) shall be 15 minutes immediately after execution of such swap.

(3) *Swaps subject to the mandatory clearing requirement where neither party is a swap dealer or major swap participant.* Any large notional off-facility swap that is subject to the mandatory clearing requirement described in section 2(h)(1) of the Act and 17 CFR chapter I, in which neither party is a swap dealer or major swap participant, shall receive a time delay as follows:

(i)–(ii) [Reserved]

(iii) The time delay for public dissemination of swap transaction and pricing data for all swaps described in this paragraph (e)(3) shall be one hour immediately after execution of such swap.

(f) *Time delay for large notional off-facility swaps in the interest rate, credit, foreign exchange or equity asset classes not subject to the mandatory clearing requirement with at least one swap dealer or major swap participant counterparty.* Any large notional off-facility swap in the interest rate, credit, foreign exchange or equity asset classes where at least one party is a swap dealer or major swap participant, that is not subject to the mandatory clearing requirement or is excepted from such mandatory clearing requirement, shall receive a time delay in the public dissemination of swap transaction and pricing data as follows:

(1)–(2) [Reserved]

(3) The time delay for public dissemination of swap transaction and pricing data for all swaps described in this paragraph (f) shall be 30 minutes immediately after execution of such swap.

(g) *Time delay for large notional off-facility swaps in the other commodity asset class not subject to the mandatory clearing requirement with at least one swap dealer or major swap participant counterparty.* Any large notional off-facility swap in the other commodity asset class where at least one party is a swap dealer or major swap participant, that is not subject to the mandatory clearing requirement or is exempt from

such mandatory clearing requirement, shall receive a time delay in the public dissemination of swap transaction and pricing data as follows:

(1)–(2) [Reserved]

(3) The time delay for public dissemination of swap transaction and pricing data for all swaps described in this paragraph (g) shall be two hours after the execution of such swap.

(h) *Time delay for large notional off-facility swaps in all asset classes not subject to the mandatory clearing requirement in which neither counterparty is a swap dealer or a major swap participant.* Any large notional off-facility swap in which neither party is a swap dealer or a major swap participant, which is not subject to the mandatory clearing requirement or is exempt from such mandatory clearing requirement, shall receive a time delay in the public dissemination of swap transaction and pricing data as follows:

(1)–(2) [Reserved]

(3) The time delay for public dissemination transaction and pricing data for all swaps described in this paragraph (h) shall be 24 business hours immediately after the execution of such swap.

■ 6. Revise § 43.6 to read as follows:

§ 43.6 Block trades and large notional off-facility swaps.

(a) *Commission determination.* The Commission shall establish the appropriate minimum block size for publicly reportable swap transactions based on the swap categories set forth in paragraphs (b) and (c) of this section, as applicable, in accordance with the provisions set forth in paragraph (d), (e), (f), (g), (h), or (i) of this section, as applicable.

(b) *Initial swap categories.* Swap categories shall be established for all swaps, by asset class, in the following manner:

(1) *Interest rates asset class.* Interest rate asset class swap categories shall be based on unique combinations of the following:

(i) Currency by:

(A) Super-major currency;

(B) Major currency; or

(C) Non-major currency; and

(ii) Tenor of swap as follows:

(A) Zero to 46 days;

(B) Greater than 46 days to three months (47 to 107 days);

(C) Greater than three months to six months (108 to 198 days);

(D) Greater than six months to one year (199 to 381 days);

(E) Greater than one to two years (382 to 746 days);

(F) Greater than two to five years (747 to 1,842 days);

(G) Greater than five to ten years (1,843 to 3,668 days);

(H) Greater than ten to 30 years (3,669 to 10,973 days); or

(I) Greater than 30 years (10,974 days and above).

(2) *Credit asset class.* Credit asset class swap categories shall be based on unique combinations of the following:

(i) Traded Spread rounded to the nearest basis point (0.01) as follows:

(A) 0 to 175 points;

(B) 176 to 350 points; or

(C) 351 points and above;

(ii) Tenor of swap as follows:

(A) Zero to two years (0–746 days);

(B) Greater than two to four years (747–1,476 days);

(C) Greater than four to six years (1,477–2,207 days);

(D) Greater than six to eight-and-a-half years (2,208–3,120 days);

(E) Greater than eight-and-a-half to 12.5 years (3,121–4,581 days); and

(F) Greater than 12.5 years (4,582 days and above).

(3) *Equity asset class.* There shall be one swap category consisting of all swaps in the equity asset class.

(4) *Foreign exchange asset class.* Swap categories in the foreign exchange asset class shall be grouped as follows:

(i) By the unique currency combinations of one super-major currency paired with one of the following:

(A) Another super major currency;

(B) A major currency; or

(C) A currency of Brazil, China, Czech Republic, Hungary, Israel, Mexico, Poland, Russia, and Turkey; or

(ii) By unique currency combinations not included in paragraph (b)(4)(i) of this section.

(5) *Other commodity asset class.* Swap contracts in the other commodity asset class shall be grouped into swap categories as follows:

(i) For swaps that are economically related to contracts in appendix B of this part, by the relevant contract as referenced in appendix B of this part; or

(ii) For swaps that are not economically related to contracts in appendix B of this part, by the following futures-related swaps:

(A) CME Cheese;

(B) CBOT Distillers' Dried Grain;

(C) CBOT Dow Jones-UBS Commodity Index;

(D) CBOT Ethanol;

(E) CME Frost Index;

(F) CME Goldman Sachs Commodity Index (GSCI), (GSCI Excess Return Index);

(G) NYMEX Gulf Coast Sour Crude Oil;

(H) CME Hurricane Index;

(I) CME Rainfall Index;

(J) CME Snowfall Index;

(K) CME Temperature Index;

(L) CME U.S. Dollar Cash Settled Crude Palm Oil; or

(iii) For swaps that are not covered in paragraphs (b)(5)(i) and (b)(5)(ii) of this section, the relevant product type as referenced in appendix D of this part.

(c) *Post-initial swap categories.* Swap categories shall be established for all swaps, by asset class, in the following manner:

(1) *Interest rate asset class.* Swaps in the interest rate asset class shall be grouped into swap categories as follows:

(i) Based on a unique combination of the following currencies and tenors:

(A) A currency of one of the following countries or union:

(*1*) Australia;

(*2*) Brazil;

(*3*) Canada;

(*4*) Chile;

(*5*) Czech Republic;

(*6*) The European Union;

(*7*) Great Britain;

(*8*) India;

(*9*) Japan;

(*10*) Mexico;

(*11*) New Zealand;

(*12*) South Africa;

(*13*) South Korea;

(*14*) Sweden; or

(*15*) The United States; and

(B) One of the following tenors:

(*1*) Zero to 46 days;

(*2*) Greater than 46 and less than or equal to 107 days;

(*3*) Greater than 107 and less than or equal to 198 days;

(*4*) Greater than 198 and less than or equal to 381 days;

(*5*) Greater than 381 and less than or equal to 746 days;

(*6*) Greater than 746 and less than or equal to 1,842 days;

(*7*) Greater than 1,842 and less than or equal to 3,668 days;

(*8*) Greater than 3,668 and less than or equal to 10,973 days; or

(*9*) Greater than 10,973 days.

(ii) Other interest rate swaps not covered in the paragraph (c)(1)(i) of this section.

(2) *Credit asset class.* Swaps in the credit asset class shall be grouped into swap categories as follows.

(i) Based on the CDXHY product type, without options and a tenor greater than 1,477 days and less than or equal to 2,207 days;

(ii) Based on the CDXHY product type, with only options and a tenor greater than 1,477 days and less than or equal to 2,207 days;

(iii) Based on the iTraxx Europe product type, without options and a tenor greater than 1,477 days and less than or equal to 2,207 days;

(iv) Based on the iTraxx Europe product type, with only options and a tenor greater than 1,477 days and less than or equal to 2,207 days;

(v) Based on the iTraxx Crossover product type, without options and a tenor greater than 1,477 days and less than or equal to 2,207 days;

(vi) Based on the iTraxx Crossover product type, with only options and a tenor greater than 1,477 days and less than or equal to 2,207 days;

(vii) Based on the iTraxx Senior Financials product type, without options and a tenor greater than 1,477 days and less than or equal to 2,207 days;

(viii) Based on the iTraxx Senior Financials product type, with only options and a tenor greater than 1,477 days and less than or equal to 2,207 days;

(ix) Based on the CDXIG product type and a tenor greater, without options than 1,477 days and less than or equal to 2,207 days;

(x) Based on the CDXIG product type with only options and a tenor greater, than 1,477 days and less than or equal to 2,207 days;

(xi) Based on the CDXEmergingMarkets product type and a tenor greater than 1,477 days and less than or equal to 2,207 days;

(xii) Based on the CMBX product type; and

(xiii) Other credit swaps not covered in paragraphs (c)(2)(i)–(xii) of this section.

(3) *Equity asset class.* There shall be one swap category consisting of all swaps in the equity asset class.

(4) *Foreign exchange asset class.* Swaps in the foreign exchange asset class shall be grouped into swap categories as follows:

(i) By the unique currency combinations of the United States currency paired with a currency of one of the following countries or union: Argentina, Australia, Brazil, Canada, Chile, China, Colombia, the European Union, Great Britain, India, Indonesia, Japan, Malaysia, Mexico, New Zealand, Peru, Philippines, Russia, South Korea, or Taiwan.

(ii) By the unique currency pair consisting of two separate currencies from the following countries or union: Argentina, Australia, Brazil, Canada, Chile, China, Colombia, the European Union, Great Britain, India, Indonesia, Japan, Malaysia, Mexico, New Zealand, Peru, Philippines, Russia, South Korea, and Taiwan.

(iii) Other swap categories in the foreign exchange asset class not covered in paragraph (c)(4)(i) or (ii) of this section.

(5) *Other commodity asset class.* Swaps in the other commodity asset class shall be grouped into swap categories as follows:

(i) For swaps that have a physical commodity underlier listed in appendix D of this part, by the relevant physical commodity underlier; or

(ii) Other commodity swaps that are not covered in paragraph (c)(5)(i) of this section.

(d) *Methodologies to determine appropriate minimum block sizes and cap sizes.* In determining appropriate minimum block sizes and cap sizes for publicly reportable swap transactions, the Commission shall utilize the following statistical calculations—

(1) *67-percent notional amount calculation.* The Commission shall use the following procedure in determining the 67-percent notional amount calculation:

(i) For each relevant swap category, select all reliable SDR data for at least a one-year period;

(ii) Convert the notional amount to the same currency or units and use a trimmed data set;

(iii) Determine the sum of the notional amounts of swaps in the trimmed data set;

(iv) Multiply the sum of the notional amount by 67 percent;

(v) Rank order the observations by notional amount from least to greatest;

(vi) Calculate the cumulative sum of the observations until the cumulative sum is equal to or greater than the 67-percent notional amount calculated in paragraph (d)(1)(iv) of this section;

(vii) Select the notional amount associated with that observation;

(viii) Round the notional amount of that observation up to two significant digits, or if the notional amount associated with that observation is already significant to only two digits, increase that notional amount to the next highest rounding point of two significant digits; and

(ix) Set the appropriate minimum block size at the amount calculated in paragraph (d)(1)(viii) of this section.

(2) *75-percent notional amount calculation.* The Commission shall use the procedure set out in paragraph (d)(1) of this section with 75-percent in place of 67-percent.

(3) *50-percent notional amount calculation.* The Commission shall use the procedure set out in paragraph (d)(1) of this section with 50-percent in place of 67-percent.

(e) *No appropriate minimum block sizes for swaps in the equity asset class.* Publicly reportable swap transactions in the equity asset class shall not be treated as block trades or large notional off-facility swaps.

(f) *Initial appropriate minimum block sizes.* Prior to the Commission making a determination as described in paragraph (g)(1) of this section, the following initial appropriate minimum block sizes shall apply:

(1) *Prescribed appropriate minimum block sizes.* Except as otherwise provided in paragraph (f)(1) of this section, for any publicly reportable swap transaction that falls within the swap categories described in paragraph (b)(1), (b)(2), (b)(4)(i), (b)(5)(i), or (b)(5)(ii) of this section, the initial appropriate minimum block size for such publicly reportable swap transaction shall be the appropriate minimum block size that is in appendix F of this part.

(2) *Certain swaps in the foreign exchange and other commodity asset classes.* All swaps or instruments in the swap categories described in paragraphs (b)(4)(ii) and (b)(5)(iii) of this section shall be eligible to be treated as a block trade or large notional off-facility swap, as applicable.

(3) *Exception.* Publicly reportable swap transactions described in paragraph (b)(5)(i) of this section that are economically related to a futures contract in appendix B of this part shall not qualify to be treated as block trades or large notional off-facility swaps (as applicable), if such futures contract is not subject to a designated contract market's block trading rules.

(g) *Post-initial process to determine appropriate minimum block sizes*—(1) *Post-initial period.* The Commission shall establish, by swap categories, the appropriate minimum block sizes as described in paragraphs (g)(2) through (6) of this section. No less than once each calendar year thereafter, the Commission shall update the post-initial appropriate minimum block sizes.

(2) *Post-initial appropriate minimum block sizes for certain swaps.* The Commission shall determine post-initial appropriate minimum block sizes for the swap categories described in paragraphs (c)(1)(i), (c)(2)(i) through (xii), (c)(4)(i), and (c)(5)(i) of this section by utilizing a one-year window of swap transaction and pricing data corresponding to each relevant swap category reviewed no less than once each calendar year, and by applying the 67-percent notional amount calculation to such data. If the Commission is unable to determine an appropriate minimum block size for any swap category described in paragraph (c)(1)(i) of this section, the Commission shall assign a block size of zero to such swap category.

(3) *Certain swaps in the foreign exchange asset class.* The parties to a swap in the foreign exchange asset class described in paragraph (c)(4)(ii) of this section may elect to receive block treatment if the notional amount of either currency in the exchange is greater than the minimum block size for a swap in the foreign exchange asset class between the respective currency, in the same amount, and U.S. dollars described in paragraph (c)(4)(i) of this section.

(4) All swaps or instruments in the swap category described in paragraphs (c)(1)(ii), (c)(2)(xiii), (c)(4)(iii), and (c)(5)(ii) of this section shall have a block size of zero and be eligible to be treated as a block trade or large notional off-facility swap, as applicable.

(5) *Commission publication of post-initial appropriate minimum block sizes.* The Commission shall publish the appropriate minimum block sizes determined pursuant to paragraph (g)(1) of this section on its website at *http://www.cftc.gov.*

(6) *Effective date of post-initial appropriate minimum block sizes.* Unless otherwise indicated on the Commission's website, the post-initial appropriate minimum block sizes described in paragraph (g)(1) of this section shall be effective on the first day of the second month following the date of publication.

(h) *Required notification*—(1) *Block trades entered into on a trading system or platform, that is not an order book as defined in § 37.3(a)(3) of a swap execution facility, or pursuant to the rules of a swap execution facility or designated contract market.* (i) If the parties make such an election, the reporting counterparty shall notify the swap execution facility or designated contract market, as applicable, of the parties' election. The parties to a publicly reportable swap transaction may elect to have a publicly reportable swap transaction treated as a block trade if such swap:

(A) Is executed on the trading system or platform, that is not an order book as defined in § 37.3(a)(3) of this chapter of a swap execution facility, or pursuant to the rules of a swap execution facility or designated contract market; and

(B) That has a notional amount at or above the appropriate minimum block size.

(ii) The swap execution facility or designated contract market, as applicable, shall notify the swap data repository of such a block trade election when reporting the swap transaction and pricing data to such swap data repository in accordance with this part.

(iii) The swap execution facility or designated contract market, as applicable, shall not disclose swap transaction and pricing data relating to a block trade subject to the block trade election prior to the expiration of the applicable delay set forth in § 43.5(d).

(2) *Large notional off-facility swap election.* The parties to a publicly reportable swap transaction that is an off-facility swap and that has a notional amount at or above the appropriate minimum block size may elect to have the publicly reportable swap transaction treated as a large notional off-facility swap. If the parties make such an election, the reporting counterparty for such publicly reportable swap transaction shall notify the applicable swap data repository of the reporting counterparty's election when reporting the swap transaction and pricing data in accordance with this part.

(i) *Special provisions relating to appropriate minimum block sizes and cap sizes.* The following special rules shall apply to the determination of appropriate minimum block sizes and cap sizes—

(1) *Swaps with optionality.* The notional amount of a swap with optionality shall equal the notional amount of the component of the swap that does not include the option component.

(2) *Swaps with composite reference prices.* The parties to a swap transaction with composite reference prices may elect to apply the lowest appropriate minimum block size or cap size applicable to one component reference price's swap category of such publicly reportable swap transaction.

(3) *Notional amounts for physical commodity swaps.* Unless otherwise specified in this part, the notional amount for a physical commodity swap shall be based on the notional unit measure utilized in the related futures contract or the predominant notional unit measure used to determine notional quantities in the cash market for the relevant, underlying physical commodity.

(4) *Currency conversion.* Unless otherwise specified in this part, when the appropriate minimum block size or cap size for a publicly reportable swap transaction is denominated in a currency other than U.S. dollars, parties to a swap and registered entities may use a currency exchange rate that is widely published within the preceding two business days from the date of execution of the swap transaction in order to determine such qualification.

(5) *Successor currencies.* For currencies that succeed a super-major currency, the appropriate currency classification for such currency shall be based on the corresponding nominal gross domestic product classification (in U.S. dollars) as determined in the most recent World Bank, World Development Indicator at the time of succession. If the gross domestic product of the country or nation utilizing the successor currency is:

(i) Greater than $2 trillion, then the successor currency shall be included among the super-major currencies;

(ii) Greater than $500 billion but less than $2 trillion, then the successor currency shall be included among the major currencies; or

(iii) Less than $500 billion, then the successor currency shall be included among the non-major currencies.

(6) *Aggregation.* The aggregation of orders for different accounts in order to satisfy the minimum block trade size or the cap size requirement is permitted for publicly reportable swap transactions only if each of the following conditions is satisfied:

(i) The aggregation of orders is done by a person who:

(A) Is a commodity trading advisor registered pursuant to section 4n of the Act, or exempt from such registration under the Act, or a principal thereof, and who has discretionary trading authority or directs client accounts;

(B) Is an investment adviser who has discretionary trading authority or directs client accounts and satisfies the criteria of § 4.7(a)(2)(v) of this chapter; or

(C) Is a foreign person who performs a similar role or function as the persons described in paragraph (i)(6)(i)(A) or (B) of this section and is subject as such to foreign regulation;

(ii) The aggregated transaction is reported pursuant to this part and part 45 of this chapter as a block trade or large notional off-facility swap, as applicable, subject to the cap size thresholds;

(iii) The aggregated orders are executed as one swap transaction; and

(iv) Aggregation occurs on a designated contract market or swap execution facility if the swap is listed for trading by a designated contract market or swap execution facility.

(j) *Eligible block trade parties.* (1) Parties to a block trade shall be ''eligible contract participants,'' as defined in section 1a(18) of the Act and 17 CFR chapter I. However, a designated contract market may allow:

(i) A commodity trading advisor registered pursuant to section 4n of the Act, or exempt from registration under the Act, or a principal thereof, and who has discretionary trading authority or directs client accounts,

(ii) An investment adviser who has discretionary trading authority or directs client accounts and satisfies the criteria of § 4.7(a)(2)(v) of this chapter, or

(iii) A foreign person who performs a similar role or function as the persons described in paragraph (j)(1)(i) or (ii) of this section and is subject as such to foreign regulation, to transact block trades for customers who are not eligible contract participants.

(2) A person transacting a block trade on behalf of a customer shall receive prior written instruction or consent from the customer to do so. Such instruction or consent may be provided in the power of attorney or similar document by which the customer provides the person with discretionary trading authority or the authority to direct the trading in its account.

■ 7. Amend § 43.7 by revising paragraphs (a)(1) through (3) and adding paragraph (a)(4) to read as follows:

§ 43.7 Delegation of authority.

(a) * * *

(1) To publish the technical specification providing the form and manner for reporting and publicly disseminating the swap transaction and pricing data elements in appendix A of this part as described in §§ 43.3(d)(1) and 43.4(a);

(2) To determine cap sizes as described in § 43.4(g) and (h);

(3) To determine whether swaps fall within specific swap categories as described in § 43.6(b) and (c); and

(4) To determine and publish post-initial appropriate minimum block sizes as described in § 43.6(g).

* * * * *

■ 8. Revise appendix A to part 43 to read as follows:

Appendix A to Part 43—Swap Transaction and Pricing Data Elements

BILLING CODE 6351–01–P

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
	Category: Clearing						
1	Cleared	Indicator of whether the transaction has been cleared, or is intended to be cleared, by a central counterparty.	✓	✓	✓	✓	✓
	Category: Custom baskets						
25	Custom basket indicator	Indicator of whether the swap transaction is based on a custom basket.	✓	✓	✓	✓	✓
	Category: Events						
26	Action type	Type of action taken on the swap transaction or type of end-of-day reporting. Actions may include, but are not limited to, new, modify, correct, error, terminate, revive, transfer out, valuation, and collateral.	✓	✓	✓	✓	✓
27	Event type	Explanation or reason for the action being taken on the swap transaction. Events may include, but are not limited to, trade, novation, compression or risk reduction exercise, early termination, clearing, exercise, allocation, clearing and allocation, credit event, transfer.	✓	✓	✓	✓	✓
28	Amendment indicator	Indicator of whether the modification of the swap transaction reflects newly agreed upon term(s) from the previously negotiated terms.	✓	✓	✓	✓	✓
30	Event timestamp	Date and time of occurrence of the event as determined by the reporting counterparty or a service provider.	✓	✓	✓	✓	✓

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		In the case of a clearing event, date and time when the original swap is accepted by the derivative clearing organization (DCO) for clearing and recorded by the DCO's system should be reported in this data element. The time element is as specific as technologically practicable.					
	Category: Notional amounts and quantities						
31	Notional amount	For each leg of the transaction, where applicable: - for OTC derivative transactions negotiated in monetary amounts, amount specified in the contract. - for OTC derivative transactions negotiated in non-monetary amounts, refer to appendix to the swap data technical specification for converting notional amounts for non-monetary amounts. In addition: • For OTC derivative transactions with a notional amount schedule, the initial notional amount, agreed by the counterparties at the inception of the transaction, is reported in this data element. • For OTC foreign exchange options, in addition to this data element, the amounts are reported using the data elements Call amount and Put amount. • For amendments or lifecycle events, the resulting outstanding notional amount is reported; (steps in notional amount schedules are not considered to be amendments or lifecycle events); • Where the notional amount is not known when a new transaction is reported, the notional amount is updated as it becomes available.	✓	✓	✓	✓	✓
32	Notional currency	For each leg of the transaction, where applicable: currency in which the notional amount is denominated.	✓	✓	✓	✓	✓
33	Notional amount schedule - notional amount in effect on associated effective date	For each leg of the transaction, where applicable: for OTC derivative transactions negotiated in monetary amounts with a notional amount schedule: • Notional amount which becomes effective on the associated unadjusted effective date. The initial notional amount and associated unadjusted effective and end date are reported as	✓	✓	✓	✓	✓

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		the first values of the schedule. This data element is not applicable to OTC derivative transactions with notional amounts that are condition- or event-dependent. The currency of the varying notional amounts in the schedule is reported in Notional currency.					
34	Notional amount schedule - unadjusted effective date of the notional amount	For each leg of the transaction, where applicable: for OTC derivative transactions negotiated in monetary amounts with a notional amount schedule: • Unadjusted date on which the associated notional amount becomes effective This data element is not applicable to OTC derivative transactions with notional amounts that are condition- or event-dependent. The currency of the varying notional amounts in the schedule is reported in Notional currency.	✓	✓	✓	✓	✓
35	Notional amount schedule - unadjusted end date of the notional amount	For each leg of the transaction, where applicable: for OTC derivative transactions negotiated in monetary amounts with a notional amount schedule: •Unadjusted end date of the notional amount (not applicable if the unadjusted end date of a given schedule's period is back-to-back with the unadjusted effective date of the subsequent period). This data element is not applicable to OTC derivative transactions with notional amounts that are condition- or event-dependent. The currency of the varying notional amounts in the schedule is reported in Notional currency.	✓	✓	✓	✓	✓
36	Call amount	For foreign exchange options, the monetary amount that the option gives the right to buy.	✓	✓	✓	✓	✓
37	Call currency	For foreign exchange options, the currency in which the Call amount is denominated.	✓	✓	✓	✓	✓
38	Put amount	For foreign exchange options, the monetary amount that the option gives the right to sell.	✓	✓	✓	✓	✓
39	Put currency	For foreign exchange options, the currency in which the Put amount is denominated.	✓	✓	✓	✓	✓
40	Notional quantity	For each leg of the swap transaction, where applicable, for swap transactions negotiated in non-monetary amounts with fixed notional quantity for each schedule period (i.e., 50 barrels per month).					✓

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		The frequency is reported in Quantity frequency and the unit of measure is reported in Quantity unit of measure.					
41	Quantity frequency	The rate at which the quantity is quoted on the swap transaction. e.g., hourly, daily, weekly, monthly.					✓
42	Quantity frequency multiplier	The number of time units for the Quantity frequency					✓
43	Quantity unit of measure	For each leg of the transaction, where applicable: unit of measure in which the Total notional quantity and Notional quantity are expressed.				✓	✓
44	Total notional quantity	For each leg of the transaction, where applicable: aggregate Notional quantity of the underlying asset for the term of the transaction. Where the Total notional quantity is not known when a new transaction is reported, the Total notional quantity is updated as it becomes available.				✓	✓
	Category: Packages						
45	Package indicator	Indicator of whether the swap transaction is part of a package transaction.	✓	✓	✓	✓	✓
47	Package transaction price	Traded price of the entire package in which the reported derivative transaction is a component. This data element is not applicable if • no package is involved, or • package transaction spread is used Prices and related data elements of the transactions (Price currency, Price notation, Price unit of measure) that represent individual components of the package are reported when available. The Package transaction price may not be known when a new transaction is reported but may be updated later.	✓	✓	✓	✓	✓
48	Package transaction price currency	Currency in which the Package transaction price is denominated. This data element is not applicable if: • no package is involved, or • Package transaction spread is used, or • Package transaction price notation = 3	✓	✓	✓	✓	✓
49	Package transaction price notation	Manner in which the Package transaction price is expressed.	✓	✓	✓	✓	✓

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		This data element is not applicable if • no package is involved, or • Package transaction spread is used					
50	Package transaction spread	Traded price of the entire package in which the reported derivative transaction is a component of a package transaction. Package transaction price when the price of the package is expressed as a spread, difference between two reference prices. This data element is not applicable if • no package is involved, or • Package transaction price is used Spread and related data elements of the transactions (spread currency, Spread notation) that represent individual components of the package are reported when available. Package transaction spread may not be known when a new transaction is reported but may be updated later.	✓	✓	✓	✓	✓
51	Package transaction spread currency	Currency in which the Package transaction spread is denominated. This data element is not applicable if • no package is involved, or • Package transaction price is used, or • Package transaction spread notation = 3, or = 4	✓	✓	✓	✓	✓
52	Package transaction spread notation	Manner in which the Package transaction spread is expressed. This data element is not applicable if • no package is involved, or • Package transaction price is used.	✓	✓	✓	✓	✓
	Category: Payments						
53	Day count convention	For each leg of the transaction, where applicable: day count convention (often also referred to as day count fraction or day count basis or day count method) that determines how interest payments are calculated. It is used to compute the year fraction of the calculation period, and indicates the number of days in the calculation period divided by the number of days in the year.	✓	✓	✓	✓	✓

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
55	Floating rate reset frequency period	For each floating leg of the swap transaction, where applicable, time unit associated with the frequency of resets, e.g., day, week, month, year or term of the stream.	✓	✓	✓	✓	✓
56	Floating rate reset frequency period multiplier	For each floating leg of the swap transaction, where applicable, number of time units (as expressed by the Floating rate reset frequency period) that determines the frequency at which periodic payment dates for reset occur. For example, a transaction with reset payments occurring every two months is represented with a Floating rate reset frequency period of "MNTH" (monthly) and a Floating rate reset frequency period multiplier of 2. This data element is not applicable if the Floating rate reset frequency period is "ADHO." If Floating rate reset frequency period is "TERM," then the Floating rate reset frequency period multiplier is 1. If the reset frequency period is intraday, then the Floating rate reset frequency period is "DAIL" and the Floating rate reset frequency period multiplier is 0.	✓	✓	✓	✓	✓
57	Other payment type	Type of Other payment amount. Option premium payment is not included as a payment type as premiums for option are reported using the option premium dedicated data element.	✓	✓	✓	✓	✓
58	Other payment amount	Payment amounts with corresponding payment types to accommodate requirements of transaction descriptions from different asset classes.	✓	✓	✓	✓	✓
59	Other payment currency	Currency in which Other payment amount is denominated.	✓	✓	✓	✓	✓
63	Payment frequency period	For each leg of the transaction, where applicable: time unit associated with the frequency of payments, e.g., day, week, month, year or term of the stream.	✓	✓		✓	✓
64	Payment frequency period multiplier	For each leg of the transaction, where applicable: number of time units (as expressed by the Payment frequency period) that determines the frequency at which periodic payment dates occur. For example, a transaction with payments occurring every two months is represented with a Payment frequency period of "MNTH" (monthly) and a Payment frequency period multiplier of 2. This data element is not applicable if the Payment frequency period is "ADHO." If Payment frequency	✓	✓		✓	✓

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		period is "TERM," then the Payment frequency period multiplier is 1. If the Payment frequency is intraday, then the Payment frequency period is "DAIL" and the Payment frequency multiplier is 0.					
	Category: Prices						
65	Exchange rate	Exchange rate between the two different currencies specified in the OTC derivative transaction agreed by the counterparties at the inception of the transaction, expressed as the rate of exchange from converting the unit currency into the quoted currency. In the example 0.9426 USD/EUR, USD is the unit currency and EUR is the quoted currency; USD 1 = EUR 0.9426.			✓		
66	Exchange rate basis	Currency pair and order in which the exchange rate is denominated, expressed as unit currency/quoted currency. In the example 0.9426 USD/EUR, USD is the unit currency and EUR is the quoted currency, USD 1 = EUR 0.9426.			✓		
67	Fixed rate	For each leg of the transaction, where applicable: for OTC derivative transactions with periodic payments, per annum rate of the fixed leg(s).	✓	✓			✓
68	Post-priced swap indicator	Indicator of whether the swap transaction satisfies the definition of "post-priced swap" in § 43.2(a) of the Commission's regulations.	✓	✓	✓	✓	✓
69	Price	Price specified in the OTC derivative transaction. It does not include fees, taxes or commissions. For commodity fixed/float swaps and similar products with periodic payments, this data element refers to the fixed price of the fixed leg(s). For commodity and equity forwards and similar products, this data element refers to the forward price of the underlying or reference asset. For equity swaps, portfolios swaps, and similar products, this data element refers to the initial price of the underlying or reference asset. For contracts for difference and similar products, this data element refers to the initial price of the underlier. This data element is not applicable to: • Interest rate swaps and forward rate agreements, as it is understood that the information included in the data elements Fixed rate and Spread may be				✓	✓

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		interpreted as the price of the transaction. • Interest rate options and interest rate swaptions as it is understood that the information included in the data elements Strike price and Option premium may be interpreted as the price of the transaction. • Commodity basis swaps and the floating leg of commodity fixed/float swaps as it is understood that the information included in the data element Spread may be interpreted as the price of the transaction. • Foreign exchange swaps, forwards and options, as it is understood that the information included in the data elements Exchange rate, Strike price, and Option premium may be interpreted as the price of the transaction. • Equity options as it is understood that the information included in the data elements Strike price and Option premium may be interpreted as the price of the transaction. • Credit default swaps and credit total return swaps, as it is understood that the information included in the data elements Fixed rate, Spread and Upfront payment (Other payment type: Upfront payment) may be interpreted as the price of the transaction. • Commodity options, as it is understood that the information included in the data elements Strike price and Option premium may be interpreted as the price of the transaction. Where the price is not known when a new transaction is reported, the price is updated as it becomes available. For transactions that are part of a package, this data element contains the price of the component transaction where applicable.					
70	Price currency	Currency in which the price is denominated. Price currency is only applicable if Price notation = 1.				✓	✓
71	Price notation	Manner in which the price is expressed.				✓	✓
72	Price unit of measure	Unit of measure in which the price is expressed.				✓	✓
73	Spread	For each leg of the transaction, where applicable: for OTC derivative transactions with periodic payments (e.g., interest rate fixed/float swaps, interest rate basis swaps, commodity swaps), • spread on the individual floating leg(s) index	✓	✓		✓	✓

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		reference price, in the case where there is a spread on a floating leg(s). For example, USD-LIBOR-BBA plus .03 or WTI minus USD 14.65; or • difference between the reference prices of the two floating leg indexes. For example, the 9.00 USD "Spread" for a WCS vs. WTI basis swap where WCS is priced at 43 USD and WTI is priced at 52 USD.					
74	Spread currency	For each leg of the transaction, where applicable: currency in which the spread is denominated. This data element is only applicable if Spread notation = 1.	✓	✓		✓	✓
75	Spread notation	For each leg of the transaction, where applicable: manner in which the spread is expressed.	✓	✓		✓	✓
76	Strike price	• For options other than FX options, swaptions and similar products, price at which the owner of an option can buy or sell the underlying asset of the option. • For foreign exchange options, exchange rate at which the option can be exercised, expressed as the rate of exchange from converting the unit currency into the quoted currency. In the example 0.9426 USD/EUR, USD is the unit currency and EUR is the quoted currency; USD 1 = EUR 0.9426. Where the strike price is not known when a new transaction is reported, the strike price is updated as it becomes available. • For volatility and variance swaps and similar products, the volatility strike price is reported in this data element.	✓	✓	✓	✓	✓
77	Strike price currency/currency pair	For equity options, commodity options, and similar products, currency in which the strike price is denominated. For foreign exchange options: Currency pair and order in which the strike price is expressed. It is expressed as unit currency/quoted currency. In the example 0.9426 USD/EUR, USD is the unit currency and EUR is the quoted currency, USD 1 = EUR 0.9426 Strike price currency/currency pair is only applicable if Strike price notation = 1.	✓	✓	✓	✓	✓
78	Strike price notation	Manner in which the strike price is expressed.	✓	✓	✓	✓	✓

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
79	Option premium amount	For options and swaptions of all asset classes, monetary amount paid by the option buyer. This data element is not applicable if the instrument is not an option or does not embed any optionality.	✓	✓	✓	✓	✓
80	Option premium currency	For options and swaptions of all asset classes, currency in which the option premium amount is denominated. This data element is not applicable if the instrument is not an option or does not embed any optionality.	✓	✓	✓	✓	✓
82	First exercise date	First unadjusted date during the exercise period in which an option can be exercised. For European-style options, this date is same as the Expiration date. For American-style options, the first possible exercise date is the unadjusted date included in the Execution timestamp. For knock-in options, where the first exercise date is not known when a new transaction is reported, the first exercise date is updated as it becomes available. This data element is not applicable if the instrument is not an option or does not embed any optionality.	✓	✓	✓	✓	✓
	Category: Product						
85	Index factor	The index version factor or percent, expressed as a decimal value, that multiplied by the Notional amount yields the notional amount covered by the seller of protection for credit default swap.	✓				
86	Embedded option type	Type of option or optional provision embedded in a contract.	✓	✓	✓	✓	✓
87	Unique Product Identifier UPI	A unique set of characters that represents a particular OTC derivative. The Commission will designate a UPI pursuant to § 45.7.	✓	✓	✓	✓	✓
	Category: Settlement						
89	Settlement currency	Currency for the cash settlement of the transaction when applicable. For multi-currency products that do not net, the settlement currency of each leg. This data element is not applicable for physically settled products (e.g., physically settled swaptions).	✓	✓	✓	✓	✓
90	Settlement location	Place of settlement of the transaction as stipulated in the contract. This data element is only applicable for transactions that involve an offshore currency (i.e. a currency which is not included in the ISO 4217 currency list, for example CNH).	✓	✓	✓	✓	✓

#	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
	Category: Transaction related						
92	Non-standardized term indicator	Indicator of whether the swap transaction has one or more additional term(s) or provision(s), other than those disseminated to the public pursuant to part 43, that materially affect(s) the price of the swap transaction.	✓	✓	✓	✓	✓
93	Block trade election indicator	Indicator of whether an election has been made to report the swap transaction as a block transaction by the reporting counterparty or as calculated either by the swap data repository acting on behalf of the reporting counterparty or by using a third party.	✓	✓	✓	✓	✓
94	Effective date	Unadjusted date at which obligations under the OTC derivative transaction come into effect, as included in the confirmation.	✓	✓	✓	✓	✓
95	Expiration date	Unadjusted date at which obligations under the OTC derivative transaction stop being effective, as included in the confirmation. Early termination does not affect this data element.	✓	✓	✓	✓	✓
96	Execution timestamp	Date and time a transaction was originally executed, resulting in the generation of a new UTI. This data element remains unchanged throughout the life of the UTI.	✓	✓	✓	✓	✓
98	Platform identifier	Identifier of the trading facility (e.g., exchange, multilateral trading facility, swap execution facility) on which the transaction was executed.	✓	✓	✓	✓	✓
99	Prime brokerage transaction indicator	Indicator of whether the swap transaction satisfies the definition of "mirror swap" or "trigger swap" in § 43.2(a) of the Commission's regulations.	✓	✓	✓	✓	✓

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■ 9. Revise appendix C to part 43 to read as follows:

Appendix C to Part 43—Time Delays for Public Dissemination

The tables below provide clarification of the time delays for public dissemination set forth in § 43.5. The first row of each table describes the asset classes to which each chart applies. The column entitled ''Time Delay for Public Dissemination'' indicates the precise length of time delay, starting upon execution, for the public dissemination of such swap transaction and pricing data by a swap data repository.

Table C1. Block Trades Executed on or Pursuant to the Rules of a Swap Execution Facility or Designated Contract Market (Illustrating § 43.5(d))

All Asset Classes
Time delay for public dissemination
15 minutes.

Table C2. Large Notional Off-Facility Swaps Subject to the Mandatory Clearing Requirement With at Least One Swap Dealer or Major Swap Participant Counterparty (Illustrating § 43.5(e)(2))

Table C2 excludes off-facility swaps that are excepted from the mandatory clearing requirement pursuant to Section 2(h)(7) of the Act and Commission regulations and those off-facility swaps that are required to be cleared under Section 2(h)(2) of the Act and Commission regulations but are not cleared.

All Asset Classes
Time delay for public dissemination
15 minutes.

Table C3. Large Notional Off-Facility Swaps Subject to the Mandatory Clearing Requirement in Which Neither Counterparty Is a Swap Dealer or Major Swap Participant (Illustrating § 43.5(e)(3))

Table C3 excludes off-facility swaps that are excepted from the mandatory clearing requirement pursuant to Section 2(h)(7) of the Act and Commission regulations and those swaps that are required to be cleared under Section 2(h)(2) of the Act and Commission regulations but are not cleared.

All Asset Classes
Time delay for public dissemination
1 hour.

Table C4. Large Notional Off-Facility Swaps Not Subject to the Mandatory Clearing Requirement With at Least One Swap Dealer or Major Swap Participant Counterparty (Illustrating § 43.5(f))

Table C4 includes large notional off-facility swaps that are not subject to the mandatory clearing requirement or are exempt from such mandatory clearing requirement pursuant to Section 2(h)(7) of the Act and Commission regulations.

INTEREST RATES, CREDIT, FOREIGN EXCHANGE, EQUITY ASSET CLASSES

Time delay for public dissemination
30 minutes.

Table C5. Large Notional Off-Facility Swaps Not Subject to the Mandatory Clearing Requirement With at Least One Swap Dealer or Major Swap Participant Counterparty (Illustrating § 43.5(g))

Table C5 includes large notional off-facility swaps that are not subject to the mandatory clearing requirement or are excepted from such mandatory clearing requirement pursuant to Section 2(h)(7) of the Act and Commission regulations.

OTHER COMMODITY ASSET CLASS

Time delay for public dissemination
2 hours.

Table C6. Large Notional Off-Facility Swaps Not Subject to the Mandatory Clearing Requirement in Which Neither Counterparty Is a Swap Dealer or Major Swap Participant (Illustrating § 43.5(h))

Table C6 includes large notional off-facility swaps that are not subject to the mandatory clearing requirement or are exempt from such mandatory clearing requirement pursuant to Section 2(h)(7) of the Act and Commission regulations.

ALL ASSET CLASSES

Time delay for public dissemination
24 business hours.

■ 10. Revise appendix D to part 43 to read as follows:

Appendix D to Part 43—Other Commodity Swap Categories

Commodity: Metals
- Aluminum
- Copper
- Gold
- Lead
- Nickel
- Silver
- Virtual
- Zinc

Commodity: Energy
- Electricity
- Fuel Oil
- Gasoline—RBOB
- Heating Oil
- Natural Gas
- Oil

Commodity: Agricultural
- Corn
- Soybean
- Coffee
- Wheat
- Cocoa
- Sugar
- Cotton
- Soymeal
- Soybean oil
- Cattle
- Hogs

■ 11. Revise appendix E to part 43 to read as follows:

Appendix E to Part 43—Other Commodity Geographic Identification for Public Dissemination Pursuant to § 43.4(c)(4)(iii)

Swap data repositories are required by § 43.4(c)(4)(iii) to publicly disseminate any specific delivery point or pricing point associated with publicly reportable swap transactions in the ''other commodity'' asset class pursuant to Tables E1 and E2 in this appendix. If the underlying asset of a publicly reportable swap transaction described in § 43.4(c)(4)(iii) has a delivery or pricing point that is located in the United States, such information shall be publicly disseminated pursuant to the regions described in Table E1 in this appendix. If the underlying asset of a publicly reportable swap transaction described in § 43.4(c)(4)(iii) has a delivery or pricing point that is not located in the United States, such information shall be publicly disseminated pursuant to the countries or sub-regions, or if no country or sub-region, by the other commodity region, described in Table E2 in this appendix.

Table E1. U.S. Delivery or Pricing Points

Other Commodity Group
- Region

Natural Gas and Related Products
- Midwest
- Northeast
- Gulf
- Southeast
- Western
- Other—U.S.

Petroleum and Products
- New England (PADD 1A)
- Central Atlantic (PADD 1B)
- Lower Atlantic (PADD 1C)
- Midwest (PADD 2)
- Gulf Coast (PADD 3)
- Rocky Mountains (PADD 4)
- West Coast (PADD 5)
- Other—U.S.

Electricity and Sources
- Florida Reliability Coordinating Council (FRCC)
- Midwest Reliability Organization (MRO)
- Northeast Power Coordinating Council (NPCC)
- Reliability First Corporation (RFC)
- SERC Reliability Corporation (SERC)
- Southwest Power Pool, RE (SPP)
- Texas Regional Entity (TRE)
- Western Electricity Coordinating Council (WECC)
- Other—U.S.

All Remaining Other Commodities (Publicly disseminate the region. If pricing or delivery point is not region-specific, indicate ''U.S.'')
- Region 1—(Includes Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)
- Region 2—(Includes New Jersey, New York)
- Region 3—(Includes Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia)
- Region 4—(Includes Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)
- Region 5—(Includes Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)
- Region 6—(Includes Arkansas, Louisiana, New Mexico, Oklahoma, Texas)
- Region 7—(Includes Iowa, Kansas, Missouri, Nebraska)
- Region 8—(Includes Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)
- Region 9—(Includes Arizona, California, Hawaii, Nevada)
- Region 10—(Includes Alaska, Idaho, Oregon, Washington)

Table E2. Non-U.S. Delivery or Pricing Points

Other Commodity Regions
- Country or Sub-Region

North America (Other than U.S.)
- Canada
- Mexico

Central America

South America
- Brazil
- Other South America

Europe
- Western Europe
- Northern Europe
- Southern Europe
- Eastern Europe (excluding Russia)

Russia

Africa
- Northern Africa
- Western Africa
- Eastern Africa
- Central Africa
- Southern Africa

Asia-Pacific
- Northern Asia (excluding Russia)
- Central Asia
- Eastern Asia
- Western Asia
- Southeast Asia
- Australia/New Zealand/Pacific Islands

Issued in Washington, DC, on September 24, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

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

Appendices to Real-Time Public Reporting Requirements—Commission Voting Summary, Chairman's Statement, and Commissioners' Statements

Appendix 1—Commission Voting Summary

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

Appendix 2—Statement of Chairman Heath P. Tarbert

I am pleased to support today's final swap data reporting rules under Parts 43, 45, and 49 of the CFTC's regulations, which are foundational to effective oversight of the derivatives markets. As I noted when these rules were proposed in February, ''[d]ata is the lifeblood of our markets.'' [1] Little did I know just how timely that statement would prove to be.

COVID–19 Crisis and Beyond

In the month following our data rule proposals, historic volatility caused by the coronavirus pandemic rocketed through our derivatives markets, affecting nearly every asset class.[2] I said at the time that while our margin rules acted as ''shock absorbers'' to cushion the impact of volatility, the Commission was also considering data rules that would expand our insight into potential systemic risk. In particular, the data rules ''would for the first time require the reporting of margin and collateral data for uncleared swaps . . . significantly strengthen[ing] the CFTC's ability to monitor for systemic risk'' in those markets.[3] Today we complete those rules, shoring up the data-based reporting systems that can help us identify—and quickly respond to—emerging systemic threats.

But data reporting is not just about mitigating systemic risk. Vibrant derivatives markets must be open and free, meaning transparency is a critical component of any reporting system. Price discovery requires robust public reporting that supplies market participants with the information they need to price trades, hedge risk, and supply liquidity. Today we double down on transparency, ensuring that public reporting of swap transactions is even more accurate and timely. In particular, our final rules adjust certain aspects of the Part 43 proposal's block-trade [4] reporting rules to improve transparency in our markets. These changes have been carefully considered to enhance clarity, one of the CFTC's core values.[5]

Promoting clarity in our markets also demands that we, as an agency, have clear goals in mind. Today's final swap data reporting rules reflect a hard look at the data we need and the data we collect, building on insights gleaned from our own analysis as well as feedback from market participants. The key point is that more data does not necessarily mean better information. Instead, the core of an effective data reporting system is focus.

As Aesop reminds us, ''Beware lest you lose the substance by grasping at the shadow.'' [6] Today's final swap data reporting rules place substance first, carefully tailoring our requirements to reach the data that really matters, while removing unnecessary burdens on our market participants. As Bill Gates once remarked, ''My success, part of it certainly, is that I have focused in on a few things.'' [7] So too are the final swap data reporting rules limited in number. The Part 45 Technical Specification, for example, streamlines hundreds of different data fields currently required by swap data repositories into 128 that truly advance the CFTC's regulatory goals. This focus will simplify the data reporting process without undermining its effectiveness, thus fulfilling the CFTC's strategic goal of enhancing the regulatory experience for market participants at home and abroad.[8]

That last point is worth highlighting: Our final swap data reporting rules account for market participants both within and outside the United States. A diversity of market participants, some of whom reside beyond our borders and are accountable to foreign regulatory regimes, contribute to vibrant derivatives markets. But before today, inconsistent international rules meant some swap dealers were left to navigate what I have called ''a byzantine maze of disparate data fields and reporting timetables'' for the very same swap.[9] While perfect alignment may not be possible or even desirable, the final rules significantly harmonize reportable data fields, compliance timetables, and implementation requirements to advance our global markets. Doing so brings us closer to realizing the CFTC's vision of being the global standard for sound derivatives regulation.[10]

Overview of the Swap Data Reporting Rules

It is important to understand the specific function of each of the three swap data reporting rules, which together form the CFTC's reporting system. First, Part 43 relates to the *real-time public reporting* of swap pricing and transaction data, which appears on the ''public tape.'' Swap dealers and other reporting parties supply Part 43 data to swap data repositories (SDRs), which then make the data public. Part 43 includes provisions relating to the treatment and public reporting of large notional trades (blocks), as well as the ''capping'' of swap trades that reach a certain notional amount.

Second, Part 45 relates to the *regulatory reporting* of swap data to the CFTC by swap dealers and other covered entities. Part 45 data provides the CFTC with insight into the swaps markets to assist with regulatory oversight. A Technical Specification available on the CFTC's website [11] includes data elements that are unique to CFTC reporting, as well as certain ''Critical Data Elements,'' which reflect longstanding efforts by the CFTC and other regulators to develop global guidance for swap data reporting.[12]

Finally, Part 49 requires *data verification* to help ensure that the data reported to SDRs and the CFTC in Parts 43 and 45 is accurate. The final Part 49 rule will provide enhanced and streamlined oversight of SDRs and data reporting generally. In particular, Part 49 will now require SDRs to have a mechanism by which reporting counterparties can access and verify the data for their open swaps held at the SDR. A reporting counterparty must compare the SDR data with the counterparty's own books and records, correcting any data errors with the SDR.

Systemic Risk Mitigation

Today's final swap data reporting rules are designed to fulfill our agency's first Strategic Goal: To strengthen the resilience and integrity of our derivatives markets while fostering the vibrancy.[13] The Part 45 rule requires swap dealers to report uncleared margin data for the first time, enhancing the CFTC's ability to ''to monitor systemic risk accurately and to act quickly if cracks begin to appear in the system.'' [14] As Justice Brandeis famously wrote in advocating for transparency in organizations, ''sunlight is the best disinfectant.'' [15] So too it is for financial markets: The better visibility the CFTC has into the uncleared swaps markets, the more effectively it can address what until

[1] Statement of Chairman Heath P. Tarbert in Support of Proposed Rules on Swap Data Reporting (Feb. 20, 2020), *https://www.cftc.gov/PressRoom/SpeechesTestimony/tabertstatement022020* (hereinafter, Tarbert, Proposal Statement).

[2] See Heath P. Tarbert, Volatility Ain't What it Used to Be, Wall Street Journal (Mar. 23, 2020), *https://www.wsj.com/articles/volatility-aint-what-it-used-to-be-11585004897?mod=searchresults&page=1&pos=1* (hereinafter Tarbert, Volatility).

[3] *Id.*

[4] The final rule's definition of ''block trade'' is provided in regulation 43.2.

[5] See CFTC Core Values, *https://www.cftc.gov/About/Mission/index.htm.*

[6] Aesop, ''The Dog and the Shadow,'' The Harvard Classics, *https://www.bartleby.com/17/1/3.html.*

[7] ABC News, One-on-One with Bills Gates (Feb. 21, 2008), *https://abcnews.go.com/WNT/CEOProfiles/story?id=506354&page=1.*

[8] See CFTC Strategic Plan 2020–2024, at 4 (discussing Strategic Goal 3), *https://www.cftc.gov/media/3871/CFTC2020_2024StrategicPlan/download.*

[9] Tarbert, Proposal Statement, *supra* note 1.

[10] See CFTC Vision Statement, available at *https://www.cftc.gov/About/AboutTheCommission#:~:text=CFTC%20Vision%20Statement,standard%20for%20sound%20derivatives%20regulation.*

[11] See CFTC, Technical Specification Document, *https://www.cftc.gov/media/3496/DMO_Part43_45TechnicalSpecification022020/download.*

[12] Since November 2014, the CFTC and regulators in other jurisdictions have collaborated through the Committee on Payments and Market Infrastructures (''CPMI'') and the International Organization of Securities Commissions (''IOSCO'') working group for the harmonization of key over-the-counter (''OTC'') derivatives data elements (''Harmonisation Group''). The Harmonisation Group developed global guidance for key OTC derivatives data elements, including the Unique Transaction Identifier, the Unique Product Identifier, and critical data elements other than UTI and UPI.

[13] See CFTC Strategic Plan, *supra* note 7, at 5.

[14] Tarbert, Proposal Statement, *supra* note 1, note 2.

[15] Hon. Louis D. Brandeis, Other People's Money 62 (National Home Library Foundation ed. 1933).

now has been ''a black box of potential systemic risk.'' [16]

Doubling Down on Transparency

Justice Brandeis's words also resonate across other areas of the final swap data reporting rules. The final swap data reporting rules enhance transparency to the public of pricing and trade data.

1. Blocks and Caps

A critical aspect of the final Part 43 rule is the issue of block trades and dissemination delays. When the Part 43 proposal was issued, I noted that ''[o]ne of the issues we are looking at closely is whether a 48-hour delay for block trade reporting is appropriate.'' [17] I encouraged market participants to ''provide comment letters and feedback concerning the treatment of block delays.'' [18] Market participants responded with extensive feedback, much of which advocated for shorter delays in making block trade data publicly available. I agree with this view, and support a key change in the final Part 43 rule. Rather than apply the proposal's uniform 48-hour dissemination delay on block trade reporting, the final rule returns to bespoke public reporting timeframes that consider liquidity, market depth, and other factors unique to specific categories of swaps. The result is shorter reporting delays for most block trades.

The final Part 43 rule also changes the threshold for block trade treatment, raising the amount needed from a 50% to 67% notional calculation. It also increases the threshold for capping large notional trades from 67% to 75%. These changes will enhance market transparency by applying a stricter standard for blocks and caps, thereby enhancing public access to swap trading data. At the same time, the rule reflects serious consideration of how these thresholds are calculated, particularly for block trades. In excluding certain option trades and CDS trades around the roll months from the 67% notional threshold for blocks, the final rule helps ensure that dissemination delays have their desired effect of preventing front-running and similar disruptive activity.

2. Post-Priced and Prime-Broker Swaps

The swaps market is highly complex, reflecting a nearly endless array of transaction structures. Part 43 takes these differences into account in setting forth the public reporting requirements for price and transaction data. For example, post-priced swaps are valued after an event occurs, such as the ringing of the daily closing bell in an equity market. As it stands today, post-priced swaps often appear on the public tape with no corresponding pricing data—rendering the data largely unusable. The final Part 43 rule addresses this data quality issue and improves price discovery by requiring post-priced swaps to appear on the public tape after pricing occurs.

The final Part 43 rule also resolves an issue involving the reporting of prime-brokerage swaps. The current rule requires that offsetting swaps executed with prime brokers—in addition to the initial swap reflecting the actual terms of trade—be reported on the public tape. This duplicative reporting obfuscates public pricing data by including prime-broker costs and fees that are unrelated to the terms of the swap. As I explained when the rule was proposed, cluttering the public tape with duplicative or confusing data can impair price discovery.[19] The final Part 43 rule addresses this issue by requiring that only the initial ''trigger'' swap be reported, thereby improving public price information.

3. Verification and Error Correction

Data is only as useful as it is accurate. The final Part 49 rule establishes an efficient framework for verifying SDR data accuracy and correcting errors, which serves both regulatory oversight and public price discovery purposes.

Improving the Regulatory Experience

Today's final swap data reporting rules improve the regulatory experience for market participants at home and abroad in several key ways, advancing the CFTC's third Strategic Goal.[20] Key examples are set forth below.

1. Streamlined Data Fields

As I stated at the proposal stage, ''[s]implicity should be a central goal of our swap data reporting rules.'' [21] This sentiment still holds true, and a key improvement to our final Part 45 Technical Specification is the streamlining of reportable data fields. The current system has proven unworkable, leaving swap dealers and other market participants to wander alone in the digital wilderness, with little guidance about the data elements that the CFTC actually needs. This uncertainty has led to ''a proliferation of reportable data fields'' required by SDRs that ''exceed what market participants can readily provide and what the [CFTC] can realistically use.'' [22]

We resolve this situation today by replacing the sprawling mass of disparate SDR fields—sometimes running into the hundreds or thousands—with 128 that are important to the CFTC's oversight of the swaps markets. These fields reflect an honest look at the data we are collecting and the data we can use, ensuring that our market participants are not burdened with swap reporting obligations that do not advance our statutory mandates.

2. Regulatory Harmonization

The swaps markets are integrated and global; our data rules must follow suit.[23] To that end, the final Part 45 rule takes a sensible approach to aligning the CFTC's data reporting fields with the standards set by international efforts. Swap data reporting is an area where harmonization simply makes sense. The costs of failing to harmonize are high, as swap dealers and other reporting parties must provide entirely different data sets to multiple regulators for the very same swap.[24] A better approach is to conform swap data reporting requirements where possible.

Data harmonization is not just good for market participants: It also advances the CFTC's vision of being the global standard for sound derivatives regulation.[25] The CFTC has a long history of leading international harmonization efforts in data reporting, including by serving as a co-chair of the Committee on Payments and Infrastructures and the International Organization of Securities Commissioners (CPMI–IOSCO) working group on critical data elements (CDE) in swap reporting.[26] I am pleased to support a final Part 45 rule that advances these efforts by incorporating CDE fields that serve our regulatory goals.

In addition to certain CDE fields, the final Part 45 rule also adopts other important features of the CPMI–IOSCO Technical Guidance, such as the use of a Unique Transaction Identifier (UTI) system in place of today's Unique Swap Identifier (USI) system. This change will bring the CFTC's swap data reporting system in closer alignment with those of other regulators, leading to better data sharing and lower burdens on market participants.

Last, the costs of altering data reporting systems makes implementation timeframes especially important. To that effect, the CFTC has worked with ESMA to bring our jurisdictions' swap data reporting compliance timetables into closer harmony, easing transitions to new reporting systems.

3. Verification and Error Correction

The final Part 49 rule has changed since the proposal stage to facilitate easier verification of SDR data by swap dealers. Based on feedback we received, the final rule now requires SDRs to provide a mechanism for swap dealers and other reporting counterparties to access the SDR's data for their open swaps to verify accuracy and address errors. This approach replaces a message-based system for error identification and correction, which would have produced significant implementation costs without improving error remediation. The final rule achieves the goal—data accuracy—with fewer costs and burdens.[27]

4. Relief for End Users

I have long said that if our derivatives markets are not working for agriculture, then

[16] Tarbert, Proposal Statement, *supra* note 1.

[17] Tarbert, Proposal Statement, *supra* note 1, note 14.

[18] *Id.*

[19] Tarbert, Proposal Statement, *supra* note 1.

[20] CFTC Strategic Plan, *supra* note 7, at 7.

[21] Tarbert, Proposal Statement, supra note 1.

[22] *Id.*

[23] *See* Tarbert, Proposal Statement, *supra* note 1.

[24] *See id.*

[25] *See* CFTC Vision Statement, *https://www.cftc.gov/About/AboutTheCommission#:~:text=CFTC%20Vision%20Statement,standard%20for%20sound%20derivatives%20regulation.*

[26] The CFTC also co-chaired the Financial Stability Board's working group on UTI and UPI governance.

[27] Limiting error correction to open swaps—versus all swaps that a reporting counterparty may have entered into at any point in time—is also a sensible approach to addressing risk in the markets. The final Part 49 rule limits error correction to errors discovered prior to the expiration of the five-year recordkeeping period in regulation 45.2, ensuring that market participants are not tasked with addressing old or closed transactions that pose no active risk.

they are not working at all.[28] While swaps are often the purview of large financial institutions, they also provide critical risk-management functions for end users like farmers, ranchers, and manufacturers. Our final Part 45 rule removes the requirement that end users report swap valuation data, and it provides them with a longer ''T+2'' timeframe to report the data that is required. I am pleased to support these changes to end-user reporting, which will help ensure that our derivatives markets work for all Americans, advancing another CFTC strategic goal.[29]

Conclusion

The derivatives markets run on data. They will be even more reliant on it in the future, as digitization continues to sweep through society and industry. I am pleased to support the final rules under Parts 43, 45, and 49, which will help ensure that the CFTC's swap data reporting systems are effective, efficient, and built to last.

Appendix 3—Supporting Statement of Commissioner Brian Quintenz

The Commodity Exchange Act (CEA) specifically directs the Commission to ensure that real-time public reporting requirements for swap transactions (i) do not identify the participants; (ii) specify the criteria for what constitutes a block trade and the appropriate time delay for reporting such block trades, and (iii) take into account whether public disclosure will materially reduce market liquidity.[1] The Commission has long recognized the intrinsic tension between the policy goals of enhanced transparency versus market liquidity. In fact, in 2013, the Commission noted that the optimal point in this interplay between enhanced swap transaction transparency and the potential that, in certain circumstances, this enhanced transparency could reduce market liquidity ''defies precision.'' [2] I agree with the Commission that the ideal balance between transparency and liquidity is difficult to ascertain and necessarily requires not only robust data but also the exercise of reasoned judgement, particularly in the swaps marketplace with a finite number of institutional investors trading hundreds of thousands of products, often by appointment.

Unfortunately, I fear the balance struck in this rule misses that mark. The final rule before us today clearly favors transparency over market liquidity, with the sacrifice of the latter being particularly more acute given the nature of the swaps market. In this final rule, the Commission asserts that the increased transparency resulting from higher block trade thresholds and cap sizes will lead to increased competition, stimulate more trading, and enhance liquidity and pricing. That is wishful thinking, which is no basis upon which to predicate a final rule. As numerous commenters pointed out, this increased transparency comes directly at the expense of market liquidity, competitive pricing for end-users, and the ability of dealers to efficiently hedge their large swap transactions. While the Commission hopes the 67% block calculation will bring about the ample benefits it cites, I think the exact opposite is the most probable outcome. I remain unconvinced that the move from the 50% notional amount calculation for block sizes to the 67% notional amount calculation is necessary or appropriate. Unfortunately, the decision to retain the 67% calculation, which was adopted in 2013 but never implemented, was not seriously reconsidered in this rule.

Instead, in the final rule, the Commission asserts that it ''extensively analyzed the costs and benefits of the 50-percent threshold and 67-percent threshold when it adopted the phased-in approach'' in 2013. Respectfully, I believe that statement drastically inflates the Commission's prior analysis. I have no doubt the Commission ''analyzed'' the costs and benefits in 2013 to the best of its ability. However, the reality is that in 2013, as the Commission acknowledged in its own cost-benefit analysis, ''in a number of instances, the Commission lacks the data and information required to precisely estimate costs, *owing to the fact that these markets do not yet exist or are not yet fully developed.*'' [3] In 2013, the Commission was just standing up its SEF trading regime, had not yet implemented its trade execution mandate, and had adopted interim time delays for all swaps—meaning that, in 2013 when it first adopted this proposal, no swap transaction data was publicly disseminated in real time. Seven years later, the Commission has a robust, competitive SEF trading framework and a successful real-time reporting regime that results in 87% of IRS trades and 82% of CDS trades being reported in real time. In light of the sea change that has occurred since 2013, I believe the Commission should have undertaken a comprehensive review of whether the transition to a 67% block trade threshold was appropriate.

In my opinion, the fact that currently 87% of IRS and 82% of CDS trades are reported in real time is evidence that the transparency policy goals underlying the real-time reporting requirements have already been achieved. In 2013, the Commission, quoting directly from the Congressional Record, noted that when it considered the benefits and effects of enhanced market transparency, the ''guiding principle in setting appropriate block trade levels [is that] the *vast majority of swap transactions* should be exposed to the public market through exchange trading.'' [4] The current block sizes have resulted *in exactly that—the vast majority of trades being reported in real time.* The final rule, acknowledging these impressively high percentages, nevertheless concludes that because less than half of total IRS and CDS *notional* amounts is reported in real time, additional trades should be forced into real-time reporting. I reach the exact opposite conclusion. By my logic, the 13% of IRS and 18% of CDS trades that currently receive a time delay represent roughly *half of notional* for those asset classes. In other words, these trades are *huge.* In my view, these trades are exactly the type of outsized transactions that Congress appropriately decided should receive a delay from real-time reporting.

Despite my reservations, I am voting for the real-time reporting rule before the Commission today for several reasons. First, I worked hard to ensure that this final rule contains many significant improvements from the initial draft we were first presented, as well as the original proposal which I supported. For example, in order to make sure the CDS swap categories are representative, the Commission established additional categories for CDS with optionality. In addition, the Commission is also providing guidance that certain risk-reduction exercises, which are not arm's length transactions, are not publicly reportable swap transactions, and therefore should be excluded from the block size calculations.

Second, while most of the changes to the part 43 rules will have a compliance period of 18 months, compliance with the new block and cap sizes will not be not be required until one year later, providing market participants with a 30-month compliance period and the Commission with an extra 12 months to revisit this issue with actual data analysis, as good government and well-reasoned public policy demands. This means that when any final block and cap sizes go into effect for the amended swap categories, it will be with the benefit of cleaner, more precise data resulting from our part 43 final rule improvements adopted today. It is my firm expectation that DMO staff will review the revised block trade sizes, in light of the new data, at that time to ensure they are appropriately calibrated for each swap category. In addition, as required by the rule, DMO will publish the revised block trade and cap sizes the month before they go effective. I am hopeful that with the benefit of time, cleaner data and public comment, the Commission can, if necessary, re-calibrate the minimum block sizes to ensure they strike the appropriate balance built into our statute between the liquidity needs of the market and transparency. To the extent market participants also have concerns about maintaining the current time delays for block trades given the move to the 67% calculation, I encourage them to reach out to DMO and my fellow Commissioners during the intervening 30-month window. That time frame is more than enough to further refine the reporting delays, as necessary, for the new swap categories based on sound data.

Appendix 4—Concurring Statement of Commissioner Rostin Behnam

I respectfully concur in the Commission's amendments to its regulations regarding real-time public reporting, recordkeeping, and swap data repositories. The three rules being finalized together today are the culmination of a multi-year effort to streamline, simplify,

[28] Opening Statement of Chairman Heath P. Tarbert Before the April 22 Agricultural Advisory Committee Meeting (April 22, 2020), *https://www.cftc.gov/PressRoom/SpeechesTestimony/tarbertstatement042220.*

[29] CFTC Strategic Plan, *supra* note 7, at 6.

[1] CEA Section 2(a)(13)(E).

[2] Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades, 78 FR 32866, 32917 (May 31, 2013).

[3] *Id.*

[4] *Id.* at 32870 n.41 (quoting from the Congressional Record—Senate, S5902, S5922 (July 15, 2010) (emphasis added)).

and internationally harmonize the requirements associated with reporting swaps. Today's actions represent the end of a long procedural road at the Commission, one that started with the Commission's 2017 Roadmap to Achieve High Quality Swap Data.[5]

But the road really goes back much further than that, to the time prior to the 2008 financial crisis, when swaps were largely exempt from regulation and traded exclusively over-the-counter.[6] Lack of transparency in the over-the-counter swaps market contributed to the financial crisis because both regulators and market participants lacked the visibility necessary to identify and assess swaps market exposures, counterparty relationships, and counterparty credit risk.[7]

In the aftermath of the financial crisis, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010 (Dodd-Frank Act).[8] The Dodd-Frank Act largely incorporated the international financial reform initiatives for over-the-counter derivatives laid out at the 2009 G20 Pittsburgh Summit, which sought to improve transparency, mitigate systemic risk, and protect against market abuse.[9] With respect to data reporting, the policy initiative developed by the G20 focused on establishing a consistent and standardized global data set across jurisdictions in order to support regulatory efforts to timely identify systemic risk. The critical need and importance of this policy goal given the consequences of the financial crisis cannot be overstated.

Among many critically important statutory changes, which have shed light on the over-the-counter derivatives markets, Title VII of the Dodd-Frank Act amended the Commodity Exchange Act (''CEA'' or ''Act'') and added a new term to the Act: ''real-time public reporting.'' [10] The Act defines that term to mean reporting ''data relating to swap transaction, including price and volume, *as soon as technologically practicable* after the time at which the swap transaction has been executed.'' [11]

As we amend these rules, I think it is important that we keep in mind the Dodd-Frank Act's emphasis on transparency, and what transpired to necessitate that emphasis. However, the Act is also clear that its purpose, in regard to transparency and real time public reporting, is to authorize the Commission to make swap transaction and pricing data available to the public ''as the Commission determines appropriate to enhance price discovery.'' [12] The Act expressly directs the Commission to specify the criteria for what constitutes a block trade, establish appropriate time delays for disseminating block trade information to the public, and ''take into account whether the public disclosure will materially reduce market liquidity.'' [13] So, as we keep Congress's directive regarding public transparency (and the events that necessitated that directive) in mind as we promulgate rules, we also need to be cognizant of instances where public disclosure of the details of large transactions in real time will materially reduce market liquidity. This is a complex endeavor, and the answers vary across markets and products. I believe that these final rules strike an appropriate balance.

Today's final rules amending the swap data and recordkeeping and reporting requirements also culminate a multi-year undertaking by dedicated Commission staff and our international counterparts working through the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions working group for the harmonization of key over-the-counter derivatives data elements. The amendments benefit from substantial public consultation as well as internal data and regulatory analyses aimed at determining, among other things, how the Commission can meet its current data needs in support of its duties under the CEA. These include ensuring the financial integrity of swap transactions, monitoring of substantial and systemic risks, formulating bases for and granting substituted compliance and trade repository access, and entering information sharing agreements with fellow regulators.

I wish to thank the responsible staff in the Division of Market Oversight, as well as in the Offices of International Affairs, Chief Economist, and General Counsel for their efforts and engagement over the last several years as well as their constructive dialogues with my office over the last several months. Their timely and fulsome responsiveness amid the flurry of activity at the Commission as we continue to work remotely is greatly appreciated.

The final rules should improve data quality by eliminating duplication, removing alternative or adjunct reporting options, utilizing universal data elements and identifiers, and focusing on critical data elements. To the extent the Commission is moving forward with mandating a specific data standard for reporting swap data to swap data repositories (''SDRs''), and that the standard will be ISO 20022, I appreciate the Commission's thorough discussion of its rationale in support of that decision. I also commend Commission staff for its demonstrated expertise in incorporating the mandate into the regulatory text in a manner that provides certainty while acknowledging that the chosen standard remains in development.

The rules provide clear, reasonable and universally acceptable reporting deadlines that not only account for the minutiae of local holidays, but address the practicalities of common market practices such as allocation and compression exercises.

I am especially pleased that the final rules require consistent application of rules across SDRs for the validation of both Part 43 and Part 45 data submitted by reporting counterparties. I believe the amendments to part 49 set forth a practical approach to ensuring SDRs can meet the statutory requirement to confirm the accuracy of swap data set forth in CEA section 21(c) [14] without incurring unreasonable burdens.

I appreciate that the Commission considered and received comments regarding whether to require reporting counterparties to indicate whether a specific swap: (1) Was entered into for dealing purposes (as opposed to hedging, investing, or proprietary trading); and/or (2) needs not be considered in determining whether a person is a swap dealer or need not be counted towards a person's *de minimis* threshold for purposes of determining swap dealer status under Commission regulations.[15] While today's rules may not be the appropriate means to acquire such information, I continue to believe that that the Commission's ongoing surveillance for compliance with the swap dealer registration requirements could be enhanced through data collection and analysis.

Thank you again to the staff who worked on these rules. I support the overall vision articulated in these several rules and am committed to supporting the acquisition and development of information technology and human resources needed for execution of that vision. As data forms the basis for much of what we do here at the Commission, especially in terms of identifying, assessing, and monitoring risk, I look forward to future discussions with staff regarding how the CFTC's Market Risk Advisory Committee which I sponsor may be of assistance.

Appendix 5—Statement of Commissioner Dawn D. Stump

I have often referenced the need for a review of policies as per the wishes of the G–20 Leaders' Statement from the Pittsburgh

[5] Roadmap to Achieve High Quality Swap Data, *available at http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/dmo_swapdataplan071017.pdf.*

[6] *See* Commodity Futures Modernization Act of 2000, Public Law 106–554, 114 Stat. 2763 (2000).

[7] *See* The Financial Crisis Inquiry Commission, The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States (Official Government Edition), at 299, 352, 363–364, 386, 621 n. 56 (2011), *available at https://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf.*

[8] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[9] G20, *Leaders' Statement, The Pittsburgh Summit* (Sept. 24–25, 2009) at 9, *available at https://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh_summit_leaders_statement_250909.pdf.*

[10] 7 U.S.C. 2(a)(13)(A).

[11] *Id.*

[12] 7 U.S.C. 2(a)(13)(B).

[13] 7 U.S.C. 2(a)(13)(C)(ii–iv).

[14] 7 U.S.C. 24a(c)(2).

[15] Commission staff has identified the lack of these fields as limiting constraints on the usefulness of SDR data to identify which swaps should be counted towards a person's *de minimis* threshold, and the ability to precisely assess the current *de minimis* threshold or the impact of potential changes to current exclusions. *See* De Minimis Exception to the Swap Dealer Definition, 83 FR 27444, 27449 (proposed June 12, 2018); Swap Dealer De Minimis Exception Final Staff Report at 19 (Aug. 15, 2016); (Nov. 18, 2015), available at *https://www.cftc.gov/sites/default/files/idc/groups/public/@swaps/documents/file/dfreport_sddeminis081516.pdf;* Swap Dealer De Minimis Exception Preliminary Report at 15 (Nov. 18, 2015), available at *https://www.cftc.gov/sites/default/files/idc/groups/public/@swaps/documents/file/dfreport_sddeminis_1115.pdf.*

Summit in 2009, which included an expectation that members would ''assess regularly implementation and whether it is sufficient to improve transparency in the derivatives markets, mitigate systemic risk, and protect against market abuse.'' [1] Today, the Commission finds itself debating a challenging issue with a robust history. In order to properly assess whether we are making the right choices, I prefer to consider where we have come from. Luckily, the history of prior Commissions' deliberations and transparency of regulatory rule-writing efforts affords us such an opportunity for a look back.

Prior to the Dodd-Frank Act [2] and enactment of the CFTC's swap data reporting regulations, there was very limited, if any, public transparency and price discovery in swaps markets. Today, under the initial calculation applied for block sizes, Commission staff states that 87% of interest rate swap transactions and 82% of credit derivative swap transactions are reported in real time.

The Commission previously decided [3] that an initial calculation (50-percent threshold notional) was appropriate to determine block sizes, and that it would be followed by implementation of a higher block size threshold (67-percent threshold notional) when one year of reliable data from SDRs was available. That Commission was in the unenviable position of making policy determinations without the benefit of the relevant market structures being operational. The original block calculation and the associated sizes were determined before both the trading venues where swaps transact (Swap Execution Facilities, or SEFs) and the data warehouses that collect swaps market information reported to the Commission (Swap Data Repositories, or SDRs) were fully operational.

In the Dodd-Frank Act, Congress amended the Commodity Exchange Act (CEA) to require the Commission to ''take into account whether the public disclosure will materially reduce market liquidity.'' [4] Whether the Commission did (or was able to) make such an assessment in 2013, when it finalized the original process and treatment for block transactions, is debatable. I cannot say for certain whether the original calculation was appropriate. It was based on limited available data, such as public data that was not applicable to our jurisdictional swaps markets. It was constructed well before the regulations it impacted, the SEF trading mandate. And the data that it should have relied on, from SDRs, was not available, much less reliable. The Commission based its determination of block size, and the resulting SEF execution methods, on a calculation contrived without the benefit of data from SEFs or SDRs.

Despite many years of experience with SEFs and SDRs since then, the Commission is today choosing to continue down the previously determined path of raising block sizes instead of leveraging data. Commenters, including entities responsible for providing liquidity and entities utilizing swaps to perform risk management, expressed concerns that increasing the block size thresholds would negatively impact the swaps market and raise costs for end users. Yet, we are moving forward to further limit the number of transactions that can receive block treatment under real time reporting, and the resulting allowable methods of execution if a swap is included in the SEF mandate. That is, we are raising the threshold largely because a previous Commission decided to do so many years ago.

Though I may not be happy that this Commission is left to grapple with an arbitrary metric set by a former Commission in 2013, even that Commission recognized the importance of considering data before proceeding. The original block rules spoke of the Commission updating the threshold once it had one year's worth of reliable data. No Commission has ever updated the calculation to adopt higher block sizes, and one would reasonably expect this is due to a lack of reliable data. Today, the Commission is rectifying data reliability challenges by adopting a robust set of rule amendments to improve the quality of swap data reporting, but chooses not to re-assess the block size thresholds with the improved data that will result from those new rules. Perhaps that data will show that we have gone too low or too high in setting the thresholds. I would prefer not to predetermine the outcome until we can ascertain and evaluate the improved data.

The Commission proposed an updated list of categories and refreshed block sizes in February 2020. In the interim period, changes, some that I hope will yield positive results, have been made to affect the categories, calculations, and, as a result, the actual block sizes. However, the lack of transparency concerns me. I believe in this case, it would benefit the Commission to hear from market participants as to their views on the changes to all of these parameters.

I believe that the driving force behind the substantial rewrite of the swap data reporting rule set we are adopting today is that the Commission is not confident in the quality of SDR data, and that an overhaul is needed to provide the CFTC with complete and accurate information for data-driven policy decision making. I feel strongly that the vast majority of the rule amendments before the Commission today will improve the quality of the data reported to SDRs and available for our analysis. I am encouraged that after the 18-month compliance date, staff will be able to better review reliable data and inform the Commission of their analysis as it pertains to block size. I believe the more prudent course of action would be to finalize the remainder of the rules before us today, but set aside any Commission action on block size, thereby preserving current block sizes until the Commission and the public can consider these issues in light of the improved reporting rules and with the new, more reliable data that will result from those rules.

The Commission should incorporate reliable swaps data and what it has learned since the inception of SEFs to make a more fully informed decision on this very meaningful metric. The numbers established in 2013 were arbitrary, and eight years later a different Commission is now faced with reconciling that, still without the availability of reliable data. I believe it is equally unfair to leave another Commission, 30 months from now, with the same predicament. We should not be finalizing a rule to transition to the higher block size calculation today while dictating that other Commissioners implement our decision or have to deal with the consequences of our decision making that is based on contemporary, unreliable data.

It is unclear what, if any, Commission or staff analysis might transpire between the effective date of the swap data reporting rules (18 months) and the block size threshold compliance date (30 months). I intend to ensure that any input received will be taken seriously, notwithstanding its retrospective nature and the fact that it is well beyond many of our terms of office. I wish for the Commission to soon hold a formal forum to receive input from affected market participants, especially end users in these markets, such as those who manage teacher retirement and college savings plans for millions of Americans. It is that input, and reliable data reported pursuant to the enhanced reporting rules we are adopting today, on which the Commission's block determinations should be based.

Appendix 6—Statement of Commissioner Dan M. Berkovitz

Introduction

I support today's final rules amending the swap data reporting requirements in parts 43, 45, 46, and 49 of the Commission's rules (the ''Reporting Rules''). The amended rules provide major improvements to the Commission's swap data reporting requirements. They will increase the transparency of the swap markets, enhance the usability of the data, streamline the data collection process, and better align the Commission's reporting requirements with international standards.

The Commission must have accurate, timely, and standardized data to fulfill its customer protection, market integrity, and risk monitoring mandates in the Commodity Exchange Act (''CEA'').[1] The 2008 financial crisis highlighted the systemic importance of global swap markets, and drew attention to the opacity of a market valued notionally in the trillions of dollars. Regulators such as the CFTC were unable to quickly ascertain the exposures of even the largest financial institutions in the United States. The absence of real-time public swap reporting contributed to uncertainty as to market liquidity and pricing. One of the primary goals of the Dodd-Frank Act is to improve swap market transparency through both real-time public reporting of swap transactions

[1] *See* Leaders' Statement from the 2009 G–20 Summit in Pittsburgh, Pa. at 9 (Sept. 24–25, 2009), available at *https://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh_summit_leaders_s statement_250909.pdf.*

[2] Public Law 111–203, 124 Stat. 1376 (2010).

[3] Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades, 78 FR 32866 (May 31, 2013).

[4] CEA Section 2(a)(13)(E)(iv), 7 U.S.C. 2(a)(13)(E)(iv).

[1] *See* CEA section 3b.

and ''regulatory reporting'' of complete swap data to registered swap data repositories (''SDRs'').[2]

As enacted by the Dodd-Frank Act, CEA section 2(a)(13)(G) directs the CFTC to establish real-time and comprehensive swap data reporting requirements, on a swap-by-swap basis. CEA section 21 establishes SDRs as the statutory entities responsible for receiving, storing, and facilitating regulators' access to swap data. The Commission began implementing these statutory directives in 2011 and 2012 in several final rules that addressed regulatory and real-time public reporting of swaps; established SDRs to receive data and make it available to regulators and the public; and defined certain swap dealer (''SD'') and major swap participant (''MSP'') reporting obligations.[3]

The Commission was the first major regulator to adopt data repository and swap data reporting rules. Today's final rules are informed by the Commission's and the market's experience with these initial rules. Today's revisions also reflect recent international work to harmonize and standardize data elements.

Part 43 Amendments (Real-Time Public Reporting)

Benefits of Real Time Public Reporting

Price transparency fosters price competition and reduces the cost of hedging. In directing the Commission to adopt real-time public reporting regulations, the Congress stated ''[t]he purpose of this section is to authorize the Commission to make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate *to enhance price discovery.*''[4] For real-time data to be useful for price discovery, SDRs must be able to report standardized, valid, and timely data. The reported data should also reflect the large majority of swaps executed within a particular swap category. The final Reporting Rules for part 43 address a number of infirmities in the current rules affecting the aggregation, validation, and timeliness of the data. They also provide pragmatic solutions to several specific reporting issues, such as the treatment of prime broker trades and post-priced swaps.

Block Trade Reporting

The Commission's proposed rule for block trades included two significant amendments to part 43: (1) Refined swap categories for calculating blocks; and (2) a single 48-hour time-delay for reporting all blocks. In addition, the proposed rule would give effect to increased block trade size thresholds from 50% to 67% of a trimmed (excluding outliers) trade data set as provided for in the original part 43. The increases in the block sizing thresholds and the refinement of swap categories were geared toward better meeting the statutory directives to the Commission to enhance price discovery through real-time reporting while also providing appropriate time delays for the reporting of swaps with very large notional amounts, *i.e.,* block trades.

Although I supported the issuance of the proposed rule, I outlined a number of concerns with the proposed blanket 48-hour delay. As described in the preamble to the part 43 final rule, a number of commenters supported the longer delay as necessary to facilitate the laying off of risk resulting from entering into swaps in illiquid markets or with large notional amounts. Other commenters raised concerns that such a broad, extended delay was unwarranted and could impede, rather than foster, price discovery. The delay also would provide counterparties to large swaps with an information advantage during the 48-hour delay.

The CEA directs the Commission to provide for both real-time reporting and appropriate block sizes. In developing the final rule the Commission has sought to achieve these objectives.

As described in the preamble, upon analysis of market data and consideration of the public comments, the Commission has concluded that the categorization of swap transactions and associated block sizes and time delay periods set forth in the final rule strikes an appropriate balance to achieve the statutory objectives of enhancing price discovery, not disclosing ''the business transactions and market positions of any person,'' preserving market liquidity, and providing appropriate time delays for block transactions. The final part 43 includes a mechanism for regularly reviewing swap transaction data to refine the block trade sizing and reporting delays as appropriate to maintain that balance.

Consideration of Additional Information Going Forward

I have consistently supported the use of the best available data to inform Commission rulemakings, and the periodic evaluation and updating of those rules, as new data becomes available. The preamble to the final rules for part 43 describes how available data, analytical studies, and public comments informed the Commission's rulemaking. Following press reports about the contents of the final rule, the Commission recently has received comments from a number of market participants raising issues with the reported provisions in the final rule. These commenters have expressed concern that the reported reversion of the time delays for block trades to the provisions in the current regulations, together with the 67% threshold for block trades, will impair market liquidity, increase costs to market participants, and not achieve the Commission's objectives of increasing price transparency and competitive trading of swaps. Many of these commenters have asked the Commission to delay the issuance of the final rule or to re-propose the part 43 amendments for additional public comments.

I do not believe it would be appropriate for the Commission to withhold the issuance of the final rule based on these latest comments and at this late stage in the process. The Commission has expended significant time and resources in analyzing data and responding to the public comments received during the public comment period. As explained in the preamble, the Commission is already years behind its original schedule for revising the block thresholds. I therefore do not support further delay in moving forward on these rules.

Nonetheless, I also support evaluation and refinement of the block reporting rules, if appropriate, based upon market data and analysis. The 30-month implementation schedule for the revised block sizes provides market participants with sufficient time to review the final rule and analyze any new data. Market participants can then provide their views to the Commission on whether further, specific adjustments to the block sizes and/or reporting delay periods may be appropriate for certain instrument classes. This implementation period is also sufficient for the Commission to consider those comments and make any adjustments as may be warranted. The Commission should consider any such new information in a transparent, inclusive, and deliberative manner. Amended part 43 also provides a process for the Commission to regularly review new data as it becomes available and amend the block size thresholds and caps as appropriate.

Cross Border Regulatory Arbitrage Risk

The International Swaps and Derivatives Association, Inc. (''ISDA'') and the Securities Industry and Financial Markets Association (''SIFMA'') commented that higher block size thresholds may put swap execution facilities (''SEFs'') organized in the United States at a competitive disadvantage as compared to European trading platforms that provide different trading protocols and allow longer delays in swap trade reporting. SIFMA and ISDA commented that the higher block size thresholds might incentivize swap dealers to move at least a portion of their swap trading from United States SEFs to European trading platforms. They also noted that this regulatory arbitrage activity could apply to swaps that are subject to mandatory exchange trading. Importantly, European platforms allow a non-competitive single-quote trading mechanism for these swaps while U.S. SEFs are required to maintain more competitive request-for-quotes mechanisms from at least three parties. The three-quote requirement serves to fulfill important purposes delineated in the CEA to facilitate price discovery and promote fair competition.

The migration of swap trading from SEFs to non-U.S. trading platforms to avoid U.S. trade execution and/or swap reporting requirements would diminish the liquidity in and transparency of U.S. markets, to the detriment of many U.S. swap market participants. Additionally, as the ISDA/SIFMA comment letter notes, it would provide an unfair competitive advantage to non-U.S. trading platforms over SEFs registered with the CFTC, who are required to abide by CFTC regulations. Such migration

[2] Dodd-Frank Wall Street Reform and Consumer Protection Act, section 727, Public Law 111–203, 124 Stat. 1376 (2010) (the ''Dodd-Frank Act''), available at *https://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf.*

[3] Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (Jan. 13, 2012); and Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 FR 54538 (Sept. 1, 2011).

[4] CEA section 2(13)(B) (emphasis added).

would fragment the global swaps market and undermine U.S. swap markets.[5]

I have supported the Commission's substituted compliance determinations for foreign swap trading platforms in non-U.S. markets where the foreign laws and regulations provide for comparable and comprehensive regulation. Substituted compliance recognizes the interests of non-U.S. jurisdictions in regulating non-U.S. markets and allows U.S. firms to compete in those non-U.S. markets. However, substituted compliance is *not* intended to encourage—or permit—regulatory arbitrage or circumvention of U.S. swap market regulations. If swap dealers were to move trading activity away from U.S. SEFs to a foreign trading platform for regulatory arbitrage purposes, such as, for example, to avoid the CFTC's transparency and trade execution requirements, it would undermine the goals of U.S. swap market regulation, and constitute the type of fragmentation of the swaps markets that our cross-border regime was meant to mitigate. It also would undermine findings by the Commission that the non-U.S. platform is subject to regulation that is as comparable and comprehensive as U.S. regulation, or that the non-U.S. regime achieves a comparable outcome.

The Commission should be vigilant to protect U.S. markets and market participants. The Commission should monitor swap data to identify whether any such migration from U.S. markets to overseas markets is occurring and respond, if necessary, to protect the U.S. swap markets.

Part 45 (Swap Data Reporting), Part 46 (Pre-Enactment and Transition Swaps), and Part 49 (Swap Data Repositories) Amendments

I also support today's final rules amending the swap data reporting, verification, and SDR registration requirements in parts 45, 46, and 49 of the Commission's rules. These regulatory reporting rules will help ensure that reporting counterparties, including SDs, MSPs, designated contract markets (''DCMs''), SEFs, derivatives clearing organizations (''DCOs''), and others report accurate and timely swap data to SDRs. Swap data will also be subject to a periodic verification program requiring the cooperation of both SDRs and reporting counterparties. Collectively, the final rules create a comprehensive framework of swap data standards, reporting deadlines, and data validation and verification procedures for all reporting counterparties.

The final rules simplify the swap data reports required in part 45, and organize them into two report types: (1) ''Swap creation data'' for new swaps; and (2) ''swap continuation data'' for changes to existing swaps.[6] The final rules also extend the deadline for SDs, MSPs, SEFs, DCMs, and DCOs to submit these data sets to an SDR, from ''as soon as technologically practicable'' to the end of the next business day following the execution date (T + 1). Off-facility swaps where the reporting counterparty is not an SD, MSP, or DCO must be reported no later than T + 2 following the execution date.

The amended reporting deadlines will result in a moderate time window where swap data may not be available to the Commission or other regulators with access to an SDR. However, it is likely that they will also improve the accuracy and reliability of data. Reporting parties will have more time to ensure that their data reports are complete and accurate before being transmitted to an SDR.[7]

The final rules in part 49 will also promote data accuracy through validation procedures to help identify errors when data is first sent to an SDR, and periodic reconciliation exercises to identify any discrepancies between an SDR's records and those of the reporting party that submitted the swaps. The final rules provide for less frequent reconciliation than the proposed rules, and depart from the proposal's approach to reconciliation in other ways that may merit future scrutiny to ensure that reconciliation is working as intended. Nonetheless, the validation and periodic reconciliation required by the final rule is an important step in ensuring that the Commission has access to complete and accurate swap data to monitor risk and fulfill its regulatory mandate.

The final rules also better harmonize with international technical standards, the development of which included significant Commission participation and leadership. These harmonization efforts will reduce complexity for reporting parties without significantly reducing the specific data elements needed by the Commission for its purposes. For example, the final rules adopt the Unique Transaction Identifier and related rules, consistent with CPMI–IOSCO technical standards, in lieu of the Commission's previous Unique Swap Identifier. They also adopt over 120 distinct data elements and definitions that specify information to be reported to SDRs. Clear and well-defined data standards are critical for the efficient analysis of swap data across many hundreds of reporting parties and multiple SDRs. Although data elements may not be the most riveting aspect of Commission policy making, I support the Commission's determination to focus on these important, technical elements as a necessary component of any effective swap data regime.

Conclusion

Today's Reporting Rules are built upon nearly eight years of experience with the current reporting rules and benefitted from extensive international coordination. The amendments make important strides toward fulfilling Congress's mandate to bring transparency and effective oversight to the swap markets. I commend CFTC staff, particularly in Division of Market Oversight and the Office of Data and Technology, who have worked on the Reporting Rules over many years. Swaps are highly variable and can be difficult to represent in standardized data formats. Establishing accurate, timely, and complete swap reporting requirements is a difficult, but important function for the Commission and regulators around the globe. This proposal offers a number of pragmatic solutions to known issues with the current swap data rules. For these reasons, I am voting for the final Reporting Rules.

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BILLING CODE 6351–01–P

[5] In my dissenting statement on the Commission's recent revisions to it cross-border regulations, I detailed a number of concerns with how those revisions could provide legal avenues for U.S. swap dealers to migrate swap trading activity currently subject to CFTC trade execution requirements to non-U.S. markets that would not be subject to those CFTC requirements.

[6] Swap creation data reports replace primary economic terms (''PET'') and confirmation data previously required in part 45. The final rules also eliminate optional ''state data'' reporting, which resulted in extensive duplicative reports crowding SDR databases, and often included no new information.

[7] The amended reporting deadlines are also consistent with comparable swap data reporting obligations under the Securities and Exchange Commission's and European Securities and Markets Authority's rules.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 45, 46, and 49

RIN 3038–AE31

Swap Data Recordkeeping and Reporting Requirements

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is amending certain regulations setting forth the swap data recordkeeping and reporting requirements for swap data repositories (''SDRs''), derivatives clearing organizations (''DCOs''), swap execution facilities (''SEFs''), designated contract markets (''DCMs''), swap dealers (''SDs''), major swap participants (''MSPs''), and swap counterparties that are neither SDs nor MSPs. The amendments, among other things, streamline the requirements for reporting new swaps, define and adopt swap data elements that harmonize with international technical guidance, and reduce reporting burdens for reporting counterparties that are neither SDs nor MSPs.

DATES: *Effective Date:* The effective date for this final rule is January 25, 2021.

Compliance Date: SDRs, SEFs, DCMs, reporting counterparties, and non-reporting counterparties must comply with the amendments to the rules by May 25, 2022.

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SUPPLEMENTARY INFORMATION:

I. Background
II. Amendments to Part 45
A. § 45.1—Definitions
B. § 45.2—Swap Recordkeeping
C. § 45.3—Swap Data Reporting: Creation Data
D. § 45.4—Swap Data Reporting: Continuation Data
E. § 45.5—Unique Transaction Identifiers
F. § 45.6—Legal Entity Identifiers
G. § 45.8—Determination of Which Counterparty Shall Report
H. § 45.10—Reporting to a Single Swap Data Repository
I. § 45.11—Data Reporting for Swaps in a Swap Asset Class Not Accepted by Any Swap Data Repository
J. § 45.12—Voluntary Supplemental Reporting
K. § 45.13—Required Data Standards
L. § 45.15—Delegation of Authority
III. Amendments to Part 46
A. § 46.1—Definitions
B. § 46.3—Data Reporting for Pre-Enactment Swaps and Transition Swaps
C. § 46.10—Required Data Standards
D. § 46.11—Reporting of Errors and Omissions in Previously Reported Data
IV. Amendments to part 49
A. § 49.2—Definitions
B. § 49.4—Withdrawal from Registration
C. § 49.10—Acceptance and Validation of Data
V. Swap Data Elements Reported to Swap Data Repositories
A. Proposal
B. Comments on the Proposal and Commission Determination
VI. Compliance Date
VII. Related Matters
A. Regulatory Flexibility Act
B. Paperwork Reduction Act
C. Cost-Benefit Considerations
D. Antitrust Considerations

I. Background

Pursuant to section 2(a)(13)(G) of the Commodity Exchange Act (''CEA''), all swaps, whether cleared or uncleared, must be reported to SDRs.[1] CEA section 21(b) directs the Commission to prescribe standards for swap data recordkeeping and reporting.[2] Part 45 of the Commission's regulations implements the swap data reporting rules.[3] The part 45 regulations require SEFs, DCMs, and reporting counterparties to report swap data to SDRs. SDRs collect and maintain data related to swap transactions, keeping such data electronically available for regulators or the public.[4]

Since the Commission adopted the part 45 regulations, Commission staff has worked with SDRs, SEFs, DCMs, reporting counterparties, and non-reporting counterparties to interpret and implement of the requirements established in the regulations. Several years ago, the Division of Market Oversight (''DMO'') announced[5] its Roadmap to Achieve High Quality Swaps Data (''Roadmap''),[6] consisting of a comprehensive review to, among other things: (i) ensure the CFTC receives accurate, complete, and high-quality data on swap transactions for its regulatory oversight role; and (ii) streamline reporting, reduce messages that must be reported, and right-size the number of data elements reported to meet the agency's priority use-cases for swap data.[7]

In February 2020, the Commission proposed certain changes to its parts 45, 46, and 49 regulations (''Proposal'')[8] to simplify the requirements for reporting swaps, require SDRs to validate swap reports, permit the transfer of swap data between SDRs, alleviate reporting burdens for non-SD/MSP reporting counterparties, and harmonize the swap data elements counterparties report to SDRs with international technical guidance.

The Commission received 26 comment letters on the Proposal.[9] After considering the comments, the Commission is adopting parts of the rules as proposed, although there are proposed changes the Commission has determined to either revise or decline to adopt. The Commission believes the rules it is adopting herein will provide clarity and lead to more effective swap data reporting by SEFs, DCMs, and reporting counterparties.

Before discussing the changes to the regulations, the Commission highlights the important role international data harmonization efforts have played in this rulemaking. As discussed in the Proposal, since November 2014, regulators across major derivatives jurisdictions, including the CFTC, have come together through the Committee on Payments and Market Infrastructures (''CPMI'') and the International Organization of Securities Commissions (''IOSCO'') working group for the harmonization of key over-the-counter (''OTC'') derivatives data elements (''Harmonisation Group'') to develop global guidance regarding the definition, format, and usage of key OTC derivatives data elements reported to trade repositories (''TRs''), including the Unique Transaction Identifier (''UTI''), the Unique Product Identifier (''UPI''), and critical data elements other than UTI and UPI (''CDE'').[10]

[1] 7 U.S.C. 2(a)(13)(G) (2020).

[2] *See* 7 U.S.C. 24a(b)(1)–(3).

[3] Commission regulations referred to herein are found at 17 CFR chapter I.

[4] The term ''swap data repository'' means any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps. *See* 7 U.S.C. 1a(48). Regulations governing core principles and registration requirements for, and duties of, SDRs are in part 49. *See generally* 17 CFR part 49.

[5] *See* Commission Letter 17–33, Division of Market Oversight Announces Review of Swap Reporting Rules in parts 43, 45, and 49 of Commission Regulations (July 10, 2017), *available at https://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/17-33.pdf.*

[6] The Roadmap is available at *https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/dmo_swapdataplan071017.pdf.* Comment letters related to the Roadmap are available at *https://comments.cftc.gov/PublicComments/CommentList.aspx?id=1824.*

[7] *See* Commission Letter 17–33, *supra* at n.5; Roadmap, *supra* at n.6.

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

[9] The following entities submitted comment letters: American Public Gas Association (''APGA''); BP Energy Company (''BP''); Chatham Financial (''Chatham''); Chris Barnard; CME Group (''CME''); Coalition of Physical Energy Companies (''COPE''); Commercial Energy Working Group (''CEWG''); Credit Suisse (''CS''); The Data Coalition (''Data Coalition''); DTCC Data Repository (U.S.) LLC (''DTCC''); Edison Electric Institute (''EEI'') and Electric Power Supply Association (''EPSA'') (collectively, ''EEI–EPSA''); Eurex Clearing AG (''Eurex''); Foreign Exchange Professionals Association (''FXPA''); Futures Industry Association (''FIA''); Global Foreign Exchange Division of the Global Financial Markets Association (collectively, ''GFXD''); Global Legal Entity Identifier Foundation (''GLEIF''); ICE Clear Credit LLC and ICE Clear Europe Limited (''ICE DCOs''); ICE Trade Vault, LLC (''ICE SDR''); IHS Markit (''Markit''); International Energy Credit Association (''IECA''); International Swaps and Derivatives Association, Inc. (''ISDA'') and Securities Industry and Financial Markets Association (''SIFMA'') (collectively, ''ISDA–SIFMA''); Japanese Bankers Association (''JBA''); Japan Securities Clearing Corporation (''JSCC''); LCH Ltd and LCH SA (collectively, ''LCH''); National Rural Electric Cooperative Association and American Public Power Association (''NRECA–APPA''); and XBRL US, Inc. (''XBRL'').

[10] In February 2017 and September 2017, respectively, the Harmonisation Group published *Guidance on the Harmonisation of the Unique Transaction Identifier* (''UTI Technical Guidance'') and *Technical Guidance on the Harmonisation of*

The Commission has played an active role in the development and publication of each of the Harmonisation Group's technical guidance documents. For the CDE Technical Guidance in particular, as part of the Harmonisation Group, Commission staff worked alongside representatives from Canada, France, Germany, Hong Kong, Japan, Singapore, and the United Kingdom, among others, to provide feedback regarding the data elements, taking into account the Commission's experience with swap data reporting thus far. Commission staff also participated in the solicitation of responses to three public consultations on the CDE Technical Guidance, along with related industry workshops and conference calls.[11]

The Commission's sustained, active role in the Harmonisation Group in developing global guidance on key OTC derivatives data elements reported to TRs is part of the Commission's broader, long-range goal of continued efforts to achieve international harmony in the area of swaps reporting. The Commission has co-led efforts to design ongoing international regulatory oversight of these standards in the Financial Stability Board (''FSB'') Working Group on UPI and UTI Governance (''GUUG'') and the Commission's efforts to achieve international harmonization in the entire clearing ecosystem, including swap data reporting, will continue.

In particular, the Commission continues to be open to further ways to cooperate with our foreign regulatory counterparts in the supervision of TRs. An example is the consideration of when and how the Commission should grant swap data reporting substituted compliance determinations for SDs and DCOs domiciled in non-U.S. jurisdictions with similar swap data reporting requirements, permitting reporting of swap data to a foreign TR to satisfy Commission swap data requirements under appropriate circumstances. Efficiencies in cross-border reporting are critical to the smooth operation of transatlantic clearing and trading. To the degree the Commission can work with its international counterparts to thus increase interoperability between jurisdictions, this will enhance cross-border trading efficiency. Moreover, with appropriate tailoring and protections, and due access to foreign TR data, deference to foreign jurisdictions will reduce expensive redundancies in trade reporting.

II. Amendments to Part 45

A. § 45.1—Definitions

The paragraph of existing § 45.1 is not lettered. The Commission is lettering the existing paragraph as ''(a)'' and adding (b) to § 45.1. Paragraph (a) will contain all of the definitions in existing § 45.1, as the Commission is modifying them. New paragraph (b) provides the terms not defined in part 45 have the meanings assigned to the terms in Commission regulation § 1.3, which was implied in the existing regulation but will now be explicit.[12]

The Commission is adding new definitions, amending certain existing definitions, and removing certain existing definitions. Within each of these categories, the Commission discusses the changes in alphabetical order, except as otherwise noted.

1. New Definitions

The Commission is adding a definition of ''allocation'' to § 45.1(a). ''Allocation'' means the process by which an agent, having facilitated a single swap transaction on behalf of clients, allocates a portion of the executed swap to the clients. Existing § 45.3(f) contains regulations for reporting allocations without defining the term. The definition will help market participants comply with the regulations for reporting allocations in § 45.3.

The Commission is adding a definition of ''as soon as technologically practicable'' (''ASATP'') to § 45.1(a). ''As soon as technologically practicable'' means as soon as possible, taking into consideration the prevalence, implementation, and use of technology by comparable market participants. The phrase ''as soon as technologically practicable'' is currently undefined but used throughout part 45. The Commission is adopting the same definition of ''as soon as technologically practicable'' as is defined in § 43.2 for swap transaction and pricing data.[13]

The Commission is adding a definition of ''collateral data'' to § 45.1(a). ''Collateral data'' means the data elements necessary to report information about the money, securities, or other property posted or received by a swap counterparty to margin, guarantee, or secure a swap, as specified in appendix 1 to part 45. The Commission explains this definition in a discussion of collateral data reporting in section II.D.4 below.

The Commission is adding definitions of ''execution'' and ''execution date'' to § 45.1(a). ''Execution'' means an agreement by the parties, by any method, to the terms of a swap that legally binds the parties to such swap terms under applicable law.[14] In the Proposal, the Commission proposed ''execution date'' to mean the date, determined by reference to Eastern Time, on which swap execution has occurred. The execution date for a clearing swap that replaces an original swap would be the date, determined by reference to Eastern Time, on which the DCO accepts the original swap for clearing. The term ''execution'' is currently undefined but used throughout part 45, and the Commission is adding regulations referencing ''execution date.''[15]

The Commission received three comments supporting the definition of ''execution date.''[16] In particular, ISDA–SIFMA believe the definition is more practical than the referencing the ''day of execution,'' because the latter would require a more complex build for industry participants, including requiring reporting counterparties to compare against the non-reporting counterparty to determine the party with the calendar day that ends latest, on a swap-by-swap basis.[17]

The Commission received three comments opposing the reference to Eastern Time in the proposed definition of ''execution date.'' CME and Chatham both believe the definition should use a coordinated universal time (''UTC'') standard.[18] CME notes Eastern Time could make the reporting entity convert data between three time zones— local time zone, Eastern Time, and UTC—and also account for daylight savings time.[19] Chatham notes reporting counterparties build systems using UTC and it would be time-consuming and costly to convert to Eastern Time, as well as inconsistent with other regulatory reporting frameworks.[20] JBA suggests the Commission use UTC to globally harmonize and follow the CDE Technical Guidance, and points out the January 2020 CPMI–IOSCO ''Clock

the Unique Product Identifier (''UPI Technical Guidance''). In April 2018, the Harmonisation Group published *Technical Guidance on the Harmonisation of Critical OTC Derivatives Data Elements (other than UTI and UPI)* (''CDE Technical Guidance'').

[11] *See* CDE Technical Guidance at 9.

[12] 17 CFR 1.3.

[13] *See* 17 CFR 43.2 (definition of ''as soon as technologically practicable'').

[14] The definition of ''execution'' is functionally identical to the part 23 definition of execution. *See* 17 CFR 23.200(e) (definition of ''execution'').

[15] *See* § 45.3(a) and (b), discussed in sections II.C.2.a and II.C.2.b, respectively, below.

[16] GXFD at 21; Eurex at 2; ISDA–SIFMA at 5.

[17] ISDA–SIFMA at 5.

[18] CME at 12; Chatham at 1.

[19] CME at 12.

[20] Chatham at 1.

Synchronization'' report recommends business clocks synchronize to UTC.[21]

The Commission agrees the reference to Eastern Time in ''execution date'' would create unnecessary operational complexities and be inconsistent with the approach taken by other regulators. In addition, the Commission's updated swap data elements in appendix 1 reference UTC. In response, the Commission is removing the references to Eastern Time in the definition of ''execution date,'' and the swap data elements in appendix 1 will clarify that SEFs, DCMs, and reporting counterparties should report the specific data elements using UTC. As such, the new definition of ''execution date'' means the date of execution of a particular swap. The execution date for a clearing swap that replaces an original swap is the date on which the original swap has been accepted for clearing.

The Commission is adding the following three definitions to § 45.1(a): ''Global Legal Entity Identifier System,'' ''legal entity identifier'' or ''LEI,'' and ''Legal Entity Identifier Regulatory Oversight Committee'' (''LEI ROC''). ''Global Legal Entity Identifier System'' means the system established and overseen by the LEI ROC for the unique identification of legal entities and individuals. ''Legal entity identifier'' or ''LEI'' means a unique code assigned to swap counterparties and entities in accordance with the standards set by the Global Legal Entity Identifier System. ''Legal Entity Identifier Regulatory Oversight Committee'' means the group charged with the oversight of the Global Legal Entity Identifier System that was established by the finance ministers and the central bank governors of the Group of Twenty nations and the FSB, under the Charter of the Regulatory Oversight Committee for the Global Legal Entity Identifier System dated November 5, 2012, or any successor thereof.[22] These definitions are all associated with, and further explained in the context of, the § 45.6 regulations for LEI, in section II.F below.[23]

The Commission is adding a definition of ''non-SD/MSP/DCO reporting counterparty'' to § 45.1(a). ''Non-SD/MSP/DCO reporting counterparty'' means a reporting counterparty that is not an SD, MSP, or DCO. The existing definition of ''non-SD/MSP reporting counterparty'' does not explicitly include DCOs. This creates problems when, for instance, the Commission did not intend DCOs follow the required swap creation data reporting regulations in § 45.3(d) for off-facility swaps not subject to the clearing requirement with a non-SD/MSP reporting counterparty, even though DCOs are technically reporting counterparties that are neither SDs nor MSPs. Instead, DCOs follow § 45.3(e) for clearing swaps. The definition of ''non-SD/MSP/DCO reporting counterparty'' addresses this unintended gap.

The Commission is adding a definition of ''novation'' to § 45.1(a). ''Novation'' means the process by which a party to a swap legally transfers all or part of its rights, liabilities, duties, and obligations under the swap to a new legal party other than the counterparty to the swap under applicable law. The term ''novation'' is currently undefined but used in the definition of ''life cycle event,'' as well as the existing § 45.8(g) regulations for determining which counterparty must report.

The Commission is adding a definition of ''swap'' to § 45.1(a). ''Swap'' means any swap, as defined by § 1.3, as well as any foreign exchange forward, as defined by CEA section 1a(24), or foreign exchange swap, as defined by CEA section 1a(25).[24] The term ''swap'' is currently undefined but used throughout part 45 and the definition codifies the meaning of the term as it is currently used throughout part 45.[25]

The Commission is adding definitions of ''swap data'' and ''swap transaction and pricing data'' to § 45.1(a). In the Proposal, the Commission proposed ''swap data'' to mean the specific data elements and information in appendix 1 to part 45 required to be reported to an SDR pursuant to part 45 or made available to the Commission pursuant to part 49, as applicable. The Commission received a comment from DTCC suggesting deleting the phrase ''and information'' from the definition of ''swap data,'' because it is unclear to what ''and information'' refers.[26] The Commission agrees and is modifying the definition to remove ''and information.''[27] The Commission is adopting the rest of the definition of ''swap data'' as proposed.

Separately, the Commission is adopting the definition of ''swap transaction and pricing data,'' with minor changes from the proposed definition. ''Swap transaction and pricing data'' will mean all data elements for a swap in appendix A[28] to part 43 that are required to be reported or publicly disseminated pursuant to part 43. Having ''swap data'' apply to part 45 data, and ''swap transaction and pricing data'' apply to part 43 data, will provide clarity across the reporting regulations.

The Commission is adding a definition of ''swap data validation procedures'' to § 45.1(a). ''Swap data validation procedures'' means procedures established by an SDR pursuant to § 49.10 to accept, validate, and process swap data reported to an SDR pursuant to part 45. The Commission discusses this definition in section IV.C.3 below.

The Commission is adding a definition of ''unique transaction identifier'' to § 45.1(a). ''Unique transaction identifier'' means a unique alphanumeric identifier with a maximum of 52 characters constructed solely from the upper-case alphabetic characters A to Z or the digits 0 to 9, inclusive in both cases, generated for each swap pursuant to § 45.5. The Commission received a comment from DTCC supporting the definition because it is consistent with UTI Technical Guidance.[29] The Commission explains this definition in a discussion of the regulations to transition from using

[21] JBA at 4.

[22] *See* Charter of the Regulatory Oversight Committee For the Global Legal Entity Identifier System, *available at https://www.leiroc.org/publications/gls/roc_20190130-1.pdf.*

[23] GLEIF supports adding these definitions, but also suggests moving definitions to § 45.1(a) from § 45.6(a) for ''local operating unit'' and ''legal entity reference data.'' The Commission is declining to adopt this suggestion, as the definitions in § 45.6(a) are only used in § 45.6.

[24] While foreign exchange forwards and foreign exchange swaps are excluded from the definition of ''swap,'' such transactions are nevertheless required to be reported to an SDR. *See* 7 U.S.C. 1a(47)(E)(iii) (definition of ''swap'').

[25] NRECA–APPA believe the Commission should incorporate the ''swap'' definition in CEA section 1a into its interpretations, exemptions, and other guidance, as well as remove from the definition: guarantees of a swap, commodity options meeting the conditions in § 32.3, and other types of agreements, contracts, and transactions the Commission has determined Congress did not intend to regulate as ''swaps.'' NRECA–APPA at 5. The Commission notes its interpretations, exemptions, and guidance are outside of the scope of this rulemaking, as is removing certain types of agreements, contracts, and transactions from the CEA definition of ''swap.'' The Commission emphasizes the definition of ''swap'' in § 45.1 is for swap data reporting purposes only, and does not impact any regulations outside of part 45.

[26] DTCC at 4.

[27] The Commission notes certain swap-related information may be required to be reported to a SDR pursuant to other CFTC regulations which are not included in the definition of ''swap data.'' Market participants should be aware of other applicable reporting requirements. For example, counterparties electing an exception to or exemption from the swap clearing requirement under § 50.4 are required to report specific information to a SDR, or if no SDR is available to receive the information, to the Commission, under § 50.50(b).

[28] The Commission is changing the reference to appendix C in the proposed definition of ''swap transaction and pricing data'' to appendix A due to changes to the part 43 appendices the Commission is adopting in a separate release.

[29] DTCC at 4, 5.

unique swap identifiers (''USIs'') to UTIs in section II.E below.

2. Changes to Existing Definitions [30]

The Commission is making non-substantive technical changes to the existing definitions of ''asset class,'' ''derivatives clearing organization,'' and ''swap execution facility.''

The Commission is changing the definition of ''business day'' in § 45.1. Existing § 45.1 defines ''business day'' to mean the twenty-four hour day, on all days except Saturdays, Sundays, and legal holidays, in the location of the reporting counterparty or registered entity reporting data for the swap.[31] In the Proposal, the Commission proposed replacing ''the twenty-four hour day'' with ''each twenty-four-hour day,'' and ''legal holidays, in the location of the reporting counterparty'' with ''Federal holidays'' to simplify the definition by no longer requiring the determination of different legal holidays depending on the reporting counterparty's location.

The Commission received four comments raising concerns with the changes to ''business day.'' CME believes the proposed changes could result in firms keeping some staff in the office on local holidays or reporting before the deadline.[32] JSCC believes the proposed changes would force non-U.S. reporting counterparties to report valuation, margin, and collateral data on local holidays even though the data would be unchanged because their markets would be closed.[33] ISDA–SIFMA request clarification that ''federal holidays'' include legal holidays in the reporting counterparty's principal place of business so a reporting counterparty located outside the U.S. can take into account legal holidays that are not U.S. federal holidays.[34] DTCC suggests using the same definitions for parts 43 and 45.[35]

The Commission seeks to avoid firms keeping staff in the office on local holidays, as commenters pointed out the changes suggest. As such, the Commission is keeping the current definition of ''business day'' with one modification: ''registered entity'' refers to SEFs and DCMs. Therefore, the ''business day'' will mean the twenty-four-hour day, on all days except Saturdays, Sundays, and legal holidays, in the location of SEF, DCM, or reporting counterparty reporting data for the swap.

The Commission is changing the definition of ''life cycle event'' in § 45.1. Existing § 45.1 defines ''life cycle event'' to mean any event that would result in either a change to a primary economic term (''PET'') of a swap or to any PET data (''PET data'') previously reported to an SDR in connection with a swap.[36] The Commission is replacing the reference to PET data with required swap creation data to reflect the Commission's removal of the concept of PET data reporting from § 45.3.[37] The Commission is also replacing a reference to a counterparty being identified in swap data by ''name'' with ''other identifiers'' to be more precise in when counterparties are identified by other means.

The Commission is changing the definition of ''non-SD/MSP counterparty'' in § 45.1. Existing § 45.1 defines ''non-SD/MSP counterparty'' to mean a swap counterparty that is neither an SD nor an MSP. The Commission is changing the defined term to ''non-SD/MSP/DCO counterparty.'' [38] ''Non-SD/MSP/DCO counterparty'' means a swap counterparty that is not an SD, MSP, or DCO. This change conforms to the changes to the term ''non-SD/MSP/DCO reporting counterparty'' explained in section II.A.1 above.

The Commission is changing the definition of ''required swap continuation data'' in § 45.1. Existing § 45.1 defines ''required swap continuation data'' to mean all of the data elements that must be reported during the existence of a swap to ensure that all data concerning the swap in the SDR remains current and accurate, and includes all changes to the PET terms of the swap occurring during the existence of the swap. The definition further specifies that required swap continuation data includes: (i) All life-cycle-event data for the swap if the swap is reported using the life cycle reporting method, or all state data for the swap if the swap is reported using the snapshot reporting method; and (ii) all valuation data for the swap.

First, the Commission is removing the reference to ''[PET] of the swap.'' [39] Second, the Commission is removing the reference to snapshot reporting to reflect the removal of the concept of snapshot reporting from § 45.4.[40] Third, the Commission is adding a reference to margin and collateral data.[41] As amended, ''required swap continuation data'' means all of the data elements that must be reported during the existence of a swap to ensure that all swap data concerning the swap in the SDR remains current and accurate, and includes all changes to the required swap creation data occurring during the existence of the swap. For this purpose, required swap continuation data includes: (i) All life-cycle-event data for the swap; and (ii) all swap valuation, margin, and collateral data for the swap.

The Commission is changing the definition of ''required swap creation data'' in § 45.1. Existing § 45.1 defines ''required swap creation data'' to mean all PET data for a swap in the swap asset class in question and all confirmation data for the swap. The Commission is replacing the reference to PET data and confirmation data with a reference to the swap data elements in appendix 1 to part 45, to reflect the Commission's update of the swap data elements in existing appendix 1.[42]

The Commission is changing the definition of ''valuation data'' in § 45.1(a). Existing § 45.1 defines ''valuation data'' to mean all of the data elements necessary to fully describe the daily mark of the transaction, pursuant to CEA section 4s(h)(3)(B)(iii),[43] and § 23.431 of the Commission's regulations, if applicable. The Commission is adding a reference to the swap data elements in appendix 1 to part 45 to link the definition and the data elements.

[30] CEWG comments the ''financial entity'' definition, which the Commission did not propose changing, is overinclusive for financial energy firms because if a central treasury unit (''CTU'') enters into a swap for purposes other than hedging, the CTU cannot qualify for the relief in CEA section 2(h)(7)(D). CEWG at 9. The existing ''financial entity'' definition in § 45.1 simply references the CEA section 2(h)(7)(C) definition of financial entity. The Commission does not see a connection between the clearing rules in CEA section 2(h)(7)(D) to the reporting rules, and thus declines to adopt CEWG's change to the existing definition.

[31] 17 CFR 45.1 (definition of ''business day'').

[32] CME at 12–13.

[33] JSCC at 1, 2.

[34] ISDA–SIFMA at 5.

[35] DTCC at 4.

[36] The Commission is not changing the examples the existing definition provides: A counterparty change resulting from an assignment or novation; a partial or full termination of the swap; a change to the end date for the swap; a change in the cash flows or rates originally reported; availability of an LEI for a swap counterparty previously identified by name or by some other identifier; or a corporate action affecting a security or securities on which the swap is based (*e.g.,* a merger, dividend, stock split, or bankruptcy).

[37] The Commission discusses this change to § 45.3 in section II.C below.

[38] The Commission is updating all references to ''non-SD/MSP counterparty'' to ''non-SD/MSP/DCO counterparty'' throughout part 45. To limit repetition, the Commission will not discuss each update of the phrase throughout this release.

[39] As explained above, the Commission is removing the concept of PET data reporting from § 45.3.

[40] The Commission discusses the changes to § 45.4 in section II.D below.

[41] The Commission discussed new margin and collateral data reporting in section II.D below.

[42] The Commission discusses the changes to appendix 1 in section V below.

[43] 7 U.S.C. 6s(h)(3)(B)(iii).

3. Removed Definitions

The Commission is removing the following definitions from § 45.1: ''credit swap;'' ''designated contract market;'' ''foreign exchange forward;'' ''foreign exchange instrument;'' ''foreign exchange swap;'' ''interest rate swap;'' ''major swap participant;'' ''other commodity swap;'' ''state data;'' ''swap data repository;'' and ''swap dealer.'' The Commission wants market participants to use the terms as they are already defined in Commission regulation § 1.3 or in CEA section 1a.[44]

The Commission is removing the following definitions from § 45.1: ''confirmation;'' ''confirmation data;'' ''electronic confirmation;'' ''non-electronic confirmation;'' ''primary economic terms;'' and ''primary economic terms data.'' The definitions are unnecessary due to the Commission combining PET data and confirmation data into a single data report in § 45.3.[45]

The Commission is removing the definition of ''quarterly reporting'' from § 45.1 because the Commission is removing the quarterly reporting requirement for non-SD/MSP reporting counterparties from § 45.4(d)(2)(ii).[46]

The Commission is removing the definitions of ''electronic verification,'' ''non-electronic verification,'' and ''verification'' from § 45.1 because the Commission is changing the deadlines for reporting counterparties to report required swap creation data in § 45.3 to no longer depend on verification.[47]

The Commission is removing the definition of ''international swap'' from § 45.1. Existing § 45.1 defines ''international swap'' to mean a swap required by U.S. law and the law of another jurisdiction to be reported both to an SDR and to a different TR registered with the other jurisdiction. The Commission is removing the definition because the Commission is removing the international swap regulations in § 45.3(i).[48]

B. § 45.2—Swap Recordkeeping

The Commission is adopting technical changes to the § 45.2 swap recordkeeping regulations.[49] For instance, the Commission is removing the phrase ''subject to the jurisdiction of the Commission'' from § 45.2. The Commission is also removing this phrase from all of part 45.[50] The phrase is unnecessary, as the Commission's regulations apply to all swaps or entities within the Commission's jurisdiction, regardless of whether the regulation states the fact.

The Commission received three comments on § 45.2 unrelated to the technical changes. COPE requests the Commission confirm recordkeeping requirements for physical energy companies that use swaps for hedging purposes are limited to recordkeeping in the normal course of business, as is customary for the hedger's particular industry.[51] As the requirement does not specify records outside of the normal course of business, the Commission is unsure of what else the regulation could require.

EEI–EPSA request the Commission clarify no additional recordkeeping is mandated to avoid injecting regulatory uncertainty into recordkeeping requirements.[52] The Commission confirms its changes to § 45.2 in this release are technical and do not create new requirements. Chris Barnard opposes retaining the current substantive requirement of keeping records for ''at least five years,'' following the final termination of the swap.[53] The Commission declines to substantively amend the five-year requirement as requested by Chris Barnard. The Commission believes five years is reasonable for the Commission to access records if it has concerns about particular swaps.

The Commission did not receive any comments on the non-substantive changes to § 45.2. For the reasons discussed above, the Commission is adopting the changes as proposed.

C. § 45.3—Swap Data Reporting: Creation Data

Existing § 45.3 requires SEFs, DCMs, and reporting counterparties to report swap data to SDRs upon swap execution. As discussed in the sections below, the Commission is adopting four significant changes to the regulations for reporting new swaps: (i) Requiring a single data report at execution instead of two separate reports; (ii) extending the time SEFs, DCMs, and reporting counterparties have to report new swaps to SDRs; (iii) removing the requirement for SDRs to map allocations; and (iv) removing the regulations for international swaps. The remaining changes to § 45.3 discussed below are non-substantive clarifying, cleanup, or technical changes.

1. Introductory Text

The Commission is removing the introductory text to § 45.3. The existing introductory text to § 45.3 provides a broad overview of the swap data reporting regulations for registered entities and swap counterparties. The Commission believes the introductory text is superfluous because the scope of § 45.3 is clear from the operative provisions of § 45.3.[54] Removing the introductory text does not impact any regulatory requirements, including those referenced in the existing introductory text.

The Commission did not receive any comments on the proposal to remove the introductory text to § 45.3.

2. § 45.3(a) through (e)—Swap Data Reporting: Creation Data

a. § 45.3(a)—Swaps Executed on or Pursuant to the Rules of a SEF or DCM

The Commission is adopting several changes to the § 45.3(a) required swap creation data reporting regulations for swaps executed on or pursuant to the rules of a SEF or DCM. Existing § 45.3(a) requires that SEFs and DCMs report all PET data[55] for swaps ASATP after execution. If the swap is not intended to be cleared at a DCO, existing § 45.3(a) requires the SEF or DCM also report confirmation data[56] for the swap ASATP after execution.

First, the Commission is changing § 45.3(a) to require SEFs and DCMs to report a single required swap creation data report, regardless of whether the swap is intended to be cleared. While the Commission intended the initial PET report would ensure SDRs have sufficient data on each swap for the Commission to perform its regulatory functions while the more complete confirmation data is not yet available,[57]

[44] 7 U.S.C. 1a.

[45] The Commission discusses the changes to § 45.3 in section II.C below.

[46] The Commission discusses the changes to § 45.4 in section II.D below.

[47] The Commission discusses the changes to § 45.3 in section II.C below.

[48] The Commission discusses the changes to § 45.3(i) in section II.C.6 below.

[49] In a separate release, the Commission is relocating the recordkeeping requirements for SDRs from § 45.2(f) and (g) to § 49.12. 84 FR at 21103 (May 13, 2019).

[50] To limit repetition, the Commission will not discuss each removal in this release.

[51] COPE at 2.

[52] EEI–EPSA at 3.

[53] Chris Barnard at 2.

[54] The Commission is moving the reference in the introductory text to required data standards for SDRs in § 45.13(b) to the regulatory text of § 45.3(a) and (b) and renumbering § 45.13(b) as § 45.13(a).

[55] PET data reporting includes the reporting of approximately sixty swap data elements, varying by asset class, enumerated in appendix 1 to part 45. *See* 17 CFR 45.1 (definition of ''primary economic terms''). The Commission discusses the removal of the definition of ''primary economic terms'' from § 45.1 in section II.A.3 above.

[56] Confirmation data reporting includes reporting all of the terms of a swap matched and agreed upon by the counterparties in confirming a swap. *See* 17 CFR 45.1 (definition of ''confirmation data''). The Commission discusses removing the definition of ''confirmation data'' from § 45.1 in section II.A.3 above.

[57] *See* 77 FR at 2142, 2148 (Jan. 13, 2012).

the Commission is concerned the separate reports may be encouraging the reporting of duplicative information to SDRs. The Commission believes this will streamline reporting, remove uncertainty, and reduce instances of duplicative required swap creation data reports.

One of the PET data elements in existing appendix 1 to part 45 is any other term(s) matched or affirmed by the counterparties in verifying the swap.[58] The Commission believes this catchall has obscured the difference between PET data and confirmation data. The Commission is concerned reporting counterparties, SEFs, and DCMs are submitting duplicative reports to meet the distinct, yet seemingly indistinguishable, regulatory requirements at the expense of data quality.[59]

Second, the Commission is changing § 45.3(a) to extend the deadline for SEFs and DCMs to report required swap creation data until the end of the next business day following the execution date (sometimes referred to as ''T+1''). Initially, the Commission believed reporting swap data immediately after execution ensured the ability of the Commission and other regulators to fulfill their systemic risk mitigation, market transparency, position limit monitoring, and market surveillance objectives,[60] but the Commission is concerned the ASATP deadline may be causing reporting counterparties to hastily report required swap creation data that has contributed to data quality issues. The Commission believes an extended reporting timeline will help improve data quality while encouraging alignment with reporting deadlines set by other regulators.[61]

The Commission received four comments supporting a single report for PET data and confirmation data in § 45.3(a).[62] In particular, DTCC believes this will streamline reporting, reduce instances of duplicative reports, remove uncertainty regarding which data elements are required to be reported to the SDR, and reduce operational burdens for SDRs and market participants by reducing the number of message types and duplicative data.[63] CEWG believes the existing requirement is duplicative and costly.[64] The Commission agrees with commenters, and for the reasons discussed above, is adopting the changes proposed.

The Commission received seven comments generally supporting extending the deadline for reporting required swap creation data in existing § 45.3(a).[65] In particular, DTCC believes the change will reduce the number of corrections being sent to SDRs because of better quality data, be consistent with the SEC and ESMA, and promote reporting structure consistency concerning timing that would, in turn, create processing efficiencies for SDRs and data submitters.[66] The Commission agrees with commenters, and for the reasons discussed above, is adopting the changes proposed, with one exception explained below.

Markit opposes extending the deadline for reporting because it believes ASATP reporting is already possible and using experienced third-party service providers like Markit helps minimize errors.[67] The Commission understands ASATP reporting is possible and market participants have developed ways to minimize errors, and expects SEFs and DCMs have sophisticated reporting systems that will encourage them to continue reporting ASATP after execution. However, the Commission believes less-sophisticated reporting counterparties, especially for off-facility swaps, will benefit from having more time to report swap data to SDRs, and a single deadline for all reporting entities will be clearest for market participants.[68]

The Commission received three comments concerning the reference to Eastern Time in the proposed extended deadline. Eurex and Chatham believe the Commission should consider aligning with regulators that reference UTC for global harmonization.[69] ISDA–SIFMA believe a T+1 deadline for required swap creation data is similar to the deadline used by other jurisdictions, and that a specific cutoff time like 11:59 p.m. eastern time is less complex to build than T+24 hours.[70] The Commission agrees with Eurex and Chatham that referencing Eastern Time would be inconsistent with global regulators. The swap data elements in appendix 1 also reference UTC.[71] As a result, the Commission deems it appropriate to adopt a modification from the proposal to remove the reference to 11:59 p.m. eastern time. Instead, § 45.3(a) will extend the deadline for reporting to not later than the end of the next business day following the execution date. For the same reason, and to be consistent, the Commission is removing the reference to 11:59 p.m. eastern time from all of the proposed regulations in §§ 45.3 and 45.4.[72] While ISDA–SIFMA believe a specific cutoff time is less complex to build, the Commission views the complications the deadline would create for reporting counterparties, especially in other countries, as offsetting build-simplicity considerations.

In summary, in light of the above changes, § 45.3(a) will require that for each swap executed on or pursuant to the rules of a SEF or DCM, the SEF or DCM shall report required swap creation data electronically to an SDR in the manner provided in § 45.13(a) not later than the end of the next business day following the execution date.

[58] The comment associated with this ''catch-all'' data element in existing appendix 1 to part 45 instructs reporting counterparties, SEFs, DCMs, and DCOs to use as many data elements as required to report each such term. 17 CFR part 45 appendix 1.

[59] Other regulators have taken different approaches to required swap creation data reporting. The Securities and Exchange Commission (''SEC'') does not have rules for reporting separate confirmation data reports. *See* 17 CFR 242.901. The European Market Infrastructure Regulation (''EMIR'') requires reporting of the details of any derivative contract counterparties have concluded and of any modification or termination of the contract. European Securities and Markets Authority (''ESMA'') then develops the specific technical standards and requirements for the implementation of reporting. *See* Regulation (EU) No. 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, Article 9(1) (July 4, 2012) (requiring reporting after execution without reference to separate reports); Commission Implementing Regulation (EU) No. 1247/2012 laying down implementing technical standards with regard to the format and frequency of trade reports to trade repositories according to Regulation (EU) No. 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, Article 1 (Dec. 19, 2012) (referencing ''single'' reports under Article 9 of Regulation (EU) No. 648/2012).

[60] *See* 77 FR 2142 at 2149 (Jan. 13, 2012).

[61] The SEC requires primary and secondary trade information be reported within 24 hours of execution on the next business day. 17 CFR 242.901(j). The SEC noted commenters raised concerns that unreasonably short reporting timeframes would result in the submission of inaccurate transaction information, and that the SEC's interim 24-hour reporting timeframe § 901(j) strikes an appropriate balance between the need for prompt reporting of security-based swap transaction information and allowing reporting entities sufficient time to develop fast and robust reporting capability. *See* Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, 80 FR 14564, 14623–64 (Mar. 19, 2015). ESMA requires reporting no later than the working day following execution. Regulation (EU) No. 648/2012 Article 9(1).

[62] LCH at 2; FIA at 14; CEWG at 2; DTCC at 5.

[63] DTCC at 5.

[64] CEWG at 2.

[65] GFXD at 21, 22; DTCC at 5; Eurex at 2; ISDA–SIFMA at 5; Chatham at 2; ICE DCOs at 3; LCH at 2.

[66] DTCC at 5.

[67] Markit at 3–4.

[68] The Commission discusses the extended deadline for off-facility swaps in section II.C.2.b below.

[69] Eurex at 2; Chatham at 2.

[70] ISDA–SIFMA at 5–7.

[71] The Commission discusses the changes to appendix 1 in section V below.

[72] To limit repetition, the Commission will not discuss each removal in this release.

b. § 45.3(b) through (e)—Off-Facility Swaps

The Commission is making several changes to the § 45.3(b) through (e) required swap creation data reporting regulations for off-facility swaps. Most of these changes conform to the changes in § 45.3(a) because the regulations in § 45.3(b) through (e) for off-facility swaps are analogous to the regulations in § 45.3(a) for swaps executed on SEFs and DCMs.

In general, for off-facility swaps subject to the Commission's clearing requirement, existing § 45.3(b) requires that SD/MSP reporting counterparties report PET data ASATP after execution, with a 15-minute deadline, while non-SD/MSP reporting counterparties report PET data ASATP after execution with a one-business-hour deadline.[73] For off-facility swaps not subject to the clearing requirement but have an SD/MSP reporting counterparty, existing § 45.3(c)(1) generally requires that SD/MSP reporting counterparties report PET data ASATP after execution with a 30-minute deadline, and confirmation data for swaps that are not intended to be cleared ASATP with a 30-minute deadline if confirmation is electronic, or ASATP with a 24-business-hour deadline if not electronic, for credit, equity, foreign exchange, and interest rate swaps.[74]

Existing § 45.3(c)(2) requires that for swaps in the other commodity asset class, SD/MSP reporting counterparties report PET data ASATP after execution, with a two-hour deadline, and confirmation data for swaps that are not intended to be cleared ASATP after confirmation with a 30-minute deadline if confirmation is electronic, or a 24-business-hour deadline if confirmation is not electronic.[75] For off-facility swaps that are not subject to the clearing requirement but have a non-SD/MSP reporting counterparty, existing § 45.3(d) requires reporting counterparties report PET data ASATP after execution with a 24-business-hour deadline, and confirmation data ASATP with a 24-business-hour deadline, if the swap is not intended to be cleared.[76]

Finally, existing § 45.3(e) requires that ASATP after a DCO accepts an original swap for clearing, or ASATP after execution of a clearing swap that does not replace an original swap, the DCO report all required swap creation data for the clearing swap, which includes all confirmation data and all PET data.

First, the Commission is replacing existing § 45.3(b) through (e) with § 45.3(b), titled ''Off-facility swaps,'' to restructure the regulations.[77] Second, the Commission is changing the existing § 45.3(b) through (e) requirements for reporting counterparties to submit separate PET data and confirmation data reports for all off-facility swaps that are not intended to be cleared at a DCO to report a single required swap creation data report. The Commission discusses its reasoning for this change in section II.C.2.a above. As with swaps executed on SEFs and DCMs, the Commission believes a single report would align with the approach taken by other regulators and improve data quality.

The Commission did not receive any comments beyond those discussed in section II.C.2.a above.[78] The Commission is adopting the new requirement for reporting counterparties to report a single required swap creation data report as proposed.

Third, the Commission is changing the existing § 45.3(b) through (e) requirements for reporting counterparties to report required swap creation data ASATP after execution with different deadlines for off-facility swaps in § 45.3(b)(1) and (2). New § 45.3(b)(1) requires SD/MSP/DCO reporting counterparties report swap creation data to an SDR by T+1 following the execution date. New § 45.3(b)(2) requires non-SD/MSP/DCO reporting counterparties report swap creation data to an SDR not later than T+2 following the execution date.

The Commission discusses the background to these changes in section II.C.2.a above. The Commission discusses several comments beyond those discussed in section II.C.2.a in this section. CEWG believes a T+2 deadline for non-SD/MSP/DCO reporting counterparties strikes an appropriate balance between giving end-users enough time to report, incurring a limited compliance burden, and providing the Commission with swap data in a timely manner.[79] The Commission agrees with CEWG and believes the extended deadline reflects the Commission's interest in avoiding placing unnecessary burdens on non-SD/MSP/DCO reporting counterparties.

The Commission received two comments raising issues with the new deadlines for reporting required swap creation data in § 45.3(b). ICE SDR believes including a set time of no later than 11:59 p.m. on T+1 or T+2 could impede the SDR's ability to update its reporting system during its maintenance window.[80] As the Commission discusses in section II.C.2.a above, the Commission is removing 11:59 p.m. eastern time from § 45.3(b)(1) and (2). The Commission believes this addresses ICE SDR's timing concern.

CME believes the reporting deadline should be T+1 or T+2 for all entities to avoid a sequencing issue with non-SD/MSP/DCO reporting counterparties that have a T+2 deadline, and the § 45.4(b) deadline for DCOs to report original swap terminations, which would result in DCO terminations being rejected until original swaps are reported.[81] The Commission does not share CME's concern, as it expects SEFs, DCMs, and DCOs will continue to report original swaps and clearing swaps ASATP, which will avoid sequencing issues for original swap terminations. The Commission expects to monitor the data for implementation issues, however, and to work with SDRs in case the deadlines need to be modified.

In summary, § 45.3(b) will require that for each off-facility swap, the reporting counterparty shall report required swap creation data electronically to an SDR as provided by § 45.3(b)(1) or (2), as applicable. If the reporting counterparty is an SD, MSP, or DCO, § 45.3(b)(1) will require the reporting counterparty report required swap creation data electronically to an SDR in the manner provided in § 45.13(a) not later than the end of the next business day following the execution date. If the reporting counterparty is a non-SD/MSP/DCO counterparty, the reporting counterparty shall report required swap creation data electronically to an SDR in the manner provided in § 45.13(a) not later than the end of the second business day following the execution date.

3. § 45.3(f)—Allocations[82]

The Commission is making several changes to the existing § 45.3(f) regulations for reporting allocations, re-designated as § 45.3(c). The Commission is making most of the changes to § 45.3(f) to conform to the changes in § 45.3(a) through (e). Existing § 45.3(f)(1) provides that the reporting counterparty to an initial swap with an allocation agent reports required swap creation

[73] 17 CFR 45.3(b)(1)(i), (ii).

[74] 17 CFR 45.3(c)(1)(i), (ii).

[75] 17 CFR 45.3(c)(2)(i), (ii).

[76] 17 CFR 45.3(d).

[77] The Commission is replacing § 45.3(c) through (d) with provisions for allocations and multi-asset swaps, respectively, as discussed in the following sections. As part of this change, the Commission is moving the requirements for reporting required swap creation data for clearing swaps from § 45.3(e) to § 45.3(b).

[78] *See* comments from DTCC, LCH, FIA, and CEWG.

[79] CEWG at 2.

[80] ICE SDR at 7.

[81] CME at 14–15.

[82] The Commission is re-designating existing § 45.3(f) as § 45.3(c) to reflect the consolidation of § 45.3(b) through (e) into § 45.3(b).

data for the initial swap, including a USI. For the post-allocation swaps, existing § 45.3(f)(2)(i) provides that the agent tells the reporting counterparty the identities of the actual counterparties ASATP after execution, with a deadline of eight business hours. Existing § 45.3(f)(2)(ii) provides that the reporting counterparty must create USIs for the swaps and report all required swap creation data for each post-allocation swap ASATP after learning the identities of the counterparties. Existing § 45.3(f)(2)(iii) provides that the SDR to which the initial and post-allocation swaps were reported must map together the USIs of the initial swap and each post-allocation swap.

First, the Commission is making non-substantive changes, including specifying required swap creation data for allocations must be reported ''electronically'' to SDRs in § 45.3(c), (c)(1), and (c)(2)(ii), and replacing the reference in existing § 45.3(f)(1) (re-designated as § 45.3(c)(1)) to ''§ 45.3(a) through (d)'' with a reference to paragraph (a) or (b) of § 45.3, to reflect the structural revisions to § 45.3(a) through (e). However, because the Commission is extending the time to report required swap creation data in § 45.3(a) and (b), reporting counterparties will have additional time to report required swap creation data for the initial swaps for allocations as well.

Second, the Commission is changing existing § 45.3(f)(2)(ii) (re-designated as § 45.3(c)(2)(ii)) [83] to replace the requirement to report required swap creation data for post-allocation swaps ASATP after learning the identities of the actual counterparties with a cross-reference to § 45.3(b). This gives reporting counterparties until T+1 or T+2, depending on their status, to report required swap creation data for the allocated swaps. Failing to extend the deadline for allocations would result in reporting counterparties unnecessarily reporting allocations faster than creation and continuation data swap reports.

Finally,[84] the Commission is removing § 45.3(f)(2)(iii) without re-designation. The Commission is requiring an event data element in appendix 1.[85] One of the events in this data element is ''allocation,'' which requires reporting counterparties indicate whether a swap is associated with an allocation. The Commission believes this will simplify the current process involving SDRs mapping data elements by having reporting counterparties report the information about allocations themselves.

The Commission received one question from two commenters on the proposed changes to § 45.3(f).[86] GFXD and ISDA–SIFMA request the Commission clarify for allocations, T+1 begins on receipt of the allocations, rather than on execution, given that allocations may not be provided for up to eight hours.[87] In response, the Commission clarifies T+1 begins on receipt of the allocation notification, rather than execution. However, the Commission notes it is retaining the requirement for the agent to inform the reporting counterparties of the allocation ASATP after execution, with an eight-business-hour deadline. As such, in the majority of cases, the Commission expects the deadline to effectively remain T+1 following execution.

The Commission did not receive additional comments on the proposed changes to § 45.3(f), re-designated as § 45.3(c). For the reasons discussed above, the Commission is adopting the changes to § 45.3(f).

4. § 45.3(g)—Multi-Asset Swaps [88]

The Commission is making non-substantive changes to the § 45.3(g) regulations for reporting multi-asset swaps to conform to the changes in § 45.3(a) through (f). Existing § 45.3(g) provides that for each multi-asset swap, required swap creation data and required swap continuation data must be reported to a single SDR that accepts swaps in the asset class treated as the primary asset class involved in the swap by the SEF, DCM, or reporting counterparty making the first report of required swap creation data pursuant to § 45.3. Existing § 45.3(g) also provides that the registered entity or reporting counterparty making the first report of required swap creation data report all PET data for each asset class involved in the swap.

First, the Commission is replacing ''making the first report'' of required swap creation data with ''reporting'' required swap creation data to reflect the single report for required swap creation data, instead of separate PET data and confirmation data reports. Second, the Commission is removing the last sentence of the regulation concerning all PET data for each asset class involved in the swap. The Commission believes this sentence is unnecessary and no longer relevant with the Commission's removal of PET data from the regulations.

The Commission did not receive any comments on the amendments to § 45.3(g). The Commission is adopting the amendments to § 45.3(g), re-designated as § 45.3(d), as proposed.

5. § 45.3(h)—Mixed Swaps [89]

The Commission is making several non-substantive changes to the § 45.3(h) regulations for mixed swaps to conform to the changes in § 45.3(a) through (g). Existing § 45.3(h)(1) requires that for each mixed swap, required swap creation data and required swap continuation data shall be reported to an SDR registered with the Commission and to a security-based SDR (''SBSDR'') registered with the SEC. This requirement may be satisfied by reporting the mixed swap to an SDR or SBSDR registered with both Commissions. Existing § 45.3(h)(2) requires that the registered entity or reporting counterparty making the first report of required swap creation data under § 45.3(h) ensure that the same USI is recorded for the swap in both the SDR and the SBSDR.

The Commission is replacing ''making the first report'' of required swap creation data with ''reporting'' required swap creation data, among other non-substantive changes. The Commission did not receive any comments on the changes to § 45.3(h), re-designated as § 45.3(e). The Commission is adopting the changes as proposed.

6. § 45.3(i)—International Swaps

The Commission is removing the § 45.3(i) regulations for international swaps. Existing § 45.3(i) requires that for each international swap, the reporting counterparty report to an SDR the identity of the non-U.S. TR to which the swap is also reported and the swap identifier used by the non-U.S. TR.[90]

[83] The Commission is not changing the § 45.3(f)(2)(i) requirement (re-designated as § 45.3(c)(2)(i)) for the agent to inform the reporting counterparty of the identities of the reporting counterparty's actual counterparties ASATP after execution, with an eight business hour deadline. Reporting counterparties would still need to know their actual counterparties, and the eight-hour deadline is consistent with other regulations for allocations. *See* 17 CFR 1.35(b)(5)(iv).

[84] The Commission is adopting several non-substantive and technical language edits, but is limiting discussion in this section to substantive amendments.

[85] The swap data elements required to be reported to SDRs are discussed in section V below.

[86] GFXD separately responded to a request for comment on whether the changes create issues for SDRs stating it believes the changes do not create issues for SDRs. GXFD at 21.

[87] GFXD at 21; ISDA–SIFMA at 6–7.

[88] The Commission is re-designating § 45.3(g) as § 45.3(d) to reflect: The consolidation of § 45.3(b) through (e) into § 45.3(b); and re-designating § 45.3(f) as § 45.3(c).

[89] The Commission is re-designating § 45.3(h) as § 45.3(e) to reflect: The consolidation of § 45.3(b) through (e) into § 45.3(b); re-designating § 45.3(f) as § 45.3(c); and re-designating § 45.3(g) as § 45.3(d).

[90] Existing § 45.1 defines ''international swaps'' to mean swaps required to be reported by U.S. law and

Continued

When § 45.3(i) was adopted, the Commission believed the regulations for international swaps were necessary to provide an accurate picture of the swaps market to regulators to further the purposes of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'').[91] However, if the same swap is reported to different jurisdictions, the USI or UTI[92] should be the same. If the transaction identifier is the same for the swap, there is no need for the counterparties to send the identifier to other jurisdictions. In addition, in the future, regulators should have access to each other's TRs, if necessary, further obviating the need for reporting counterparties sending identifiers to multiple jurisdictions. As a result, the Commission believes § 45.3(i) is unnecessary and is removing § 45.3(i) from its regulations. The Commission did not receive any comments on the removal of § 45.3(i).

7. § 45.3(j)—Choice of SDR[93]

The Commission is making non-substantive changes to the § 45.3(j) regulations for reporting counterparties in choosing their SDR. Existing § 45.3(j) requires that the entity with the obligation to choose the SDR to which all required swap creation data for a swap is reported be the entity to make the first report of all data pursuant to § 45.3, as follows: (i) For swaps executed on or pursuant to the rules of a SEF or DCM, the SEF or DCM choose the SDR; (ii) for all other swaps, the reporting counterparty, as determined in § 45.8, choose the SDR.

The Commission is changing the heading of re-designated § 45.3(f) from ''Choice of SDR'' to ''Choice of swap data repository,'' to be consistent with other headings throughout part 45, among other technical changes. The Commission did not receive any comments on the proposed changes to § 45.3(j), re-designated as § 45.3(f). The Commission is adopting the changes to § 45.3(j) as proposed.

D. § 45.4—Swap Data Reporting: Continuation Data

Existing § 45.4 requires reporting counterparties to report updates to existing swap data and swap valuations to SDRs. As discussed in the sections below, the Commission is adopting four significant changes to these regulations: (i) Removing the option for state data reporting; (ii) extending the deadline for reporting required swap continuation data to T+1 or T+2; (iii) removing the requirement for non-SD/MSP/DCO reporting counterparties to report valuation data quarterly; and (iv) requiring SD/MSP reporting counterparties to report margin and collateral data daily. The remaining changes to § 45.4 discussed below are non-substantive clarifying, cleanup, or technical changes.

1. Introductory Text

The Commission is removing the introductory text to existing § 45.4.[94] The existing introductory text to § 45.4 provides a broad overview of the swap continuation data reporting regulations for registered entities and swap counterparties. The Commission believes the introductory text is superfluous because the scope of § 45.4 is clear from the operative provisions of § 45.4. Removing the introductory text would not impact any regulatory requirements, including those referenced in the introductory text.

The Commission did not receive any comments on the proposal to remove the introductory text to § 45.4.

2. § 45.4(a)—Continuation Data Reporting Method Generally

The Commission is making several changes to the § 45.4(a) regulations for required swap continuation data reporting. Existing § 45.4(a) requires reporting counterparties and DCOs[95] report required swap continuation data in a manner sufficient to ensure that all data in the SDR for a swap remains current and accurate, and includes all changes to the PET data of the swap occurring during the existence of the swap. Existing § 45.4(a) further specifies reporting entities and counterparties fulfill their obligations by reporting, within the applicable deadlines outlined in § 45.4, the following: (i) Life-cycle-event data to an SDR that accepts only life-cycle-event data reporting; (ii) state data to an SDR that accepts only state data reporting; or (iii) either life-cycle-event data or state data to an SDR that accepts both life-cycle-event data and state data reporting.

First, the Commission is changing the first two sentences to state that for each swap, regardless of asset class, reporting counterparties and DCOs required to report required swap continuation data shall report, to improve readability without changing the regulatory requirement.

Second, the Commission is removing state data reporting as an option for reporting changes to swaps from § 45.4. State data reporting involves reporting counterparties re-reporting the PET terms of a swap every day, regardless of whether any changes have occurred to the terms of the swap since the last state data report.[96] In contrast, life-cycle-event data reporting involves reporting counterparties re-submitting the PET terms of a swap when an event has taken place that results in a change to the previously reported terms of the swap.[97]

In adopting part 45, the Commission gave reporting counterparties the option of reporting changes to swaps by either the state data reporting method or life cycle event method to provide flexibility.[98] However, the Commission believes state data reporting may be contributing to data quality issues by filling SDRs with unnecessary swap messages. As noted in the Proposal, the Commission estimates that state data reporting messages represent the vast majority of swap reports maintained by SDRs and the Commission.[99] The Commission believes eliminating state

the law of another jurisdiction to be reported to both an SDR and to a different TR registered with the other jurisdiction. The Commission discusses removing the definition of ''international swap'' from § 45.1 in section II.A above.

[91] Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136, 2151 (Jan. 13, 2012).

[92] The Commission discusses USIs and UTIs in section II.E below.

[93] The Commission is re-designating § 45.3(j) as § 45.3(f) to reflect: The consolidation of § 45.3(b) through (e) into § 45.3(b); re-designating § 45.3(f) as § 45.3(c); re-designating § 45.3(g) as § 45.3(d); re-designating § 45.3(h) as § 45.3(d); and removing § 45.3(i).

[94] The introductory text to § 45.4 references: The existing § 45.13(b) regulations for required data standards for reporting swap data to SDRs; the existing § 49.10 regulations for SDRs to accept swap data; the existing part 46 regulations for reporting pre-enactment swaps and transition swaps; the existing § 45.3 regulations for reporting required swap creation data; the existing § 45.6 regulations for the use of LEIs; the real-time public reporting requirements in existing part 43; and the parts 17 and 18 regulations for large trader reporting.

[95] SEFs and DCMs do not have reporting obligations with respect to required swap continuation data. DCOs are reporting counterparties for clearing swaps, and are thus responsible for reporting required swap continuation data for these swaps. However, DCOs also have required swap continuation data obligations for original swaps, to which DCOs are not counterparties. As a result, § 45.4(a) must address reporting counterparties and DCOs separately.

[96] 17 CFR 45.1 (definition of ''state data''). The Commission discusses removing the definition of ''state data'' from § 45.1 in section II.A.3 above.

[97] 17 CFR 45.1 (definition of ''life cycle event''). The Commission discusses amending the definition of ''life-cycle-event data'' in § 45.1 in section II.A.2 above.

[98] *See* 77 FR at 2153.

[99] For instance, an analysis of part 45 data showed that during January 2018, SDRs received approximately 30 million state data reporting messages, which included over 77% of all interest rate swap reports submitted to SDRs during that time period. Since reporting began, the Commission estimates SDRs have received and made available to the Commission over a billion state data reporting messages.

data reporting will improve data quality without impeding the Commission's ability to fulfill systemic risk mitigation, market transparency, position limit monitoring, and market surveillance objectives.

CME opposes removing state data reporting from § 45.4(a). CME believes the Commission should instead require the reporting of final-state life cycle event changes per swap on the day in question to reduce further submission of unnecessary data, noting that this requirement would be consistent with the requirements of other international regulators.[100] The Commission agrees with CME updates should be limited to final-state life cycle event changes per swap on a day in question, but believes the Commission can clarify this without continuing to permit state data reporting. As a result, the Commission declines to keep state data reporting, but does clarify life cycle updates should be limited to end of day updates where multiple take place on a day.

For the reasons discussed above, the Commission is adopting the changes to § 45.4(a) as proposed. Therefore, § 45.4(a) will require that for each swap, regardless of asset class, reporting counterparties and DCOs required to report required swap continuation data shall report life-cycle-event data for the swap electronically to an SDR in the manner provided in § 45.13(a) within the applicable deadlines outlined in § 45.4.

3. § 45.4(b)—Continuation Data Reporting for Clearing Swaps

The Commission is making several changes to the existing § 45.4(b) regulations for required swap continuation data reporting for clearing swaps. The Commission is moving the § 45.4(b) required swap continuation data reporting regulations for clearing swaps to § 45.4(c) as part of structural changes to the regulations.[101] The Commission is re-designating existing § 45.4(c) as § 45.4(b). Existing § 45.4(c) contains the continuation data reporting regulations for original swaps. Re-designated § 45.4(b) will be titled ''Continuation data reporting for original swaps.''

The Commission is also making several changes to the continuation data reporting regulations for original swaps in re-designated § 45.4(b). Existing § 45.4(c) requires required swap continuation data, including terminations, must be reported to the SDR to which the original swap that was accepted for clearing was reported pursuant to § 45.3(a) through (d).[102] For continuation data, existing § 45.4(c)(1) requires: (i) Life-cycle-event data or state data reporting either on the same day that any life cycle event occurs with respect to the swap, or daily for state data reporting; and (ii) daily valuation data. In addition, existing § 45.4(c)(2) requires the reporting of: (i) The LEI of the SDR to which all required swap creation data for each clearing swap was reported by the DCO under § 45.3(e); (ii) the USI of the original swap that was replaced by the clearing swaps; and (iii) the USI of each clearing swap that replaces a particular original swap.

First, the Commission is extending the deadline for reporting swap continuation data for original swaps in § 45.4(c)(1) to either T+1 or T+2, depending on the reporting counterparty, to be consistent with the new deadlines for reporting required swap creation data in § 45.3.[103] As the Commission discusses in section II.C.2.a above, though, the Commission is removing the references to 11:59 p.m. eastern time that were in the Proposal. The Commission is thus changing the reference from 11:59 p.m. eastern time to the end of the next business day or the second business day that any life cycle event occurs for the swap. Second, the Commission is removing the references to state data reporting[104] in § 45.4(b) and clarifying that required swap continuation data must be reported ''electronically,'' among other non-substantive changes.

The Commission received three comments supporting extending the deadline for reporting required swap continuation data in § 45.4(b).[105] In particular, GFXD believes T+1 will create a more harmonized global regulatory framework.[106] The Commission agrees with commenters that the proposal extending the deadline for reporting required swap continuation data will streamline reporting and be consistent with the deadlines set by other regulators.

DTCC requests clarification on when ''each business day'' begins for § 45.4(b) reporting.[107] The Commission believes the definitions of ''required swap creation data'' and ''required swap continuation data'' explain that § 45.4 required swap continuation data reporting begins when reporting counterparties need to update information for a swap reported to an SDR under § 45.3. As such, reporting data required by § 45.4 would begin on the ''business day'' on which a reporting counterparty needs to begin reporting according to § 45.4.

Eurex proposes removing the DCO obligation to report terminations of original swaps for ''off facility swaps.''[108] Eurex states that in Europe clearing members have no automated reporting line to Eurex and not all multilateral trading facilities (''MTFs'') or Approved Trade Sources (''ATSs'') transmit USI namespaces and LEIs of the SDR for ''off-facility swaps'' to the DCO.[109] Eurex states this would be burdensome as SDRs' USI namespaces and LEIs would have to be manually obtained from the MTFs and ATSs.[110] The Commission is not changing DCOs' obligations for reporting original swap terminations, as the Commission does not want to disrupt the reporting workflows for original and clearing swaps the Commission established in a 2016 rulemaking extensively analyzing the process.[111] The Commission declines to adopt Eurex's suggestion at this time.

In summary, § 45.4(b) will require that for each original swap, the DCO shall report required swap continuation data, including terminations, electronically to the SDR to which the swap that was accepted for clearing was reported pursuant to § 45.3 in the manner provided in § 45.13(a), and such required swap continuation data shall be accepted and recorded by such SDR as provided in § 49.10. New § 45.4(b)(1) will provide that the DCO that accepted the swap for clearing shall report all life-cycle-event data electronically to an SDR in the manner provided in § 45.13(a) not later than the end of the next business day following the day that any life cycle event occurs with respect to the swap. New § 45.4(b)(2) will require that, in addition to all other required swap continuation data, life-

[100] CME at 15.

[101] The Commission discusses the revisions to the continuation data requirements for clearing swaps and uncleared swaps in section II.D.4 below.

[102] The regulation also specifies the information must be reported in the manner provided in § 45.13(b) and in § 45.4, and must be accepted and recorded by such SDR as provided in § 49.10. 17 CFR 45.4(c).

[103] The Commission discusses these changes in sections II.C.2 above. The Commission also considered the deadlines set by other regulators. The SEC requires that any events that would result in a change in the information reported to a SBSDR be reported within 24 hours of the event taking place. 17 CFR 242.900(g); 17 CFR 242.901(e). EMIR requires that contract modifications be reported no later than the working day following the modification. Reg. 648/2012 Art. 9(1).

[104] The Commission discusses removing state data reporting in section II.D.2 above.

[105] GFXD at 22; Chatham at 2; ISDA–SIFMA at 5.

[106] GFXD at 22.

[107] DTCC at 5.

[108] Eurex 2–3.

[109] *Id.*

[110] *Id.*

[111] *See* Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps, 81 FR 41736 (June 27, 2016).

cycle-event data shall include the LEI of the SDR to which all required swap creation data for each clearing swap was reported by the DCO pursuant to § 45.3(b); the UTI of the original swap that was replaced by the clearing swaps; and the UTI of each clearing swap that replaces a particular original swap.

4. § 45.4(c)—Continuation Data for Original Swaps

The Commission is making several changes to the § 45.4(c) regulations for reporting required swap continuation data for original swaps. The Commission is moving the required swap continuation data reporting requirements for original swaps from existing § 45.4(c) to § 45.4(b) as part of structural changes.[112] The Commission is also moving the continuation data reporting requirements for clearing swaps from existing § 45.4(b) to § 45.4(c), and combining them with the continuation data reporting requirements for uncleared swaps in existing § 45.4(d). The Commission is retitling § 45.4(c) ''Continuation data reporting for swaps other than original swaps'' to reflect the combination.

The Commission is making several changes to the continuation data reporting regulations for clearing swaps and uncleared swaps in § 45.4(b) and (d), respectively, proposed to be re-designated as § 45.4(c). Existing § 45.4(b) requires that for all clearing swaps, DCOs report: (i) Life-cycle-event data or state data reporting either on the same day that any life cycle event occurs with respect to the swap, or daily for state data reporting; and (ii) daily valuation data. Existing § 45.4(d) requires that for all uncleared swaps, including swaps executed on a SEF or DCM, the reporting counterparty report: (i) All life-cycle-event data on the same day for SD/MSP reporting counterparties, or the second business day if it relates to a corporate event of the non-reporting counterparty, or state data daily; (ii) all life-cycle-event data on the next business day for non-SD/MSP reporting counterparties, or the end of the second business day if it relates to a corporate event of the non-reporting counterparty, or state data daily; (iii) daily valuation data for SD/MSP reporting counterparties; and (iv) the current daily mark of the transaction as of the last day of each fiscal quarter, within 30 calendar days of the end of each fiscal quarter for non-SD/MSP reporting counterparties.[113]

First, the Commission is changing the life cycle event reporting deadlines for these swaps to match other T+1 and T+2 deadlines.[114] The Commission is changing the life cycle event reporting deadline for SD/MSP/DCO reporting counterparties from the same day to T+1 following any life cycle event.[115] The Commission is changing the exception for corporate events of the non-reporting counterparty to T+2. For non-SD/MSP/DCO reporting counterparties, the Commission is changing the life cycle event reporting deadline to T+2 following the life cycle event. As explained in section II.C.2.a above, though, the Commission is removing the references to 11:59 p.m. eastern time from the proposal. As a result, the deadlines will be either the end of the next business day or the second business day following the events.

Second, the Commission is removing the references to state data reporting in new § 45.4(c).[116] Third, the Commission is clarifying that required swap continuation data must be reported ''electronically,'' among other non-substantive edits to improve readability and update cross-references.

Fourth, the Commission is changing the swap valuation data reporting requirements for all reporting counterparties. DCOs, SDs, and MSPs report valuation data daily, while non-SD/MSP reporting counterparties report the daily mark of transactions quarterly.[117] For DCO, SD, and MSP reporting counterparties, the Commission is keeping the daily reporting requirement. However, the Commission is expanding the requirement to include margin and collateral data.[118] Conversely, the Commission is eliminating the requirement for non-SD/MSP/DCO reporting counterparties to report valuation data and is not requiring them to report margin and collateral data.

The Commission decided against requiring collateral data reporting when it adopted part 45 in 2012. At the time, both the Commission and industry understood collateral data was important for systemic risk management, but was not yet possible to include in transaction-based reporting since it was calculated at the portfolio level.[119] In light of this limitation, the Commission required the daily mark be reported for swaps as valuation data, but not collateral.[120] However, the Commission noted while the industry had not yet developed data elements suitable for representing the terms required to report collateral, the Commission could revisit the issue in the future if and when industry and SDRs develop ways to represent electronically the terms required for reporting collateral.[121]

The Commission is concerned not having margin and collateral data at SDRs impedes its ability to fulfill systemic risk mitigation objectives. As a result, the Commission revisited this issue in the Proposal to determine whether it is now feasible.[122] The Commission believes margin and collateral data is necessary to monitor risk in the swaps market. Given that ESMA is already requiring margin and collateral reporting, and that the Commission is requiring many of the data elements that ESMA requires, the Commission believes certain market participants are ready to report this data to SDRs.

However, the Commission is concerned valuation, margin, and collateral data reporting could create a significant burden for non-SD/MSP/DCO reporting counterparties. These entities include those market

[112] The Commission discusses changes to continuation data requirements for original swaps in section II.D.3 above.

[113] If a daily mark of the transaction is not available for the swap, the reporting counterparty satisfies the requirement by reporting the current valuation of the swap recorded on its books in accordance with applicable accounting standards. 17 CFR 45.4(d)(2)(ii).

[114] The Commission discusses the T+1 and T+2 deadlines in § 45.3(b) and § 45.4(b) in sections II.C.2.b and II.D.3, respectively, above.

[115] The Commission is not extending the valuation data reporting deadline for SD/MSP/DCO reporting counterparties. The Commission believes SDs, MSPs, and DCOs are already creating daily valuations and tracking margin and collateral for reasons independent of their swap reporting obligations.

[116] The Commission discusses the removal of state data reporting in section II.D.2 above.

[117] 17 CFR 45.4(b)(2) and (d)(2).

[118] The Commission is adding a definition of ''collateral data'' to § 45.1(a), as discussed in section II.A.1 above. ''Collateral data'' means the data elements necessary to report information about the money, securities, or other property posted or received by a swap counterparty to margin, guarantee, or secure a swap, as specified in appendix 1 to part 45.

[119] *See* 77 FR 2136, 2153.

[120] 17 CFR 45.1 (definition of ''valuation data''). The Commission proposed amending the definition of ''valuation data'' in § 45.1(a), as discussed in section II.A.2 above. As amended, ''valuation data'' would mean the data elements necessary to report information about the daily mark of the transaction, pursuant to CEA section 4s(h)(3)(B)(iii), and to § 23.431 if applicable, as specified in appendix 1 to part 45.

[121] *See* 77 FR 2136, 2154 (Jan. 13, 2012).

[122] Other regulators have taken different approaches to margin and collateral data reporting. ESMA, for instance, requires the reporting of many of the same collateral and margin swap data elements the Commission proposed requiring, either on a portfolio basis or by transaction. Reg. 148/2013 Art. 3(5). With respect to valuation data, ESMA requires central counterparties to report valuations for cleared swaps as the Commission does. Reg. 148/2013 Art. 3(4); Reg. 648/2012 Art. 10. EMIR provides an exemption from valuation reporting, as well as reporting margin and collateral data, for non-financial counterparties, unless they exceed a threshold of derivatives activity.

participants that, by virtue of size and extent of activity in the swap market, may have fewer resources to devote to reporting this complex data. The Commission also recognizes the quarterly valuation data these counterparties report is not integral to the Commission's ability to monitor systemic risk in the swaps market and may not justify the cost to these entities to report it.

The Commission received 11 comments on expanding daily valuation data reporting to include margin and collateral data reporting in § 45.4(c) for SD/MSP/DCO reporting counterparties. Three commenters support the proposal.[123] In particular, Markit believes it is more efficient for reporting counterparties to submit both cleared and uncleared margin and collateral data together to SDRs, and states that when it comes to valuation or collateral reporting valuation, some systems may have limited information (*e.g.,* trade reference identification but not clearing status), and therefore it is more complex to split valuation or collateral reporting into cleared versus uncleared categories.

Eight commenters oppose the proposal.[124] CME, Eurex, ISDA–SIFMA, and FIA note collateral and margin reporting for DCOs pursuant to part 45 would be redundant for DCOs that have to report similar data to the Commission pursuant to part 39 of the Commission's regulations, which could result in burdens on DCOs with questionable benefits to the Commission.[125] In particular, CME believes the Commission should consider consolidating its collateral reporting obligations for DCOs under part 39.[126]

The Commission received nine comments supporting excluding non-SD/MSP/DCO reporting counterparties from reporting valuation, margin, and collateral data in § 45.4(c).[127] In particular, IECA notes reporting counterparties contract for third-party services to perform quarterly valuations of transactions, and the valuation analysis does not mitigate systemic risk, and offers only tangential value, at best, to the two parties.[128] Similarly, ISDA–SIFMA strongly support the proposal because ISDA–SIFMA do not believe the 2% of swaps reported by non-SD/MSP/DCO reporting counterparties represent systemic risk.[129]

The Commission acknowledges the concerns raised by CME, Eurex, ICE DCOs, ISDA–SIFMA, and FIA about duplicative reporting for DCOs regarding cleared swaps. While collateral and margin data is reported pursuant to part 39 using a different set of data elements than those contained in appendix 1, and collateral and margin data is reported for end-of-day positions pursuant to part 39 as opposed to a more granular transaction-by-transaction basis pursuant to part 45, the Commission believes the collateral and margin data reported by DCOs pursuant to part 39 is sufficiently similar to data reported pursuant to part 45 to meet the Commission's current needs.

However, the Commission is also open to requiring DCO reporting counterparties to report collateral and margin data on a transaction-by-transaction basis pursuant to part 45 at a future date if a Commission need for more granular data emerges in its monitoring of systemic risk or if granular data is needed as a condition for global jurisdictions to grant substituted compliance and TR access to one another. The Commission notes any added costs to DCO reporting counterparties to comply with any such future Commission requirement would be substantially mitigated by DCOs' existing and future systems for transaction-by-transaction reporting of collateral and margin data developed to comply with the requirements of other jurisdictions, including Europe.

The Commission received one comment on reporting corporate events. FIA suggests that for the reporting of corporate events of non-reporting counterparties, the Commission measure the reporting deadline from the day the non-reporting counterparty informs the reporting counterparty of the corporate event.[130] The Commission believes corporate events need to be reported in a timely manner, and is concerned FIA's suggestion of leaving the decision of when to inform the reporting counterparty could delay the notification for extended periods of time, resulting in inaccurate or stale data. As such, the Commission declines to adopt FIA's suggestion.

For the reasons discussed above, the Commission is adopting the changes to § 45.4(c) as proposed, except the Commission is excluding DCO reporting counterparties from the requirement to report collateral data. In summary, § 45.4(c) will require that for each swap that is not an original swap, including clearing swaps and swaps not cleared by DCOs, the reporting counterparty shall report all required swap continuation data electronically to an SDR in the manner provided in § 45.13(a) as provided in § 45.4(c). New § 45.4(c)(1) will require that: (i) If the reporting counterparty is a SD, MSP, or DCO, the reporting counterparty shall report life-cycle-event data electronically to an SDR in the manner provided in § 45.13(a) not later than the end of the next business day following the day that any life cycle event occurred, with the sole exception that life-cycle-event data relating to a corporate event of the non-reporting counterparty shall be reported in the manner provided in § 45.13(a) not later than the end of the second business day following the day that such corporate event occurred; (ii) if the reporting counterparty is a non-SD/MSP/DCO counterparty, the reporting counterparty shall report life-cycle-event data electronically to an SDR in the manner provided in § 45.13(a) not later than the end of the second business day following the day that any life cycle event occurred. New § 45.4(c)(2)(i) will require that if the reporting counterparty is a SD, MSP, or DCO, swap valuation data shall be reported electronically to an SDR in the manner provided in § 45.13(b) each business day. New § 45.4(c)(2)(ii) will require that if the reporting counterparty is a SD or MSP, collateral data shall be reported electronically to an SDR in the manner provided in § 45.13(b) each business day.

E. § 45.5—Unique Transaction Identifiers

The Commission is amending § 45.5 to adopt requirements for UTIs, the globally accepted transaction identifier, replacing USIs in existing § 45.5. In general, the Commission is amending existing § 45.5(a) through (f) to require each swap to be identified with a UTI in all recordkeeping and all swap data reporting, and to require the UTI be comprised of the LEI of the generating entity and a unique alphanumeric code. Before discussing the specific changes to § 45.5(a) through (f) in sections II.E.1 to II.E.7 below, the Commission explains the policy behind adopting UTIs.

In general, existing § 45.5 requires: (i) Each swap be identified with a USI in all recordkeeping and all swap data reporting, and (ii) the USI be comprised of a unique alphanumeric code and an identifier the Commission assigns to the generating entity. Each swap retains its USI from execution until, for instance,

[123] Chris Barnard at 1; Markit at 6; LCH at 2.

[124] CME at 15–16; CEWG at 8; Eurex at 3; ICE DCOs at 3–4; ISDA–SIFMA at 8; BP at 3; FXPA at 4–5; FIA at 12.

[125] CME at 15–16; Eurex at 3; ICE DCOs at 3–4; ISDA–SIFMA at 8; FIA at 12.

[126] CME at 15–16.

[127] IECA at 3; Chatham at 2–3; Eurex at 3; JBA at 4; NRECA–APPA at 5; ISDA–SIFMA at 8; FIA at 14; CEWG at 2; COPE at 2.

[128] IECA at 3.

[129] ISDA–SIFMA at 8.

[130] FIA at 11.

the swap reaches maturity or the counterparties terminate the contract. USIs allow the Commission to identify new swaps in SDR data and track changes to swaps by reviewing all reports associated with a USI.

The Commission implemented the existing USI regulations before global consensus was reached on the structure and format for a common swap identifier. For entities reporting swap data to multiple jurisdictions, this has resulting in conflicting or ambiguous generation and transmission requirements across jurisdictions. Practically, the Commission is concerned this has resulted in: (i) Conflicting responsibilities for generating identifiers and (ii) entities reporting different identifiers identifying the same swap to different SDRs and TRs.

The Commission believes amending § 45.5 to require each swap be identified with a UTI in all recordkeeping and all swap data reporting, and to require that the UTI be comprised of the LEI of the generating entity and a unique alphanumeric code, will result in the structure and format for the swap identifier being consistent with the UTI Technical Guidance, which will reduce cross-border reporting complexity and encourage global swap data aggregation.

1. Title and Introductory Text

The Commission proposed several conforming amendments to the § 45.5 title and the introductory text. Existing § 45.5 is titled ''Unique swap identifiers.'' The existing introductory text states that each swap subject to the jurisdiction of the Commission shall be identified in all recordkeeping and all swap data reporting pursuant to part 45 by the use of a USI, which shall be created, transmitted, and used for each swap as provided in § 45.5(a) through (f).

The Commission proposed replacing ''swap'' in the title with ''transaction'' to reflect the Commission's proposed adoption of the UTI. Accordingly, the Commission proposed updating the reference to USI with UTI in the introductory text.

The Commission also proposed updating the reference to paragraphs (a) through (f) of existing § 45.5 to (a) through (h) of proposed § 45.5. This would reflect the Commission's addition of proposed § 45.5(g) and (h), discussed in sections II.E.8 and II.E.9 below.

The Commission received eight general comments on adopting UTIs in § 45.5. Four commenters generally support adopting UTIs in § 45.5.[131] In particular, BP also supports using the same UTI across jurisdictions and recommends SDRs manage UTI generation and identify and coordinate the use of the earliest regulatory reporting deadline among jurisdictions.[132]

GFXD supports implementing global UTI standards but is concerned the Commission will conflict with the global harmonized generation hierarchy or run on a timeframe that is not coordinated with other jurisdictions, negating the purpose and benefits of a universal UTI standard and creating significant extra cost and complexity, as well as the need to separate UTI systems and logic for each jurisdiction.[133]

Eurex supports harmonizing the UTI and believes it would significantly relieve reporting counterparties. Eurex recommends the Commission align UTI requirements with ESMA and other global regulators on the effective date of UTI and phase in UTI to handle existing open swap positions.[134] LCH recommends the Commission apply the factors provided in Table 1 of the UTI Technical Guidance, which contains specific factors authorities should consider for allocating responsibility for UTI generation.[135]

JBA believes not adopting the UTI Technical Guidance precisely could lead to confusion for the UTI generation responsibility for cross-border transactions. JBA asks the Commission consider designing easy-to-implement and flexible rules, such as allowing a change to the UTI generation responsibility in accordance with a bilateral agreement or adopting tiebreaker logic similar to the existing ISDA Tie-Breaker Logic that easily determines the UTI generation responsibility.[136]

The Commission did not receive any comments on the proposals to retitle § 45.5 ''Unique Transaction Identifiers,'' to update the reference to paragraphs (a) through (f) of § 45.5 to (a) through (h) of § 45.5, or to update the reference to USI with UTI in the introductory text and for reasons articulated in the Proposal and reiterated above, is adopting the changes to those portions of the introductory text as proposed. For the reasons articulated in the Proposal and the additional reasons discussed below, the Commission is adopting the changes to the remainder of the introductory text to § 45.5 as proposed.

The Commission acknowledges the comments supportive of the Commission's proposal to adopt UTIs. The Commission agrees with Eurex and GFXD that the promise of UTIs can only be realized if jurisdictions worldwide adopt the UTI, but the Commission shares the FSB's belief that it is not feasible for jurisdictions to have one coordinated global implementation date due to differences in the legislative and regulatory process across jurisdictions.[137] However, as discussed in section VI below, the Commission is adopting an 18-month compliance date for UTIs in an effort to be closer aligned with the estimated implementation dates of other jurisdictions and recommends that other jurisdictions adopt UTIs as expeditiously as possible.

As to the comments from LCH, GFXD, and JBA on the importance of following the UTI Technical Guidance for assigning UTI generation responsibilities, the Commission agrees and has cited the specific steps from the UTI Technical Guidance generation flowchart in sections II.E.2 to II.E.5 below to demonstrate the conformity of § 45.5(a) to (d) with the UTI Technical Guidance.

The Commission declines JBA's request for a rule affording flexibility in UTI generation responsibilities, such as allowing bilateral agreement between counterparties to override the UTI generation responsibilities in § 45.5, because it believes clear rules delineating UTI generation responsibilities provide the best assurance that only one unique UTI is generated for a trade, a necessity for swap data reporting integrity. Allowing UTIs to be generated according to bilateral agreement results in the need to reach agreement on a trade-by-trade or counterparty-by-counterparty basis, a scenario the Commission believes will increase the likelihood, due to miscommunication, that no UTI is generated for a swap if each entity believes the other agreed to generate or multiple UTIs are generated for a swap if each entity believes it agreed to generate.

[131] Chatham at 3; LCH at 3; GLEIF at 3; BP at 5.

[132] BP at 5.

[133] GFXD at 22–23.

[134] Eurex suggests, for example, continuing use of the old identifier for open swaps until positions are modified. Eurex at 3–4.

[135] LCH at 3.

[136] JBA at 2–3.

[137] FSB, Governance arrangements for the unique transaction identifier (UTI) (Dec. 29, 2017) at 16 (''The FSB recognises the challenges in coordinating a synchronised regulatory and technological implementation across jurisdictions and registered entities. As a result, the FSB believes that the most realistic and feasible implementation plan is that jurisdictions globally implement the requirements to report UTIs as expeditiously as possible'').

2. § 45.5(a)—Swaps Executed on or Pursuant to the Rules of a SEF or DCM

The Commission proposed several conforming amendments to § 45.5(a) for the creation and transmission of UTIs for swaps executed on or pursuant to the rules of SEFs and DCMs. Existing § 45.5(a)(1) requires that for swaps executed on or pursuant to the rules of SEFs and DCMs, the SEFs and DCMs generate and assign USIs at or ASATP following execution, but prior to the reporting of required swap creation data, that consist of a single data field.[138]

Existing § 45.5(a)(2) requires that the SEF or DCM transmit the USI electronically (i) to the SDR to which the SEF or DCM reports required swap creation data for the swap, as part of that report; (ii) to each counterparty to the swap ASATP after execution of the swap; and (iii) to the DCO, if any, to which the swap is submitted for clearing, as part of the required swap creation data transmitted to the DCO for clearing purposes.[139]

First, the Commission proposed amendments to conform to the Commission's proposed adoption of the UTI. The Commission proposed replacing all references to ''USIs'' with ''UTIs'' in proposed § 45.5(a)(1) and (2). In addition, the Commission proposed updating the phrase in existing § 45.5(a)(1) that requires the USI to consist of a single data ''field'' that contains two components to a single data ''element with a maximum length of 52 characters'' so that the length of the UTI is consistent with the UTI Technical Guidance.[140]

The Commission also proposed amending the § 45.5(a)(1)(i) description of the first component of the UTI's single data element to replace ''unique alphanumeric code assigned to'' the SEF or DCM with ''legal entity identifier of'' the SEF or DCM so that the identifier used to identify the UTI generating entity is consistent with the UTI Technical Guidance.[141] The Commission proposed to delete the phrase in the second half of the sentence statin that by the Commission for the purpose of identifying the SEF or DCM with respect to the USI creation, because, according to the UTI Technical Guidance, an LEI is used to identify the UTI generating entity instead of an identifier assigned by individual regulators.

The Commission did not receive any comments on the proposed amendments to the requirements for the creation and transmission of UTIs for swaps executed on or pursuant to the rules of SEFs and DCMs in proposed § 45.5(a) and for reasons articulated in the Proposal and reiterated above, is adopting the changes as proposed. The Commission notes assigning UTI generation responsibilities for swaps executed on or pursuant to the rules of SEFs and DCMs to the SEF or DCM adheres to the generation flowchart in the UTI Technical Guidance.[142]

3. § 45.5(b)—Off-Facility Swaps With an SD or MSP Reporting Counterparty

The Commission proposed several amendments to existing § 45.5(b) for the creation and transmission of UTIs for off-facility swaps by SD/MSP reporting counterparties. Existing § 45.5(b)(1) requires that, for off-facility swaps with SD/MSP reporting counterparties, the reporting counterparty generate and assign a USI consisting of a single data field.[143] The required USI must be generated and assigned after execution of the swap and prior to the reporting of required swap creation data and the transmission of data to a DCO if the swap is to be cleared.

Existing § 45.5(b)(2) requires that the reporting counterparty transmit the USI electronically: (i) To the SDR to which the reporting counterparty reports required swap creation data for the swap, as part of that report; and (ii) to the non-reporting counterparty to the swap, ASATP after execution of the swap; and (iii) to the DCO, if any, to which the swap is submitted for clearing, as part of the required swap creation data transmitted to the DCO for clearing purposes.

First, the Commission proposed expanding the UTI creation and transmission requirements for SD/MSP reporting counterparties to include reporting counterparties that are financial entities.[144] The Commission explained that it believed extending the responsibility for generating off-facility swap UTIs to reporting counterparties that are financial entities would reduce the UTI generation burden on non-financial entities. The Commission also proposed conforming changes. These changes replaced ''swap dealer or major swap participant reporting counterparty'' in the title to proposed § 45.5(b) with ''financial entity reporting counterparty'' and replaced ''swap dealer or major swap participant'' in the first sentence of § 45.5(b) with ''financial entity.'' As proposed, the new title of § 45.5(b) would be ''Off-facility swaps with a financial entity reporting counterparty'' and the first sentence of proposed § 45.5(b) would begin with ''For each off-facility swap where the reporting counterparty is a financial entity. . . .''[145] The Commission similarly proposed to replace references to ''swap dealer or major swap participant'' in § 45.5(b)(1)(i) and (ii) with ''reporting counterparty.''[146]

Second, the Commission proposed amendments to conform to the Commission's proposed adoption of the UTI. The Commission proposed replacing all references to ''USIs'' with ''UTIs'' in proposed § 45.5(b)(1) and (2). In addition, the Commission proposed updating the phrase in proposed § 45.5(b)(1) that requires the USI to consist of a single data ''field'' that contains two components to a single data ''element with a maximum length of 52 characters'' so that the length of the UTI is consistent with the UTI Technical Guidance.[147]

The Commission proposed amending § 45.5(b)(1)(i) to describe the first component of the UTI's single data element by replacing ''unique alphanumeric code assigned to'' the SD or MSP with ''legal entity identifier of'' the reporting counterparty so that the identifier used to identify the UTI generating entity is consistent with the UTI Technical Guidance.[148] The Commission also proposed deleting the phrase in the second half of the sentence stating ''by the Commission at the time of its registration as such, for the purpose of identifying the [SD] or [MSP] with respect to the [USI] creation,'' because, according to the UTI Technical Guidance, an LEI should be used to identify the UTI generating

[138] The single data field must contain: (i) The unique alphanumeric code assigned to the SEF or DCM by the Commission for the purpose of identifying the SEF or DCM with respect to the USI creation; and (ii) an alphanumeric code generated and assigned to that swap by the automated systems of the SEF or DCM, which is unique with respect to all such codes generated and assigned by that SEF or DCM. 17 CFR 45.5(a)(1)(i) and (ii).

[139] 17 CFR 45.5(a)(2)(i) through (iii).

[140] UTI Technical Guidance, Section 3.6.

[141] UTI Technical Guidance, Section 3.5.

[142] UTI Technical Guidance at 12 (Step 3: ''Was the transaction executed on a trading platform?'' ''If so, the trading platform'').

[143] The single data field must contain: (i) The unique alphanumeric code assigned to the SD or MSP by the Commission at the time of its registration for the purpose of identifying the SD or MSP with respect to USI creation; and (ii) an alphanumeric code generated and assigned to that swap by the automated systems of the SD or MSP, which shall be unique with respect to all such codes generated and assigned by that SD or MSP. 17 CFR 45.5(b)(1).

[144] 17 CFR 45.1 (definition of ''financial entity'').

[145] *See* row ''45.5(b)'' of the table in section VIII.3 below.

[146] *See* row ''45.5(b)(1)(ii)'' of the table in section VIII.3 below.

[147] UTI Technical Guidance, Section 3.6.

[148] UTI Technical Guidance, Section 3.5.

entity instead of an identifier assigned by individual regulators.

The Commission also believed this would more closely align the UTI generation hierarchy with the reporting counterparty determination hierarchy in § 45.8, which incorporates financial entities for purposes of determining the reporting counterparty.[149] For example, in an off-facility swap where neither counterparty is an SD nor an MSP and only one counterparty is a financial entity, the counterparty that is a financial entity would be the reporting counterparty,[150] yet the SDR would generate the USI under existing § 45.5(c).[151] The Commission explained that the proposed changes to § 45.5(b) would ensure that for such swap, the financial entity would be assigned to both the reporting counterparty and to generate the UTI and that the proposal would also reduce the number of swaps for which SDRs would be required to generate the UTI.

The Commission received two comments on the proposed amendments to § 45.5(b). ISDA–SIFMA believe the Commission should delay the requirement to disseminate UTIs to non-reporting counterparties from ASATP to T+1, because the UTI transmission mechanisms generally align with the method of confirmation, such as electronic or paper. ISDA–SIFMA suggest the Commission replace the ASATP requirement for UTI transmission with a deadline of no later than T+1, to correspond with the proposed timeline for reporting creation data to the SDR.[152] DTCC agrees that the reporting counterparty should be responsible for generating off-facility swap UTIs.[153]

The Commission did not receive any comments opposing the proposed amendments to § 45.5(b) expanding the UTI creation and transmission requirements for SD/MSP reporting counterparties to include reporting counterparties that are financial entities, and for reasons articulated in the Proposal and reiterated above, is adopting the proposal with one modification relating to transmission. The Commission agrees with ISDA–SIFMA and believes in light of the proposed changes in § 45.3(b) to the deadline for reporting required swap creation data, that transmission of the UTI to the non-reporting counterparty should be similarly delayed in order to not potentially provide two separate confirmations to the non-reporting counterparty. The Commission therefore is adopting the changes as proposed, except it replaces ''To the non-reporting counterparty to the swap, as soon as technologically practicable after execution of the swap; and'' with ''To the non-reporting counterparty to the swap, no later than the applicable deadline in § 45.3(b) for reporting required swap creation data; and'' in final § 45.5(b)(2)(ii).

The Commission notes assigning UTI generation responsibilities for off-facility swaps with a financial entity reporting counterparty to the reporting counterparty adheres to the generation flowchart in the UTI Technical Guidance.[154]

4. § 45.5(c)—Off-Facility Swaps With a Non-SD/MSP Reporting Counterparty

The Commission proposed several amendments to existing § 45.5(c) for the creation and transmission of USIs for off-facility swaps by non-SD/MSP reporting counterparties. Existing § 45.5(c)(1) requires that, for off-facility swaps with non-SD/MSP reporting counterparties, the SDR generates and assigns the USI ASATP after receiving the first report of PET data, consisting of a single data field.[155]

Existing § 45.5(c)(2) requires that the SDR transmit the USI electronically: (i) To the counterparties to the swap ASATP after creation of the USI, and (ii) to the DCO, if any, to which the swap is submitted for clearing ASATP after creation of the USI.

First, the Commission proposed replacing ''non-SD/MSP reporting counterparty'' in the title of proposed § 45.5(c) with ''non-SD/MSP/DCO reporting counterparty that is not a financial entity'' and replacing ''reporting counterparty is a non-SD/MSP counterparty'' in the first sentence of proposed § 45.5(c) with ''reporting counterparty is a non-SD/MSP/DCO counterparty that is not a financial entity.'' The new title of § 45.5(c) would be ''Off-facility swaps with a non-SD/MSP/DCO reporting counterparty that is not a financial entity'' and the first sentence of § 45.5(c) would begin with ''For each off-facility swap for which the reporting counterparty is a non-SD/MSP/DCO counterparty that is not a financial entity. . . .'' The Commission is expanding UTI generation responsibilities to financial entities,[156] and believes this amendment will clarify that § 45.5(c) will apply only where a reporting counterparty is a non-SD/MSP/DCO counterparty that is not a financial entity.

Second, the Commission proposed amending existing § 45.5(c) to provide non-SD/MSP/DCO reporting counterparties that are not financial entities with the option to generate the UTI for an off-facility swap or to request the SDR to which required swap creation data will be reported to generate the UTI. If the non-SD/MSP/DCO reporting counterparty that is not a financial entity chooses to generate the UTI for an off-facility swap, the reporting counterparty would follow the creation and transmission requirements for financial entity reporting counterparties in final § 45.5(b)(1) and (2). If the non-SD/MSP/DCO reporting counterparty that is not a financial entity chooses to request the SDR generates the UTI, the SDR would follow the creation and transmission requirements for SDRs in proposed § 45.5(c)(1) and (2). The Commission proposed amendments to the requirements for SDRs in proposed § 45.5(c)(1), as discussed below.

The Commission participated in the preparation of the UTI Technical Guidance, which includes guidance to authorities for allocating responsibility for UTI generation, including a generation flowchart that places SDRs at the end.[157] The UTI Technical Guidance also notes ''[n]ot all factors'' in the flowchart for allocating responsibility for UTI generation ''will be relevant for all jurisdictions.''[158]

Because the UTI Technical Guidance was produced with the need to accommodate the different trading patterns and reporting rules in jurisdictions around the world, the Commission explained certain factors included in the UTI Technical Guidance generation flowchart are not applicable for the Commission (*e.g.,* factors relating to the principal clearing model[159] or

[149] 17 CFR 45.8.

[150] 17 CFR 45.8(c).

[151] 17 CFR 45.5(c).

[152] ISDA–SIFMA at 10.

[153] DTCC at 5.

[154] UTI Technical Guidance at 12 (Step 7: ''Does the jurisdiction employ a counterparty-status-based approach (*e.g.,* rule definition or registration status) for determining which entity should have responsibility for generating the UTI?'' ''If so, see step 8.'' Step 8: ''Do the counterparties have the same regulatory status for UTI generation purposes under the relevant jurisdiction?'' ''Otherwise, see step 9.'' Step 9: ''Do the applicable rules determine which entity should have responsibility for generating the UTI?'' ''If so, the assigned entity'').

[155] The single data field must contain: (i) The unique alphanumeric code assigned to the SDR by the Commission at the time of its registration for the purpose of identifying the SDR with respect to USI creation; and (ii) an alphanumeric code generated and assigned to that swap by the automated systems of the SDR, which must be unique with respect to all such codes generated and assigned by that SDR. 17 CFR 45.5(c)(1).

[156] 17 CFR 45.1 (definition of ''financial entity''). The Commission discusses this change in section II.E.3 above.

[157] UTI Technical Guidance at 12–14.

[158] UTI Technical Guidance at 12.

[159] UTI Technical Guidance at 12 (Step 2: ''Is a counterparty to this transaction a clearing member

electronic confirmation platforms),[160] and that therefore the Commission was unable to adopt the UTI Technical Guidance without modification. However, the Commission explained in the Proposal that none of the provisions of proposed § 45.5 would conflict with the UTI Technical Guidance, including maintaining the existing obligations for SDRs to generate and transmit UTIs. While UTI generation and transmission responsibilities by SDRs remain in proposed § 45.5(c), the Commission also believed the proposed alignment of the UTI generation and reporting counterparty determination for financial entities in final § 45.5(b) and the proposed reporting option for reporting counterparties that are neither DCOs nor financial entities in proposed § 45.5(c) would result in reduced overall UTI generation and transmission burdens for SDRs.

The Commission explained in the Proposal that amending § 45.5(c) to provide the reporting counterparty with the option to generate the UTI for an off-facility swap where the reporting counterparty is neither a DCO nor financial entity or, if the reporting counterparty elects not to generate the UTI, to request the SDR to which required swap creation data will be reported generate the UTI would provide a reporting counterparty that is neither a DCO nor financial entity with the flexibility to generate the UTI should it choose to do so. Simultaneously, the Commission believed the proposal would reduce the number of swaps where an SDR is assigned UTI generation responsibilities, while also maintaining the existing SDR role as a guarantee that every off-facility swap will be identified with a UTI.

Third, the Commission proposed amendments to conform to the Commission's proposed adoption of the UTI.[161] The Commission also proposed deleting the phrase in the second half of the sentence stating ''by the Commission at the time of its registration as such, for the purpose of identifying the [SDR] with respect to the [USI] creation,'' because, according to the UTI Technical Guidance, an LEI should be used to identify the UTI generating entity instead of an identifier assigned by individual regulators.

The Commission received four comments supporting expansion of the ability to generate UTIs. CME supports expanding the ability to generate UTIs to non-SD/MSP/DCO reporting counterparties that are not financial entities, because the internal reference identifier used in bookkeeping systems is different than the transaction identifier used in swap data reporting.[162] DTCC agrees that the reporting counterparty should be responsible for generating off-facility swap UTIs, because reporting counterparties are in the best position to collect information from a non-reporting counterparty necessary to generate a UTI, such as LEI.[163] Chatham believes all non-SD/MSP/DCO reporting counterparties should have the option to have the SDR continue to generate the UTI for them, because it is efficient and requires the fewest changes to the current practice.[164] BP supports SDRs continuing to manage UTI generation.[165]

The Commission received four comments opposing the requirement for SDRs to generate UTIs. CME believes the rule changes appear to require SDRs to offer separate parts 43 and 45 messages because of the different reporting deadlines, and that SDRs would not be able to link the parts 43 and 45 messages, necessitating the reporting counterparty to include the UTI from the first message in the second message. CME believes SDRs should not generate UTIs to avoid this situation. CME also notes some reporting counterparties who currently rely on SDRs to generate USIs have swaps with multiple USIs because of an issue when reporting counterparties submit swaps to the SDR in batches but the swaps fail some validations.[166]

DTCC opposes SDRs generating and transmitting UTIs because it would not enable early and automated generation in the transaction's life-cycle, which may be necessary for counterparties.[167] ICE SDR suggests the Commission instead let non-SD/MSP/DCO reporting counterparties choose which counterparty generates the UTI, and highlights that non-SD/MSP/DCOs may have more flexibility with extended reporting timelines by electing to have a third-party service provider or confirmation platform generate and assign the UTI. ICE SDR believes allowing a confirmation platform to assign UTIs aligns with the UTI Technical Guidance.[168] ICE SDR recommends that the Commission revise proposed § 45.5(c) to remove the requirement that the SDR transmit the UTI to both counterparties to a swap. ICE SDR contends that, if the reporting counterparty chooses to have the SDR generate the UTI, the SDR should be responsible only for transmitting the UTI to the reporting counterparty requesting UTI generation, because SDRs often has no relationship with the non-reporting counterparties who are not participants of the SDR.[169]

ISDA–SIFMA believe each jurisdiction must align to a global UTI waterfall to the maximum extent possible. ISDA–SIFMA also believe the Commission deviates from the UTI Technical Guidance by assigning SDRs the obligation to generate UTIs for non-SD/MSP/DCOs superior in the hierarchy than the UTI Technical Guidance. As non-SD reporting counterparties can conduct trade reporting and must transmit the UTI to their counterparties, ISDA–SIFMA question whether there is sufficient demand for UTI generation by the SDR to substantiate this deviation from the UTI Technical Guidance.[170]

For reasons articulated in the Proposal and informed by comments and analysis as further discussed below, the Commission is adopting the proposed changes to the § 45.5(c) regulations for the creation and transmission of UTIs for off-facility swaps with a non-SD/MSP/DCO reporting counterparty that is not a financial entity as proposed. The Commission notes SDRs have been required to generate USIs pursuant to existing § 45.5(c) since the adoption of part 45 in 2012 and further notes assigning UTI generation responsibility for off-facility swaps with a non-SD/MSP/DCO reporting counterparty that is not a financial entity to the SDR adheres

of a CCP, and if so is that clearing member acting in its clearing member capacity for this transaction?'').

[160] UTI Technical Guidance at 12 (Step 6: ''Has the transaction been electronically confirmed or will it be and, if so, is the confirmation platform able, willing and permitted to generate a UTI within the required time frame under the applicable rules?'').

[161] The Commission proposed replacing all references to ''USIs'' with ''UTIs'' in proposed § 45.5(c)(1) and (2). In addition, the Commission proposed updating the phrase in proposed § 45.5(c)(1) that required the USI to consist of a single data ''field'' that contains two components to a single data ''element with a maximum length of 52 characters'' so that the length of the UTI is consistent with the UTI Technical Guidance. UTI Technical Guidance, Section 3.6. The Commission proposed amending the § 45.5(c)(1)(i) description of the first component of the UTI's single data element to replace ''unique alphanumeric code assigned to'' the SDR with ''legal entity identifier of'' the SDR so that the identifier used to identify the UTI generating entity is consistent with the UTI Technical Guidance. UTI Technical Guidance, Section 3.5.

[162] CME at 15.

[163] DTCC at 5.

[164] Chatham at 3.

[165] BP at 5.

[166] CME at 16–17.

[167] DTCC at 5.

[168] ICE SDR at 5.

[169] ICE SDR at 5.

[170] ISDA–SIFMA at 9.

to the generation flowchart in the UTI Technical Guidance.[171]

In addition to adhering to the UTI Technical Guidance, the Commission also believes the adopted rule appropriately balances the burdens between reporting counterparties and SDRs by providing optionality to a non-SD/MSP/DCO reporting counterparty that is not a financial entity to elect to generate a UTI if it so chooses, and lowers costs for both SDRs and non-SD/MSP/DCO reporting counterparties. SDR costs would be lowered due to fewer transaction identifiers that SDRs would be required to generate under final § 45.5(c) compared to existing § 45.5(c). Costs on non-SD/MSP/DCO reporting counterparties who choose not to generate UTIs would be lowered due to their ability to leverage the existing transaction identifier generation infrastructure of SDRs rather than expenditures to develop their own UTI generation systems.

In response to the several comments indicating that the proposed amendments to § 45.5(c) do not follow the UTI Technical Guidance, the Commission notes Commission staff was heavily involved in the preparation of the UTI Technical Guidance generation flowchart, and disagrees that assigning UTI generation to SDRs contravenes the UTI Technical Guidance for the following reasons. Section 45.5(c) would apply only for off-facility trades where both counterparties are of equal status (*i.e.,* non-financial entities), and in this scenario, UTI Technical Guidance flowchart step 8 directs to step 11, which instructs inquiring about whether the counterparties have an agreement as to UTI generation. Since no agreement exists, the flowchart leads to step 12, which instructs inquiring about whether electronic confirmation platforms are able, willing, and permitted to generate UTIs, the step ICE SDR suggests the Commission set as the last step in assigning UTI generation responsibilities. However, the Commission is unable to assign electronic confirmation platforms with UTI generation responsibilities, as it has no jurisdiction over such platforms, nor does the Commission deem it desirable to require counterparties who do not use such platforms to specifically contract with platforms or other third parties solely for the purpose of UTI generation. As a result, step 12 is not applicable, leading to step 13 where the SDR is the entity responsible for generating UTIs. As demonstrated above, the Commission believes each step of the UTI Technical Guidance generation flowchart leading up to step 13 matches the conditions under which an SDR is required to generate UTIs pursuant to § 45.5(c).

While the optionality to generate UTIs for non-SD/MSP/DCO reporting counterparties that are not financial entities is not a step in the UTI Technical Guidance generation flowchart, the Commission does not believe the optionality conflicts with an SDR's responsibility for serving as UTI generator of last resort. Under the optionality, an SDR continues to be the entity that has legal responsibility for UTI generation for this type of off-facility trade should the non-SD/MSP/DCO reporting counterparty that is not a financial entity elect not to, and at no point would a non-SD/MSP/DCO reporting counterparty that is not a financial entity that is unwilling or unable to generate the UTI be forced to generate the UTI. Additionally, no commenters oppose providing non-SD/MSP/DCO reporting counterparties that are not financial entities with the ability to generate UTIs.

The Commission acknowledges ICE SDR's request to remove the requirement to transmit the UTI to the non-reporting counterparty due to a potential lack of relationship between an SDR and the non-reporting counterparty, but declines to adopt the suggestion for two reasons. First, the Commission notes the requirement for an SDR generator to transmit USIs to both counterparties has been in existing § 45.5(c)(2)(i) that SDRs have complied with since part 45 was adopted in 2012, and based on experience with compliance by SDRs since 2012, the Commission has seen no evidence that lack of relationship presents a problem in need of being addressed. In addition, the Commission is adopting three amendments to § 45.5 that will result in SDRs generating fewer UTIs than USIs and mitigate any burden placed on SDRs to transmit the UTIs they generate to non-reporting counterparties, including: (i) All financial entities, not just SD/MSPs, being required to generate UTIs pursuant to final § 45.5(b); (ii) the optionality provided to non-SD/MSP/DCO reporting counterparties that are not financial entities to generate UTIs in final § 45.5(c); and (iii) as described in section II.E.8 below, the requirement in final § 45.5(g) for entities using third-party service providers to ensure that the third-party service providers generate UTIs.

Finally, the Commission declines to adopt the SDRs' suggestion to end the UTI generation responsibilities with the reporting counterparty as the last step of the hierarchy, since this would result in incomplete UTI generation logic. A natural person reporting counterparty, who by definition is a non-SD/MSP/DCO reporting counterparty that is not a financial entity, will highly likely be unable to generate UTIs due to the inability of most natural persons to obtain an LEI[172] that is necessary to generate UTIs. As a result, the SDRs' suggestion would not ensure that an entity capable of generating UTIs is assigned with the responsibility to generate the UTI for every swap.

The Commission also acknowledges—but does not find persuasive—DTCC's comment that reporting counterparties should be the entity responsible for generating UTIs because they are in the best position to collect information such as LEI from a non-reporting counterparty necessary to generate a UTI. The Commission notes no information about the non-reporting counterparty is necessary for an entity to generate UTIs, as the UTI is composed using the LEI *of the UTI generating entity,* not the LEI *of the non-reporting counterparty.* Accordingly, because proposed § 45.5(c)(1)(i) requires the UTI to be composed of the ''legal entity identifier of the swap data repository'' and SDRs do not need the LEI of any other entity to generate the UTI, the Commission does not believe DTCC's reasoning supports its request for the Commission not to assign UTI generation responsibilities to SDRs.

5. § 45.5(d)—Clearing Swaps

The Commission proposed several amendments to the existing § 45.5(d) regulations for the creation and transmission of USIs for clearing swaps. Existing § 45.5(d) requires that for each clearing swap, the DCO that is a

[171] UTI Technical Guidance at 12–13 (Step 7: ''Does the jurisdiction employ a counterparty-status-based approach . . . for determining which entity should have responsibility for generating the UTI?'' ''If so, see step 8.'' Step 8: ''Do the counterparties have the same regulatory status for UTI generation purposes[ ]?'' ''If so, see step 11.'' Step 11: ''Do the counterparties have an agreement governing which entity should have responsibility for generating the UTI for this transaction?'' ''Otherwise, see step 12.'' Step 12 ''Has the transaction been electronically confirmed or will it be and, if so, is the confirmation platform able, willing and permitted to generate a UTI within the required time frame under the applicable rules?'' ''Otherwise, see step 13.'' Step 13: ''Is there a single TR to which reports relating to the transaction have to be made, and is that TR able, willing and permitted to generate UTIs under the applicable rules?'' ''If so, the TR'').

[172] CME itself notes the inability of natural person reporting counterparties to obtain LEIs in a separate portion of its comment letter. *See* CME at 25 (''For individuals that qualify as an Eligible Contract Participant, they will not be able to obtain an LEI and hence will be unable to report if [counterparty 1] allowable value is an LEI'').

reporting counterparty to such swap shall create and transmit a USI upon, or ASATP after, acceptance of an original swap for clearing, or execution of a clearing swap that does not replace an original swap, and prior to the reporting of required swap creation data for the clearing swap. Existing § 45.5(d)(1) requires that the USI consist of a single data field.[173]

Existing § 45.5(d)(2) requires that the DCO transmit the USI electronically to: (i) The SDR to which the DCO reports required swap creation data for the clearing swap; and (ii) to the counterparty to the clearing swap, ASATP after accepting the swap for clearing or executing the swap, if the swap does not replace an original swap.

First, the Commission proposed to retitle proposed § 45.5(d) as ''Off-facility swaps with a [DCO] reporting counterparty.'' The Commission also proposed rephrasing the introductory text in § 45.5(d) to reflect this shift in terminology.

Second, the Commission proposed amendments to conform to the Commission's proposed adoption of the UTI.[174] The Commission also proposed deleting the phrase in the second half of the sentence stating ''by the Commission at the time of its registration as such, for the purpose of identifying the [DCO] with respect to the [USI] creation,'' because, according to the UTI Technical Guidance, an LEI should be used to identify the UTI generating entity instead of an identifier assigned by individual regulators.

The Commission received two comments regarding DCOs in § 45.5(d). LCH supports the proposal that DCOs generate the UTIs for cleared swaps, as it is in line with the UTI Technical Guidance.[175] ISDA–SIFMA suggest that the Commission cover exempt DCOs, SEFs, and DCMs in § 45.5, because it is unclear which entities have part 45 reporting obligations. ISDA–SIFMA recommend that parts 43 and 45 rules specify that the entities with individual exemptive orders assigning reporting obligations have the same reporting and UTI generation responsibilities as their non-exempt equivalents.[176]

The Commission received one supportive comment on the proposed amendments to the § 45.5(d) regulations for the creation and transmission of UTIs for clearing swaps and for reasons articulated in the Proposal and reiterated above, is adopting the changes as proposed. The Commission notes assigning UTI generation responsibilities for clearing swaps to the DCO adheres to the generation flowchart in the UTI Technical Guidance.[177]

The Commission appreciates the comment from ISDA–SIFMA recommending that the Commission issue a clarification that exempt DCOs, SEFs, and DCMs have the same reporting and UTI generation responsibilities as their non-exempt equivalents. The Commission did not propose including exempt DCOs, SEFs, and DCMs in § 45.5 and has not had enough time to study the range of effects that any inclusion of these exempt entities in § 45.5 would have on other provisions of the Act and the Commission's regulations, and as a result, the Commission declines to adopt alternative amendments relating to UTI generation for exempt entities such as exempt DCOs, SEFs, and DCMs at this time. However, the Commission notes despite exempt DCOs, SEFs, and DCMs not being assigned with formal UTI generation responsibilities in § 45.5, exempt entities wishing to generate UTIs on behalf of their clients could do so voluntarily by entering into agreements with their clients to act as their third-party service provider pursuant to § 45.5(g).

6. § 45.5(e)—Allocations

The Commission proposed several amendments to the existing § 45.5(e) regulations for the creation and transmission of USIs for allocations. The Commission proposed replacing references to USIs with UTI throughout proposed § 45.5(e) to conform to the Commission's proposed adoption of the UTI. The Commission also proposed non-substantive technical and language edits to update cross-references and improve readability.

The Commission did not receive any comments on the proposed changes to existing § 45.5(e) is adopting the changes to § 45.5(e) as proposed.

7. § 45.5(f)—Use

The Commission proposed several amendments to the existing § 45.5(f) regulations for the use of UTIs by registered entities and swap counterparties. Existing § 45.5(f) requires that registered entities and swap counterparties subject to the jurisdiction of the Commission include the USI for a swap in all of their records and all of their swap data reporting concerning that swap, from the time they create or receive the USI, throughout the existence of the swap, and for as long as any records concerning the swap are required to be kept by the CEA or Commission regulations, regardless of any life cycle events or any changes to state data concerning the swap, including, without limitation, any changes with respect to the counterparties to or the ownership of the swap.

Existing § 45.5(f) also specifies that this requirement shall not prohibit the use by a registered entity or swap counterparty in its own records of any additional identifier or identifiers internally generated by the automated systems of the registered entity or swap counterparty, or the reporting to an SDR, the Commission, or another regulator of such internally generated identifiers in addition to the reporting of the USI.

First, the Commission proposed amendments to conform proposed § 45.5(f) to the Commission's proposed adoption of the UTI. The Commission proposed replacing all references to ''USIs'' with ''UTIs'' in proposed § 45.5(f). The Commission also proposed removing the reference to state data in part 45, and to make minor technical language edits, including removing reference to ownership of the swap, which is not needed given the reference to counterparties.

Second, the Commission proposed removing the existing § 45.5(f) provision permitting the reporting of any additional identifier or identifiers internally generated by the automated systems of the registered entity or swap counterparty to an SDR, the Commission, or another regulator. The Commission explained this amendment would improve consistency in the swap data reported to SDRs, and further the goal of harmonization of SDR data across FSB member jurisdictions.

[173] The single data field must contain: (i) The unique alphanumeric code assigned to the DCO by the Commission for the purpose of identifying the DCO with respect to USI creation; and (ii) an alphanumeric code generated and assigned to that clearing swap by the automated systems of the DCO, which shall be unique with respect to all such codes generated and assigned by that DCO. 17 CFR 45.5(d)(1).

[174] The Commission proposed replacing all references to ''USIs'' with ''UTIs'' in proposed § 45.5(d)(1) and (2). In addition, the Commission proposed updating the phrase in proposed § 45.5(d)(1) that requires that the USI shall consist of a single data ''field'' that contains two components to a single data ''element with a maximum length of 52 characters,'' so that the length of the UTI is consistent with the UTI Technical Guidance. UTI Technical Guidance, Section 3.6. The Commission proposed amending § 45.5(d)(1)(i) to describe the first component of the UTI's single data element to replace ''unique alphanumeric code assigned'' to the DCO reporting counterparty with ''legal entity identifier of'' the DCO reporting counterparty so that the identifier used to identify the UTI generating entity is consistent with the UTI Technical Guidance. UTI Technical Guidance, § 3.5.

[175] LCH at 3.

[176] ISDA–SIFMA at 9.

[177] UTI Technical Guidance at 12 (Step 1: ''Is a CCP a counterparty to this transaction?'' ''If so, the CCP'').

Proposed § 45.5(f) would therefore require that registered entities and swap counterparties include the UTI for a swap in all of their records and all of their swap data reporting concerning that swap, from the time they create or receive the UTI, throughout the existence of the swap, and for as long as any records are required to be kept concerning the swap by the CEA or Commission regulations, regardless of any life cycle events concerning the swap, including, without limitation, any changes to the counterparties to the swap.

The Commission received one request for clarification on the proposal. ISDA–SIFMA believe, due to the requirement for a UTI to persist through ''changes with respect to the counterparty,'' the Commission should be clearer that these counterparty changes, when related to corporate events such as name change, are not considered novations or assignments, as current market practice is to create a new USI for a swap created through the novation process.[178] The Commission declines to adopt the suggestion, as the Commission notes, in light of the Commission's adoption of the new definition of ''novation'' in § 45.1(a) described in section II.A above, market participants should refer to the newly adopted definition as to what constitutes a novation.

The Commission received no additional comments on proposed § 45.5(f) and for reasons articulated in the Proposal and reiterated above in this section, is adopting § 45.5(f) as proposed.

8. § 45.5(g)—Third-Party Service Provider

The Commission proposed adding new § 45.5(g) to its regulations, titled ''Third-party service provider.'' Proposed § 45.5(g) would create requirements for registered entities and reporting counterparties—when contracting with third-party service providers to facilitate reporting under § 45.9—to ensure that the third-party service providers create and transmit UTIs.[179]

The Commission explained in the Proposal that it had encountered inconsistencies in the format and standard of USIs for swaps reported using third-party service providers, which is detrimental to the Commission's ability to use swap data for its regulatory purposes. The Commission believed proposed § 45.5(g) would help ensure consistency with the UTI Technical Guidance in the format and standard of UTIs for swaps reported by third-party service providers. The Commission further explained that proposed § 45.5(g) would also reinforce that a registered entity or reporting counterparty is responsible for the data reported on its behalf by a third-party service provider.

The Commission received one comment supporting the proposal. Markit supports § 45.5(g) UTI generation by third-party service providers and believes this is an important clarification, but advises the Commission to monitor SDRs' implementation of this requirement as some SDRs have struggled to capture third-party service provider LEIs as part of the transaction record, especially when reporting on behalf of SEFs.[180]

The Commission received no additional comments on proposed § 45.5(g) and for reasons articulated in the Proposal and reiterated above in this section, is adopting § 45.5(g) as proposed.

9. § 45.5(h)—Cross-Jurisdictional Swaps

The Commission proposed adding new § 45.5(h) to its regulations, titled ''Cross-jurisdictional swaps.'' Proposed § 45.5(h) would clarify that, notwithstanding §§ 45.5(a) through (g), if a swap is also reportable to one or more other jurisdictions with a regulatory reporting deadline earlier than the deadline set forth in § 45.3, the same UTI generated according to the rules of the jurisdiction with the earliest regulatory reporting deadline is to be transmitted pursuant to §§ 45.5(a) through (g) and used in all recordkeeping and all swap data reporting pursuant to part 45.

The Commission explained in the Proposal that the benefits resulting from global swap data aggregation and harmonization are realizable only if each swap is identified in all regulatory reporting worldwide with a single UTI to avoid double- or triple-counting of the swap. While the existing requirement in part 45 (for swap creation data to be reported ASATP after execution) results in the Commission having the earliest reporting deadline, changes to the reporting deadline in proposed amendments to § 45.3 may result in the reporting of a cross-jurisdictional swap to another jurisdiction earlier than to the Commission. Further, given the critical importance of a unique UTI used to identify each swap, the Commission proposed that, if a cross-jurisdictional swap is reportable to another jurisdiction earlier than required under part 45, the UTI for such swap reported pursuant to part 45 be generated according to the rules of the jurisdiction with the earliest regulatory reporting deadline.

The Commission explained in the Proposal that the new proposed provision would: (i) Ensure consistency with the UTI Technical Guidance;[181] (ii) assist the Commission, SDRs, and swap counterparties to avoid potentially identifying a single cross-jurisdictional trade with multiple UTIs; and (iii) eliminate the potential for market participants to be faced with a situation of attempting to comply with conflicting UTI generation rules.

The Commission received three comments on cross-jurisdictional swaps. Specifically, ISDA–SIFMA highlight several implementation issues.[182] ISDA–SIFMA believe counterparties may not come to the same conclusions regarding each other's jurisdictions, which could cause differing conclusions about who generates the UTI. In this regard, ISDA–SIFMA believe each counterparty's jurisdictional hierarchy would need to readjust each time new reporting jurisdictions go live. Separately, ISDA–SIFMA state that the UTI generating party should be determined separately from any nexus obligations, because nexus reporting (*i.e.,* reporting requirements depending on the location of personnel) is treated differently according to jurisdiction, and it would be challenging for counterparties to communicate nexus obligations on a swap-by-swap basis.[183] Lastly, ISDA–SIFMA note it is important for each reporting jurisdiction to follow a global UTI waterfall.[184]

JBA believes it would be difficult for a counterparty in a jurisdiction to generate a UTI if other jurisdictions with a regulatory reporting deadline earlier than the Commission's do not mandate the UTI or use an identifier different from the UTI required under Commission or global rules.[185] In addition, BP supports imparting responsibility on SDRs to coordinate identification of the jurisdiction with the earliest regulatory reporting deadline and conform to that jurisdiction's UTI requirements.[186]

The Commission is adopting the proposed provisions relating to cross-jurisdictional swaps in § 45.5(h) as proposed, with one clarification relating

[178] ISDA–SIFMA at 7.

[179] *See generally* 17 CFR 45.9.

[180] Markit at 3.

[181] UTI Technical Guidance at 13 (Step 10: ''UTI generation rules of the jurisdiction with the sooner reporting deadline should be followed'').

[182] ISDA–SIFMA at 10–11.

[183] *Id.*

[184] *Id.*

[185] JBA at 2–3.

[186] BP at 5.

to the CFTC reporting deadlines to be considered for cross-jurisdictional swaps, as discussed below. In the technical specification, UTIs are required to be reported (but are not publicly disseminated) pursuant to parts 43 and 45 to allow the Commission to link and reconcile the two reports for each swap, requiring the deadline to be measured in terms of both parts 43 and 45. Therefore, the Commission is adopting, in § 45.5(h), the requirement that, notwithstanding §§ 45.5(a) through (g), if a swap is also reportable to one or more other jurisdictions with a regulatory reporting deadline earlier than the deadline set forth in § 45.3 or in part 43, the same UTI generated according to the rules of the jurisdiction with the earliest regulatory reporting deadline is to be transmitted pursuant to §§ 45.5(a) through (g) and used in all recordkeeping and all swap data reporting pursuant to part 45, a modification from the proposal's consideration of only the deadline outlined in § 45.3.

The Commission declines to adopt ISDA–SIFMA's suggestion regarding nexus obligations, as the Commission has no requirements for nexus reporting and how the jurisdictions requiring nexus reporting mandate UTI generation is outside of the Commission's jurisdiction. As discussed above, the Commission expects the vast majority of cross-jurisdictional swaps reportable to both the CFTC and one or more additional jurisdictions will result in the CFTC having the earliest regulatory reporting deadline due to the CFTC being one of the few jurisdictions with real-time reporting requirement and UTIs being required to be generated ASATP for part 43 reporting. However, the Commission recognizes the potential concern that market participants may have in complying with similar rules that other jurisdictions may adopt to ensure consistency with the UTI Technical Guidance, and recommends that market participants and the LEI ROC work collaboratively on additional guidance relating to cross-jurisdictional swaps. The Commission also recognizes that the UTI Technical Guidance did not address which jurisdiction's UTI generation rules to follow if two jurisdictions hypothetically have the same reporting deadline, and similarly recommends that market participants and the LEI ROC work collaboratively on guidance to address this scenario.

The Commission appreciates JBA's comment regarding the potential difficulties if other jurisdictions with a regulatory reporting deadline earlier than the Commission's do not mandate the UTI, but the Commission does not believe this hypothetical is likely to occur. As discussed above, the Commission's ASATP reporting deadline under part 43 will result in the UTIs for most, if not all, swaps reportable to the Commission and another jurisdiction being generated according to § 45.5. Furthermore, the Commission also acknowledges JBA's concern that other jurisdictions may require an identifier different from the UTI, but the Commission notes authorities in the major swap markets have all indicated through the FSB and CPMI–IOSCO harmonization initiatives of their intention to adopt the UTI and the other harmonized identifiers, and the Commission does not believe inaction by a holdout authority should hinder the Commission's fulfillment of its commitments on UTI.

The Commission also acknowledges BP's desire for SDRs to coordinate identification of the jurisdiction with the earliest regulatory reporting deadline and conform to that jurisdiction's UTI requirements, but the Commission declines to adopt the suggestion. SDRs lack information to determine on their own the jurisdiction(s) that a SEF, DCM, DCO, or counterparty for each swap is subject to, and therefore the Commission believes requiring entities without such information such as SDRs to serve as the entity responsible for determining the earliest regulatory reporting deadline would not serve the Commission's interest in seeing that each swap is identified in all regulatory reporting worldwide with a single UTI.

F. § 45.6—Legal Entity Identifiers [187]

Existing § 45.6 requires counterparties to be identified in all recordkeeping and swap data reporting under part 45 by an LEI. As discussed in the sections below, the Commission is revising the § 45.6 LEI regulations in two ways: (i) Cleanup changes removing unnecessary outdated regulatory text concerning LEIs and (ii) changes to the LEI regulations for SEFs, DCMs, DCOs, SDRs, and reporting and non-reporting counterparties.

1. Introductory Text

The Commission proposed amending the introductory text of the § 45.6 regulations for LEIs. The existing introductory text states that each counterparty to any swap subject to the jurisdiction of the Commission shall be identified in all recordkeeping and all swap data reporting under part 45 through a single LEI as specified in § 45.6.

First, to improve the section's precision, the Commission proposed replacing ''each counterparty'' with each SEF, DCM, DCO, SDR, entity reporting pursuant to § 45.9, and counterparty to any swap. Second, the Commission proposed revising the introductory text to require each relevant entity (SEF, DCM, DCO, SDR, entity reporting pursuant to § 45.9, and counterparty to any swap that is eligible to receive an LEI) to ''obtain,'' as well as be identified in, all recordkeeping and swap data reporting by a single LEI.

The Commission received two comments on proposed § 45.6. ISDA–SIFMA, while recognizing that SEF trades are not specifically addressed in § 45.6, suggest clarifying that SEFs must require any entity allowed to execute a trade on a SEF under part 45 to obtain an LEI prior to reporting by the SEF.[188] The Commission appreciates ISDA–SIFMA's comment; however, the Commission did not propose substantive amendments to regulations relating to SEF trading and has not had enough time to study the range of effects that ISDA–SIFMA's proposal would have on SEF trading or market liquidity. Accordingly, it would be inappropriate to finalize such an amendment at this time.

XBRL agrees with the proposed requirement that counterparties must be identified, not only with their own LEI, but that they must obtain an LEI if they do not have one.[189] The Commission agrees with XBRL. The Commission is aware of uncertainty as to whether the requirement to identify each counterparty with an LEI in existing § 45.6 also included a requirement for the counterparty to obtain an LEI, and the Commission believes clarifying in § 45.6 that a person or entity required to be identified with an LEI in recordkeeping and swap data reporting also has an associated affirmative requirement to obtain an LEI would clarify that identification using LEI necessarily requires the identified person or entity, if eligible to receive an LEI, to obtain an LEI.

The Commission believes extending the requirement for each counterparty to any swap to be identified in all recordkeeping and swap data reporting by a single LEI to all SEFs, DCMs, DCOs, entities reporting under § 45.9, and SDRs will ensure consistency with the CDE Technical Guidance, allow for standardization in the identification in recordkeeping and swap data reporting,

[187] The Commission is re-numbering the requirements of existing § 45.6 to correct extensive numbering errors.

[188] ISDA–SIFMA at 13.

[189] XBRL at 2.

and encourage global swap data aggregation.

For reasons discussed above, the Commission is adopting the proposed changes to the introductory text of the § 45.6 regulations for LEIs as proposed, with one clarification relating to the maintenance of LEI reference data. As discussed in section II.F.8 below, the Commission is adding ''maintain'' to the introductory text of final § 45.6 to clarify that each SEF, DCM, DCO, SDR, entity reporting under § 45.9, and counterparty to any swap that is eligible to receive an LEI is required to ''maintain,'' as well as obtain and be identified in, all recordkeeping and swap data reporting by a single LEI.

2. § 45.6(a)—Definitions

a. Proposal

The Commission proposed several changes to the definitions for the LEI regulations in § 45.6(a). As background, existing § 45.6(a) provides definitions for ''control,'' ''legal identifier system,'' ''level one reference data,'' ''level two reference data,'' ''parent,'' ''self-registration,'' ''third-party registration,'' and ''ultimate parent.''

The Commission proposed moving certain definitions pertaining to LEIs to § 45.1(a). The Commission explained in the Proposal these definitions should be in § 45.1(a) because they are used in regulations outside of § 45.6. These definitions were: ''Global Legal Entity Identifier System,'' [190] ''legal entity identifier'' or ''LEI,'' and ''Legal Entity Identifier Regulatory Oversight Committee.'' These definitions are discussed in section II.A.1 above.

The Commission proposed removing certain definitions pertaining to LEIs from § 45.6(a). The Commission explained that these definitions would no longer be necessary in light of the proposed amendments to the LEI regulations, discussed in sections II.F.3 to II.F.8 below. These definitions were: ''control,'' ''level one reference data,'' ''level two reference data,'' ''parent,'' and ''ultimate parent.''

The Commission proposed amending certain definitions pertaining to LEIs in § 45.6(a). Specifically, the Commission proposed amending the definition of ''self-registration'' in several respects. First, the Commission proposed removing the specific reference to ''level one or level two'' reference data, and the accompanying specifier ''as applicable.'' The amendment reflected the Commission's proposal to remove the definitions of ''level one reference data'' and ''level two reference data.'' [191]

Second, the Commission proposed adding a reference to ''individuals,'' to reflect the fact that swap counterparties may be individuals who need to obtain LEIs. As amended, ''self-registration'' would mean submission by a legal entity or individual of its own reference data.

Separately, the Commission proposed amending the definition of ''third-party registration.'' In this regard, the Commission proposed removing the specific references to ''level one or level two'' reference data, and the accompanying specifier ''as applicable.'' This amendment reflected the Commission's proposal to remove the definitions of ''level one reference data'' and ''level two reference data.'' [192]

Further, the Commission proposed adding references to ''individuals,'' to reflect that swap counterparties may be individuals who need to obtain LEIs. As amended, ''third-party registration'' would mean submission of reference data for a legal entity or individual that is or may become a swap counterparty, made by an entity or organization other than the legal entity or individual identified by the submitted reference data. Examples of third-party registration include, without limitation, submission by an SD or MSP of reference data for its swap counterparties, and submission by a national numbering agency, national registration agency, or data service provider of reference data concerning legal entities or individuals with respect to which the agency or service provider maintains information.

Finally, the Commission proposed adding two definitions pertaining to LEIs to § 45.6(a). First, the Commission proposed adding a definition of ''local operating unit.'' As proposed, ''local operating unit'' would mean an entity authorized under the standards of the Global Legal Entity Identifier System to issue legal entity identifiers. Second, the Commission proposed adding a definition of ''reference data.'' As proposed, ''reference data'' would mean all identification and relationship information, as outlined in the standards of the Global Legal Entity Identifier System, of the legal entity or individual to which an LEI is assigned. The terms ''local operating unit'' and ''reference data'' are explained in a discussion of the proposed amendments to § 45.6(e) in section II.F.7 below.

b. Comments on the Proposal

As also noted in section II.A.1 above, GLIEF suggests moving proposed definitions to § 45.1(a) from § 45.6(a) for ''local operating unit'' and ''legal entity reference data.'' [193]

i. Definition: ''Reference data''

The Commission received one comment on the proposed definition of ''reference data.'' GLEIF suggests an alternative definition: ''data as defined by the currently valid common data file formats in the Global [Legal Entity Identifier] System describing business card and relationship information related to corresponding [Legal Entity Identifier] Regulatory Oversight Committee policies.'' GLEIF, however, does not explain why it believes its suggested alternative is preferable to the Commission's proposal.[194]

ii. Definition: ''Self-registration''

The Commission received one comment on the definition of ''self-registration.'' GLEIF supports the proposed definition revisions in § 45.6(a), including removal of references to ''level one'' and ''level two.'' [195]

c. Final Rule

The Commission did not receive any comments on the proposed definitions for ''local operating unit'' and ''third-party registration'' and for reasons articulated in the Proposal and reiterated in section II.F.2.a above, is adopting those two definitions as proposed. The only comment submitted on the proposed definition of ''self-registration'' supports the proposal and for reasons articulated in the Proposal and reiterated in section II.F.2.a above, the Commission is adopting the definition as proposed.

GLEIF does not explain why its suggested alternative for ''reference data'' is preferred to the Commission's proposal. Based on the analysis of the proposed text, the Commission believes the GLEIF definition's references to ''data as defined by the currently valid common data file formats'' and ''related to corresponding [LEI ROC] policies'' are unnecessarily detailed, and may not account for potential future changes to the Global Legal Entity Identifier System. The Commission believes

[190] ''Global Legal Entity Identifier System'' and ''local operating unit'' would be updated versions of the existing definition of ''legal identifier system.''

[191] Instead, as discussed below, the Commission proposed adding a definition of ''reference data.'' The proposed amendment to ''self-registration'' would be consistent with the new definition.

[192] Instead, as discussed below, the Commission proposed adding a definition of ''reference data.'' The proposed amendment to ''self-registration'' would be consistent with the new definition.

[193] *Id.* The Commission notes the term proposed is ''reference data,'' not ''legal entity reference data.'' *See* 85 FR at 21632.

[194] GLEIF at 2.

[195] *Id.*

references in its proposed definition to ''all identification and relationship information'' and ''the standards of the Global Legal Entity Identifier System'' are more general and better-suited to account for potential future changes in the Global Legal Entity Identifier System (*e.g.,* a hypothetical future shift away from common data files in setting reference data standards) and is adopting the definition as proposed, rather than the more-specific GLEIF suggestion.

As the four definitions proposed in § 45.6(a) are only used in § 45.6, the Commission declines to adopt GLEIF's suggestion to move the proposed definitions to § 45.1(a).

3. § 45.6(b)—International Standard for the Legal Entity Identifier

The Commission proposed several changes to § 45.6(b) regulations for the international standards for LEIs. The amendments would reflect changes that have taken place since the Commission adopted the existing LEI regulations in § 45.6 in 2012. Existing § 45.6(b) states that the LEI used in all recordkeeping and all swap data reporting required by part 45, following designation of the legal entity identifier system as provided in § 45.6(c)(2), shall be issued under, and shall conform to, International Organization for Standardization (''ISO'') Standard 17442, Legal Entity Identifier (LEI), issued by the ISO.

The Commission proposed removing the phrase ''following designation of the [LEI] system as provided in [§ 45.6(c)(2)].'' The Commission explained in the Proposal that governance of the Global Legal Entity Identifier System was designed by the FSB with the contribution of private sector participants and was fully in place.[196] The Commission further explained that LEI ROC establishes policy standards, such as the definition of the eligibility to obtain an LEI and conditions for obtaining an LEI; the definition of reference data and any extension thereof, such as the addition of information on relationships between entities; the frequency of update for some or all of the reference data; the nature of due diligence and other standards necessary for sufficient data quality; or high-level principles governing data and information access.[197]

The Commission did not receive any comments on the proposed changes to § 45.6(b) and for reasons articulated in the Proposal and reiterated above, is adopting the changes to § 45.6(b) as proposed.

4. § 45.6(b)—Technical Principles for the Legal Entity Identifier

The Commission proposed removing this redundantly-numbered § 45.6(b) for the technical principles for the LEI.[198] Regulations for LEI reference data are currently located in § 45.6(e), which the Commission proposed moving to § 45.6(c). The Commission discusses revisions to the existing § 45.6(e) reference data regulations in section II.F.7 below.

Existing § 45.6(b) enumerates the six technical principles for the legal entity identifier to be used in all recordkeeping and all swap data reporting: (i) Uniqueness; (ii) neutrality; (iii) reliability; (iv) open source; (v) extensibility; and (vi) persistence.

The Commission proposed removing the technical principles from § 45.6(b). The Commission explained in the Proposal that it adopted § 45.6(b) before global technical principles for the LEI were developed. The Commission further explained that it has participated in the Global Legal Entity Identifier System and the LEI ROC since their establishment in 2013, through which global technical principles have been developed and a functioning LEI system introduced. The Commission believed removing the technical principles from § 45.6(b) for the LEI to be used in all recordkeeping and all swap data reporting was warranted because the global technical principles that have been developed and adopted by the Global Legal Entity Identifier System already conform to the technical principles in § 45.6(b).

The Commission did not receive any comments on the changes to § 45.6(b) and for reasons articulated in the Proposal and reiterated above, is adopting the changes to § 45.6(b) as proposed.

5. § 45.6(c)—Governance Principles for the Legal Entity Identifier

The Commission proposed removing the existing § 45.6(c) regulations for the governance principles for the LEI.[199] Regulations for the use of the LEI are currently located in § 45.6(f), which the Commission proposed moving to § 45.6(d), which would be correctly renumbered as § 45.6(d). The Commission discusses the revisions to existing § 45.6(f) section II.F.8 below.

Existing § 45.6(c) enumerates the five governance principles for the LEI to be used in all recordkeeping and all swap data reporting: International governance; reference data access; non-profit operation and funding; unbundling and non-restricted use; and commercial advantage prohibition.

The Commission proposed removing the governance principles from § 45.6(c). The Commission explained in the Proposal that it adopted § 45.6(c) before global governance principles for the LEI were developed. The Commission further explained that it has participated in the Global Legal Entity Identifier System and the LEI ROC since their establishment in 2013, through which global governance principles have been developed and a functioning LEI system introduced. The Commission believed deleting existing § 45.6(c) to remove the governance principles for the legal entity identifier to be used in all recordkeeping and all swap data reporting was warranted because the global governance principles that have been developed and adopted by the Global Legal Entity Identifier System already conform to the governance principles in § 45.6(c).

The Commission did not receive any comments on the proposed changes to § 45.6(c) and for reasons articulated in the Proposal and reiterated above, is adopting the changes to § 45.6(c) as proposed.

6. § 45.6(e)—Designation of the Legal Entity Identifier System

The Commission proposed removing the § 45.6(e) regulations for the designation of the legal entity identifier system. Existing § 45.6(e) enumerates the procedures for determining whether a legal entity identifier system meets the Commission's requirements and the procedures for designating the legal entity identifier system as the provider of LEIs to be used in all recordkeeping and all swap data reporting.

The Commission explained in the Proposal that it adopted § 45.6(e) before a global legal entity identifier system was developed. The Commission further explained that it has participated in the Global Legal Entity Identifier System and the LEI ROC since their establishment in 2013, through which a functioning LEI system has been introduced, overseeing the issuance of LEIs by local operating units. The Commission believed deleting existing

[196] While at the beginning of the Global Legal Entity Identifier System, LEI issuers were operating under a temporary endorsement of the LEI ROC, all active LEI issuers have now been accredited. Progress report by the LEI ROC, The Global LEI System and regulatory uses of the LEI, 2 (Apr. 30, 2018), *available at https://www.leiroc.org/publications/gls/roc_20180502-1.pdf.*

[197] *Id.*

[198] This § 45.6(b) was numbered in error, as there is already a § 45.6(b), discussed in section II.F.3 above.

[199] Existing § 45.6(c) was also numbered in error because of the duplicate § 45.6(b) sections.

§ 45.6(e) to remove the procedures for designating a legal entity identifier system was warranted because such determination and designation procedures were no longer needed due to the establishment of the Global Legal Entity Identifier System and the standards adopted by the Global Legal Entity Identifier System under which a local operating unit is authorized to issue LEIs.

The Commission did not receive any comments on the proposed changes to § 45.6(e) and for reasons articulated in the Proposal and reiterated above, is adopting the changes to § 45.6(e) as proposed.

7. § 45.6(e)—Reference Data Reporting (Re-Designated as § 45.6(c))

The Commission proposed changes to the § 45.6(e) regulations for LEI reference data reporting.[200] First, the Commission proposed moving the requirements for reporting LEI reference data in § 45.6(e) to correctly renumbered § 45.5(c).

Second, the Commission proposed changing the requirements for reporting LEI reference data in existing § 45.6(e) to be moved to § 45.6(c). Existing § 45.6(e)(1) requires level one reference data for each counterparty to be reported via self-registration, third-party registration, or both, and details the procedures for doing so, including the requirement to update level one reference data in the event of a change or discovery of the need for a correction. Existing § 45.6(e)(2) contains the requirement, once the Commission has determined the location of the level two reference database, for level two reference data for each counterparty to be reported via self-registration, third-party registration, or both, and the procedures for doing so, including the requirement to update level two reference data in the event of a change or discovery of the need for a correction.

The Commission proposed removing the distinction between level one and level two reference data now found in § 45.6(e). Instead, proposed new § 45.6(c) would require that all reference data for each SEF, DCM, DCO, SDR, entity reporting under § 45.9, and counterparty to any swap be reported via self-registration, third-party registration, or both, to a local operating unit in accordance with the standards set by the Global Legal Entity Identifier System. Proposed new § 45.6(c) would retain the requirement in existing § 45.6(e) to update the reference data in the event of a change or discovery of the need for a correction.

The Commission explained in the Proposal that it adopted § 45.6(e) before a global legal entity identifier system was developed. The Commission further explained that it has participated in the Global Legal Entity Identifier System and the LEI ROC since their establishment in 2013, through which a functioning LEI system has been introduced that sets, and updates as needed, the standards governing the identification and relationship reference data required to be provided to obtain an LEI. The Commission believed amending existing § 45.6(e) to remove the distinction between level one and level two reference data, and proposed a new § 45.6(c) to require that all reference data is reported to a local operating unit in accordance with the standards set by the Global Legal Entity Identifier System was warranted because the establishment of Global Legal Entity Identifier System removes the role of individual authorities in determining the standards governing LEI reference data.

The Commission explained in the Proposal that while existing § 45.6(e) requires that reference data for only the counterparties to a swap be reported, the extension of the requirement to be identified in all recordkeeping and swap data reporting by a single LEI to all SEFs, DCMs, DCOs, entities reporting pursuant to § 45.9, and SDRs described in section II.F.1 above also necessarily requires that all SEFs, DCMs, DCOs, entities reporting pursuant to § 45.9, and SDRs report their LEI reference data.

The Commission did not receive any comments on the proposed changes to § 45.6(e) and for reasons articulated in the Proposal and reiterated above in this section, is adopting the changes to § 45.6(e) as proposed.

8. § 45.6(f)—Use of the Legal Entity Identifier System by Registered Entities and Swap Counterparties (Re-designated as § 45.6(d))

The Commission proposed changing the § 45.6(f) regulations for the use of LEIs by registered entities and swap counterparties. Existing § 45.6(f)(1) requires that when a legal entity identifier system has been designated by the Commission pursuant to § 45.6(e), each registered entity and swap counterparty shall use the LEI provided by that system in all recordkeeping and swap data reporting pursuant to part 45. Existing § 45.6(f)(2) requires that before a legal entity identifier system has been designated by the Commission, each registered entity and swap counterparty shall use a substitute counterparty identifier created and assigned by an SDR in all recordkeeping and swap data reporting pursuant to part 45.[201]

Existing § 45.6(f)(3) requires that for swaps reported pursuant to part 45 prior to Commission designation of a legal entity identifier system, after such designation each SDR shall map the LEIs for the counterparties to the substitute counterparty identifiers in the record for each such swap. Existing § 45.6(f)(4) requires that prior to October 15, 2012, if an LEI has been designated by the Commission as provided in § 45.6, but a reporting counterparty's automated systems are not yet prepared to include LEIs in recordkeeping and swap data reporting pursuant to part 45, the counterparty shall be excused from complying with § 45.6(f)(1), and shall instead comply with § 45.6(f)(2), until its automated systems are prepared with respect to LEIs, at which time it must commence compliance with § 45.6(f)(1).[202]

The Commission proposed retitling the section ''Use of the legal entity identifier,'' because, as discussed below, the LEI will no longer be used only by registered entities and swap counterparties. The Commission proposed moving the requirements for the use of LEIs from existing § 45.6(f) to correctly renumbered § 45.6(d),[203] as a result, the Commission's proposed amendments to the requirements for the use of LEIs in existing § 45.6(f) discussed below will be captured in new § 45.6(d).

The Commission proposed removing the sections of existing § 45.6(f) that are no longer operative, either because the Commission has designated a legal entity identifier system, or the provisions have expired. For these reasons, the Commission proposed removing existing § 45.6(f)(2) and (4). As a result, the substantive requirements of existing § 45.6(f)(2) and (4) were not proposed to be moved to § 45.6(d).

The Commission explained in the Proposal that while the provisions of existing § 45.6(f)(3) relating to substitute counterparty identifiers are no longer applicable for new swaps, the substantive requirements in § 45.6(f)(3), which are still applicable for swaps

[200] This § 45.6(e) was numbered in error, as there is already a § 45.6(e) directly preceding it.

[201] The requirements for the substitute identifier were set forth in § 45.6(f)(2)(i) through (iv). As the Global Legal Entity Identifier System has been introduced that oversees the issuance of LEIs by local operating units, these requirements are no longer applicable, and the Commission will limit the detail of their discussion in this release.

[202] The regulation specified that this paragraph would have no effect on or after October 15, 2012. 17 CFR 45.6(f)(4).

[203] As previously noted, existing § 45.6(c) was numbered in error because of the duplicate § 45.6(b) sections.

previously reported pursuant to part 45 using substitute counterparty identifiers assigned by an SDR before Commission designation of a legal entity identifier system, would be moved to final § 45.6(d)(4). The Commission considered this change to be non-substantive.

The Commission proposed the following substantive changes to the regulations requiring the use of LEIs. First, the Commission proposed revisions to the existing § 45.6(f)(1) regulations for the use of LEIs. The revised regulations would be moved to final § 45.6(d)(1), as discussed below.

The Commission proposed deleting the introductory clause ''[w]hen a legal entity identifier system has been designated by the Commission pursuant to paragraph (e) of this section'' in existing § 45.6(f)(1) because it was no longer relevant due to the establishment of the Global Legal Entity Identifier System and the LEI ROC in 2013. In addition, while existing § 45.6(f)(1) requires ''each registered entity and swap counterparty'' to use LEIs in all recordkeeping and swap data reporting pursuant to part 45, the Commission proposed to replace ''each registered entity and swap counterparty'' with ''[e]ach [SEF], [DCM], [DCO], [SDR], entity reporting pursuant to § 45.9, and swap counterparty'' to, as described in section II.F.1 above, ensure consistency with the CDE Technical Guidance, allow for standardization in the identification in recordkeeping and swap data reporting, and encourage global swap data aggregation. The Commission also proposed to add ''to identify itself and swap counterparties'' immediately after ''use [LEIs]'' in this section to clarify the intended use of LEIs. Finally, the Commission proposed to add a new sentence in this section to clarify that if a swap counterparty is not eligible to receive an LEI, such counterparty should be identified in all recordkeeping and all swap data reporting pursuant to part 45 with an alternate identifier pursuant to § 45.13(a). Because some counterparties, including many individuals, are currently ineligible to receive an LEI based on the standards of the Global Legal Entity Identifier System, the Commission believed this sentence would provide clarity as to how LEI-ineligible counterparties should be identified.

Second, the Commission proposed § 45.6(d)(2) to require each SD, MSP, SEF, DCM, DCO, and SDR to maintain and renew its LEI in accordance with the standards set by the Global Legal Entity Identifier System (as opposed to the requirement for other entities to only maintain its LEI). Existing § 45.6(e) requires that reference data be updated in the event of a change or discovery of the need for a correction, which will continue to be required under final § 45.6(c).

The Commission explained in the Proposal that pursuant to the Global Legal Entity Identifier System, established in 2013, a person or entity is issued an LEI after: (1) Providing its identification and relationship reference data to a local operating unit and (2) paying a fee, currently as low as approximately $65, to the local operating unit to validate the provided reference data. After initial issuance, an LEI holder is asked to certify the continuing accuracy of, or provide updates to, its reference data annually, and pay a fee, currently as low as approximately $50, to the local operating unit. LEIs that are not renewed annually are marked as lapsed. Existing § 45.6 does not require annual LEI renewal because part 45 was drafted and implemented before the establishment of the Global Legal Entity Identifier System. The Commission further explained that since the implementation of existing § 45.6, the Commission has received consistent feedback from certain market participants and industry groups that the Commission should require at least some LEI holders to annually renew their LEIs.

The Commission explained in the Proposal that it was aware that some LEI holders have not updated reference data as required by existing § 45.6(e), and imposing an annual renewal requirement may increase the accuracy of their reference data. The Commission also recognized that other LEI holders comply with the continuing requirement to update reference data, and imposing an annual renewal requirement may impose costs on those LEI holders without necessarily increasing the accuracy of their reference data. The Commission further explained that it has participated in the Global Legal Entity Identifier System since its inception, and values the functionality of the LEI reference data collected, including the introduction of level two reference data.

The Commission explained in the Proposal that it considers the activities of SDs, MSPs, SEFs, DCMs, DCOs, and SDRs to have the most systemic impact affecting the Commission's ability to fulfill its regulatory mandates. Accordingly, in light of the introduction of LEI level two reference data, the Commission believed requiring each SD, MSP, SEF, DCM, DCO, and SDR to maintain and renew its LEI in accordance with the standards set by the Global Legal Entity Identifier System in § 45.6(d)(2) struck the appropriate balance between the Commission's interest in accurate LEI reference data and cost to LEI holders.

Third, the Commission proposed a new § 45.6(d)(3) that would obligate each DCO and each financial entity reporting counterparty executing a swap with a counterparty that does not have an LEI but is eligible for one to cause, before reporting any required swap creation data for such swap, an LEI to be assigned to the counterparty, including if necessary, through third-party registration.

The Commission explained in the Proposal that it was aware that some counterparties have not obtained an LEI. While proposed amendments to § 45.6 clarify the requirement that a counterparty required to be identified with an LEI in swap data reporting also has an associated affirmative requirement to obtain an LEI, the Commission explained that it anticipates a small percentage of counterparties nonetheless will not have obtained an LEI before executing a swap. The Commission further explained that swap data that does not identify eligible counterparties with an LEI hinders the Commission's fulfillment of its regulatory mandates, including monitoring systemic risk, market monitoring, and market abuse prevention. The Commission believed new § 45.6(d)(3) to require each DCO and each financial entity reporting counterparty executing a swap with a counterparty that does not have an LEI to cause an LEI to be assigned to the non-reporting counterparty would further the objective of identifying each counterparty to a swap with an LEI.

Proposed § 45.6(d)(3) did not prescribe the initial manner in which a DCO or financial entity reporting counterparty causes an LEI to be assigned to the non-reporting counterparty, though if initial efforts are unsuccessful, proposed § 45.6(d)(3) required the DCO or financial entity reporting counterparty to obtain an LEI for the non-reporting counterparty. The Commission explained in the Proposal that having a DCO or financial entity reporting counterparty serving as a backstop under new § 45.6(d)(3) to ensure the identification of the non-reporting counterparty with an LEI was appropriate because: (i) Each DCO and financial entity reporting counterparty already had obtained, via its ''know your customer'' and anti-money laundering compliance processes, all identification and relationship reference data of the non-reporting counterparty

required by a local operating unit to issue an LEI for the non-reporting counterparty; (ii) multiple local operating units offered expedited issuance of LEI in sufficient time to allow reporting counterparties to meet their new extended deadline in § 45.3(a) through (b) for reporting required swap creation data; and (iii) the Commission anticipated that third-party registration in these instances would be infrequent, as the Commission expected most non-reporting counterparties to be mindful of their direct obligation to obtain their own LEIs pursuant to § 45.6.[204]

The Commission received two comments on the proposed provision relating to use of the LEI in proposed § 45.6(f)(1) and moved to § 45.6(d)(1). CME suggests that the Commission revise the proposal to require a DCO to record the LEIs of all of its swap counterparties in its books and records, instead of ''in all recordkeeping'' and swap data reporting, to avoid DCOs identifying a swap counterparty by its LEI every time the name of that counterparty is in its records.[205]

GLEIF suggests that, in the interest of clarity, the Commission reformulate § 45.6(d)(1) to state that alternative identifiers pursuant to § 45.13(a) can only be used for natural persons who are not eligible for an LEI, though no explanation was provided as to why it believes the alternative formulation is clearer than the Commission's proposal.[206]

The Commission received six comments, all supporting the LEI maintenance and renewal requirements for SDs, MSPs, SEFs, DCMs, DCOs, and SDRs under proposed § 45.6(d)(2),[207] with two of those commenters supporting additional expansion of the LEI renewal requirement and one commenter opposing additional expansion of the LEI renewal requirement. In particular, GFXD believes reporting counterparties should be required only to renew their LEI and that reporting counterparties should not be responsible for ensuring counterparties renew their LEI.[208] LCH is concerned about the treatment of swap data that contains lapsed LEIs, specifically if that data is rejected by an SDR and recommends language be included to clarify that SDRs would not reject data in an LEI lapse.[209] GLEIF believes the Commission should expand the requirement to include all swap counterparties.[210]

Chatham opposes expanding the requirement to renew LEIs annually beyond SDs, MSPs, SEFs, DCMs, DCOs, and SDRs.[211] Chatham notes many LEI applicants may not have problems with the insignificant cost of application, but often experience significant difficulty with the documentation requirements for some renewals.[212] Chatham also requests clarification on whether § 45.6(d) requires counterparties to obtain an LEI to report for trades that have already been reported using a substitute identifier.[213]

The Commission received four comments supporting obtaining an LEI for a counterparty that does not have one under proposed § 45.6(d)(3).[214] GLEIF notes performing an LEI registration on behalf of a third-party is considered to satisfy the requirements of self-registration only if the registrant has provided explicit permission for such a registration to be performed.[215] In particular, Chatham believes requiring each DCO and financial entity reporting counterparty to obtain an LEI on behalf of the counterparty through third-party registration is the most logical method to implement requiring an LEI instead of a temporary identifier.[216]

The Commission received four comments opposing obtaining an LEI for a counterparty that does not have one, under proposed § 45.6(d)(3). GFXD believes the proposal disincentivizes smaller counterparties from obtaining their own LEI and places an administrative and financial burden on reporting counterparties.[217] GFXD believes the requirement would ''likely'' cause unintended operational issues, such as reporting counterparties simultaneously creating an LEI for a counterparty.[218] GFXD recommends following the EU approach, where all counterparties must obtain and maintain their own LEI (''no LEI, no trade''), with a sufficient implementation period and significant education effort for smaller counterparties.[219]

JBA believes obtaining an LEI on behalf of the counterparty is impractical and costly.[220] JBA requests changing this requirement and suggests that DCO and financial entities ''recommend'' the counterparty to obtain an LEI, or take other similar actions.[221]

ISDA–SIFMA have concerns about a reporting counterparty's ability to comply with such a requirement because a DCO or financial entity reporting counterparty cannot obtain an LEI on behalf of a non-reporting counterparty without the non-reporting counterparty's permission, and ISDA–SIFMA anticipate that some counterparties would be resistant to obtaining an LEI.[222] ISDA–SIFMA request clarification that a DCO or financial entity reporting counterparty may act as an agent for third-party registration to obtain LEIs on a counterparty's behalf only if it chooses to do so, instead of being mandated to do so.[223] ISDA–SIFMA suggest adding a clarification that the LEI registrant (*i.e.,* the non-reporting counterparty), has the regulatory obligation to obtain and maintain its own LEI, and that the maintenance obligation be placed on the entity to whom the LEI is issued, instead of a third-party.[224] ISDA–SIFMA consider a non-reporting counterparty to include an investment manager executing a transaction for, and on behalf of, a swap counterparty (*e.g.,* funds), and wants the Commission to clarify that an investment manager executing a transaction on behalf of a counterparty is required to obtain and maintain its own LEI and that an investment manager is required to obtain its own LEI sufficiently in advance of executing pre-allocation swaps, so that the reporting counterparty can report the investment manager LEI within the reporting counterparty's part 45 timing obligations.[225]

ICE DCOs believe it is inappropriate for DCOs to backstop the compliance functions of other participants, especially since this may include clients of clearing members with which a DCO has no relationship, requests the

[204] ESMA also issued temporary relief to investment firms transacting with a client without an LEI on the condition that they ''[obtain] the necessary documentation from this client to apply for an LEI code on his behalf,'' *available at https://www.esma.europa.eu/press-news/esma-news/esma-issues-statement-lei-implementation-under-mifid-ii.*

[205] CME at 17–18.

[206] GLEIF at 3.

[207] DTCC at 6; Eurex at 4; LCH at 3; GFXD at 23–24; GLEIF at 1–2; Chatham at 3.

[208] GFXD at 23–24.

[209] LCH at 3.

[210] GLEIF at 1–2. GLEIF mentions that costs related to LEIs continue to decline and today average $60 versus $150 five years ago, and its ''validation agent'' framework pilot program provides a new operating model where financial institutions, and not registrants, have the responsibility of obtaining and maintaining an LEI, but that the program could take 1–2 years to complete.

[211] Chatham at 3.

[212] *Id.*

[213] *Id.*

[214] GLEIF at 2; Data Coalition at 2; Chatham at 3; Eurex at 4.

[215] GLEIF at 2.

[216] Chatham at 3.

[217] GFXD at 23–24.

[218] *Id.*

[219] *Id.*

[220] JBA at 5–6.

[221] *Id.*

[222] ISDA–SIFMA at 14–15.

[223] *Id.*

[224] *Id.*

[225] *Id.*

Commission to either remove the LEI backstop entirely or exempt DCOs from the backstop.[226]

For reasons articulated in the Proposal and informed by comments and analysis as further discussed below, the Commission is adopting the changes to § 45.6(f), re-designated as § 45.6(d), largely as proposed, with certain modifications in response to commenters and other considerations.

The Commission did not receive any comments on the proposals to retitle § 45.6(f) ''Use of the legal entity identifier'' or to remove § 45.6(f)(2) and (4) and for reasons articulated in the Proposal and reiterated above, is adopting the changes as proposed. The Commission also did not receive any comments on the proposals to move the requirements for the use of LEIs from § 45.6(f) to renumbered § 45.6(d) or to move the substantive requirements in § 45.6(f)(3) relating to substitute counterparty identifiers to § 45.6(d)(4) and for reasons articulated in the Proposal and reiterated above, is adopting the changes as proposed.

The Commission is adopting the changes to the § 45.6(f)(1) regulations for the use of LEIs as proposed and the move to § 45.6(d)(1) as proposed. The Commission believes a change to the ''all recordkeeping and all swap data reporting'' language in § 45.6(f)(1) would only lead to confusion due to the term being used extensively elsewhere in § 45.6 and other sections of part 45, and therefore declines to adopt CME's suggestion. The Commission notes the requirement to identify entities using an LEI in ''all recordkeeping and swap data reporting'' has existed in § 45.6(f)(1) that all entities have complied with since part 45 was adopted in 2012, and the Commission has seen no evidence that any entity has encountered difficulty complying with this provision. The Commission notes nothing prevents an entity from supplementing the LEI with a human-readable alternative in its records.

The Commission also declines to adopt GLEIF's suggestion to rephrase the second sentence of § 45.6(f)(1) to state that alternative identifiers may only be used for natural persons who are not eligible for an LEI, as the Commission lacks sufficient knowledge of all entity structures and legal systems worldwide to know for certain that every non-natural person is eligible for an LEI.[227] Even though the legal entities that have faced questions regarding their eligibility for LEIs are admittedly very small in number, GLEIF's suggested rephrasing of § 45.6(f)(1) would result in those few legal entities currently ineligible for LEIs to also not be allowed to be identified using alternative identifiers, and the resulting lack of acceptable identifier would hinder the Commission's ability to aggregate the total exposure of those entities.

The Commission did not receive any comments opposing the proposed requirements in § 45.6(d)(2) for each SD, MSP, SEF, DCM, DCO, and SDR to maintain and renew its LEI in accordance with the standards set by the Global Legal Entity Identifier System and for reasons articulated in the Proposal and reiterated above, is adopting § 45.6(d)(2) as proposed.

The Commission acknowledges LCH's request to clarify in § 45.6 that SDRs should not reject LEIs that have not been renewed, but declines to adopt this suggestion in the text of § 45.6, as the Commission has delegated to the DMO Director in § 45.15 to issue guidance on the form and manner of the technical specification governing reporting to SDRs. Nevertheless, the Commission notes DMO has not asked SDRs to validate the renewal status of LEIs in the technical specification being published concurrent with adoption of the revisions to part 45.

The Commission acknowledges GFXD's comment regarding the duty to renew should apply to a reporting counterparty's own LEIs and not that of the non-reporting counterparty, but believes GFXD conflates two separate requirements: The LEI renewal requirement for SDs, MSPs, SEFs, DCMs, DCOs, and SDRs in § 45.6(d)(2) and the requirements described in § 45.6(d)(3) below regarding efforts to obtain LEIs for counterparties without LEIs. The Commission believes § 45.6(d)(2) is clear that the renewal requirement applies only to an entity's own LEI. By definition, an LEI has to be issued before it can be renewed, so § 45.6(d)(3) would not apply to LEI renewals.

The Commission also acknowledges the alternative suggestions of expanding the LEI renewal requirement to either all reporting counterparties or all counterparties, but declines to adopt an expansion of the LEI renewal requirement, as the Commission continues to believe requiring each SD, MSP, SEF, DCM, DCO, and SDR to maintain and renew its LEI strikes the appropriate balance between the Commission's interest in accurate LEI reference data and the current cost to LEI holders. The Commission acknowledges and appreciates the reduction in the cost to LEI holders to obtain and renew LEIs since the start of the Global Legal Entity Identifier System, but does not believe further expansion of the renewal requirement and the resulting increased costs on LEI holders *now* premised solely on GLEIF's promises of *future* cost reductions and/or shifts of the LEI renewal fee to financial institutions resulting from Global Legal Entity Identifier System operating model changes is appropriate. Before the Commission mandates such a requirement, it will seek additional information to gain a better understanding what the benefits or costs of such a requirement will be. While the Commission declines to expand the renewal mandate in this release, it is open to considering expansions of the LEI renewal requirement in future releases upon further enhancements in LEI reference data or realized reductions in cost to LEI holders.

In response to Chatham's request for clarification, the Commission notes the requirements of § 45.6 would not apply retroactively to swap data reports previously reported before the adoption of the amendments to part 45, but do apply to creation data and continuation data submitted after the adoption of the amendments to part 45.

For reasons articulated in the Proposal and informed by comments and analysis as further discussed below, the Commission is adopting § 45.6(d)(3) largely as proposed, with certain modifications in response to commenters and other considerations.

Section 45.6(d)(3) of the final rule removes DCOs from the obligation, as DCOs may not have information regarding customers clearing trades through futures commission merchants. Section 45.6(d)(3) of the final rule also reflects the addition of ''use best efforts to'' before ''cause a legal entity identifier to be assigned to the counterparty'' to clarify that the obligation relates to actions within a financial entity reporting counterparty's control, instead of the obligation to ensure an outcome that may be outside of a financial entity reporting counterparty's control. Section 45.6(d)(3) of the final rule also removes the phrase ''including if necessary, through third-party registration.'' Finally, as the Commission still has a need to know the identity of the non-

[226] ICE DCOs at 4–5.

[227] For example, the Commission is aware that certain European banking groups with unconventional legal structures have encountered difficulties obtaining LEIs. The Commission also notes a recent LEI ROC consultation covered, among other topics, ''[p]otential difficulties for identification of general government entities in the [Global Legal Entity Identifier System] current framework''; *see* LEI ROC, LEI Eligibility for General Government Entities (Oct. 25, 2019), *available at https://www.leiroc.org/publications/gls/roc_20191025-1.pdf.*

reporting counterparty despite the non-reporting counterparty's failure to obtain its own LEI pursuant to § 45.6, the Commission is adopting in § 45.6(d)(3) of the final rule a requirement for the financial entity reporting counterparty to promptly provide to the Commission the identity and contact information of the counterparty for whom the financial entity reporting counterparty's efforts to cause an LEI to be issued were unsuccessful.[228]

As discussed in the Proposal, swap data that does not identify eligible counterparties with an LEI hinders the Commission's fulfillment of its regulatory mandates. However, the Commissioner declines to adopt a ''no LEI, no trade'' requirement that GFXD suggests due to concerns of the potential impact of such a requirement may have on market liquidity, as a ''no LEI, no trade'' rule would result in market participants without an LEI not being permitted to transact in the market. The Commission also notes part 45 relates to the reporting of swaps that already have been executed, whereas ''no LEI, no trade'' relates to who is eligible to engage in swap transactions, a completely different topic than the reporting of executed swaps and outside of the scope of the part 45 swap data reporting rule. With regards to GFXD's operational concerns, the Commission does not believe operational issues such as multiple LEI being issued to a counterparty are likely to arise, as checks in the Global Legal Entity Identifier System prohibit multiple LEIs being issued to an entity. The Commission also does not believe GFXD's concerns that the provision will result in a material shifting of costs for obtaining an LEI onto reporting counterparties are particularly realistic due to: (i) Most counterparties having already obtained an LEI due to significant LEI adoption by other authorities whose jurisdictions the counterparties may be subject to, (ii) the relatively sophisticated nature of counterparties in the swaps market, (iii) the financial due diligence that reporting counterparties such as GFXD's members perform on their counterparties, and (iv) the unlikelihood that those relatively sophisticated counterparties with adequate financial resources would willingly and knowingly disregard their own separate obligation to obtain their own LEIs pursuant to § 45.6 just so they may realize a one-time savings of $65.

The Commission also recognizes the concerns noted by commenters that obtaining an LEI for a counterparty via third-party registration requires the consent of the counterparty, consent that may potentially not be obtained despite a financial entity reporting counterparty's best efforts. The Commission believes § 45.6(d)(3) of the final rule addresses those concerns, as financial entities will only be required to ''use best efforts to cause [an LEI] to be assigned to the counterparty,'' so financial entities would not be required to obtain an LEI for a non-consenting counterparty. It was never the Commission's intent for anyone other than the entity to which an LEI is issued to be responsible for maintaining the reference data for that LEI, and the Commission has, in response to ISDA–SIFMA's suggestion, added a clarification in the introductory text of § 45.6 that each entity is responsible for maintaining its LEI, in addition to obtaining and being identified with an LEI.

G. § 45.8[229] *—Determination of Which Counterparty Shall Report*

The Commission is changing the introductory text to the § 45.8 reporting counterparty determination regulations. The existing introductory text states the determination of which counterparty is the reporting counterparty for all swaps, except clearing swaps, shall be made as provided in § 45.8(a) through (h), and that the determination of which counterparty is the reporting counterparty for all clearing swaps shall be made as provided in § 45.8(i).

The Commission is changing the introductory text to state that the determination of which counterparty is the reporting counterparty for each swap shall be made as provided in § 45.8. The Commission believes this language is clearer, as much of the introductory text is superfluous given that the scope of what § 45.8 covers is clear from the operative provisions of § 45.8. The Commission is making non-substantive amendments to the rest of existing § 45.8.

The Commission received two comments beyond the non-substantive changes the Commission proposed. ICE SDR recommends the Commission allow swap counterparties to determine which entity is best suited to report swap data where both counterparties are non-SDs/MSPs and only one counterparty is a financial entity and where both counterparties are non-SDs/MSPs and only one counterparty is a U.S. person.[230] The Commission declines to adopt ICE SDR's recommendation, as financial entities, being more active in the swaps market, are better suited to report swap data to SDRs than non-SD/MSP counterparties. In addition, between two non-SD/MSP/DCO reporting counterparties, the U.S. person counterparty should report swap data to SDRs given their stronger connection to the U.S.

ISDA–SIFMA propose deleting language that seems to address cross-border matters that do not fully align with Commission guidance or no-action letters and request the Commission confirm that, so long as both counterparties incorporate a widely accepted industry practice into their internal policies and procedures, they will have met the requirements of § 45.8.[231] The Commission did not propose any amendments to reflect cross-border guidance or no-action letters, and believes the substantive amendments advocated by ISDA–SIFMA, are beyond the scope of this rulemaking and thus not amenable for adoption absent an notice and an opportunity for comment. The Commission believes the requirements of § 45.8 are clear from their operative provisions, and declines to comment on widely-accepted industry practices in this rulemaking.

For the reasons discussed above, the Commission is adopting the changes to § 45.8 as proposed.

H. § 45.10[232] *– Reporting to a Single Swap Data Repository*

The Commission is changing the § 45.10 regulations for reporting swap data to a single SDR. The Commission is amending and removing existing regulations, and adding new regulations to § 45.10. In particular, new § 45.10(d) will permit reporting counterparties to change the SDR to which they report swap data and swap transaction and pricing data.

1. Introductory Text

The Commission is amending the introductory text to § 45.10. The existing

[228] The Commission recognizes that if the non-reporting counterparty refuses to obtain an LEI or refuses to provide permission for the reporting counterparty to obtain an LEI on its behalf, the lack of LEI may cause the swap data report to fail an SDR's validations for the ''Counterparty 2'' data element. To the extent a swap data report would otherwise pass an SDR's validations but for the refusal by an LEI-eligible non-reporting counterparty to obtain an LEI, the Commission will take appropriate steps to address such refusal by the LEI-eligible non-reporting counterparty. The Commission expects this to be an infrequent situation.

[229] The Commission proposed minor, non-substantive amendments to § 45.7.

[230] ICE SDR at 6.

[231] ISDA–SIFMA at 15–16.

[232] The Commission is making minor, non-substantive amendments to § 45.9.

introductory text states that all swap data for a given swap, which includes all swap data required to be reported pursuant to parts 43 and 45, must be reported to a single SDR, which must be the SDR to which the first report of required swap creation data is made pursuant to part 45.

First, the Commission is clarifying all ''swap transaction and pricing data and swap data'' (both terms that the Commission proposed to newly define and add to § 45.1(a)) [233] for a given swap must be reported. As newly defined, ''swap transaction and pricing data'' and ''swap data'' would expressly refer, respectively, to data subject to parts 43 and 45, making the existing § 45.10 introductory text's reference to the two parts redundant. Second, the Commission is adding a qualifier to the end of the introductory text specifying that all swap data and swap transaction and pricing data for a swap must be reported to a single SDR ''unless the reporting counterparty changes the [SDR] to which such data is reported'' pursuant to the new regulations proposed in § 45.10(d).[234] Third, the Commission is making non-substantive changes in the introductory text to improve readability.

The Commission did not receive any comments on the changes to the introductory text in § 45.10. The Commission is adopting the changes as proposed.

2. § 45.10(a)—Swaps Executed On or Pursuant to the Rules of a SEF or DCM

The Commission is amending the § 45.10(a) regulations for reporting swaps executed on or pursuant to the rules of a SEF or DCM to a single SDR. Existing § 45.10(a) requires that to ensure all swap data, including all swap data required to be reported pursuant to parts 43 and 45, for a swap executed on or pursuant to the rules of a SEF or DCM is reported to a single SDR: (i) The SEF or DCM that reports required swap creation data as required by § 45.3 shall report all such data to a single SDR, and ASATP after execution shall transmit to both counterparties to the swap, and to any DCO, the identity of the SDR and the USI for the swap; and (ii) thereafter, all required swap creation data and all required swap continuation data reported for the swap reported by any registered entity or counterparty must be reported to that same SDR (or to its successor in the event that it ceases to operate, as provided in existing part 49).

First, the Commission is removing the phrase ''(or to its successor in the event that it ceases to operate, as provided in part 49)'' from § 45.10(a)(2).[235] Second, the Commission is updating all references to swap data throughout proposed § 45.10(a) with ''swap transaction and pricing data and swap data.'' The Commission believes using the new defined terms for ''swap data'' and ''swap transaction and pricing data'' will provide clarity for market participants.

Third, the Commission is removing § 45.10(a)(1)(ii) and combining the text of § 45.10(a) and (a)(i) into a single provision § 45.10(a) to provide clarity as the requirement in § 45.10(a)(1)(ii) is already located in § 45.5(a)(2). Fourth, the Commission is adding the qualifier to the end of § 45.10(a)(2) that all swap data and swap transaction and pricing data for a swap must be reported to a single SDR ''unless the reporting counterparty changes the [SDR] to which such data is reported'' pursuant to the new regulations in proposed § 45.10(d).[236]

The Commission did not receive any comments on the changes to § 45.10(a). For the reasons discussed above, the Commission is adopting the changes as proposed.

3. § 45.10(b)—Off-Facility Swaps with an SD or MSP Reporting Counterparty

The Commission is amending the § 45.10(b) regulations for reporting swaps executed off-facility with an SD/MSP reporting counterparty to a single SDR. Existing § 45.10(b)(1) requires that to ensure that all swap data, including all swap data required to be reported pursuant to parts 43 and 45, for off-facility swaps with an SD or MSP reporting counterparty is reported to a single SDR: (i) If the reporting counterparty reports PET data to an SDR as required by § 45.3, the reporting counterparty shall report PET data to a single SDR and ASATP after execution, but no later than as required pursuant to § 45.3, shall transmit to the other counterparty to the swap both the identity of the SDR to which PET data is reported by the reporting counterparty, and the USI for the swap created pursuant to § 45.5; and (ii) if the swap will be cleared, the reporting counterparty shall transmit to the DCO at the time the swap is submitted for clearing both the identity of the SDR to which PET data is reported by the reporting counterparty, and the USI for the swap created under § 45.5.

Thereafter, § 45.10(b)(2) requires that all required swap creation data and all required swap continuation data reported for the swap, by any registered entity or counterparty, shall be reported to the SDR to which swap data has been reported pursuant to § 45.10(b)(1) or (2) (or to its successor in the event that it ceases to operate, as provided in part 49).

First, the Commission is combining the requirements for SD/MSP reporting counterparties in § 45.10(b) for off-facility swaps with the requirements for non-SD/MSP reporting counterparties in § 45.10(c) for off-facility swaps. The Commission believes combining the requirements for SD/MSP reporting counterparties and non-SD/MSP reporting counterparties in § 49.10(b) and (c) will simplify the regulations in § 45.10. The Commission is re-titling § 45.10(b) ''Off-facility swaps that are not clearing swaps.'' [237]

Second, the Commission is removing the phrase ''(or to its successor in the event that it ceases to operate, as provided in part 49)'' from § 45.10(b)(2).[238] Third, the Commission is updating all references to swap data throughout § 45.10(b) by replacing all references to ''swap data'' with ''swap transaction and pricing data and swap data.''

Fourth, the Commission is removing existing § 45.10(b)(1) and combining the regulations in existing § 45.10(b)(1)(i) through (iii) into § 45.10(b)(1). The Commission believes existing § 45.10(b)(1) is unnecessary, as all reporting counterparties must report required swap creation data to an SDR pursuant to § 45.3 for off-facility swaps. Fifth, the Commission is removing the requirement in existing § 45.10(b)(1)(ii) for the reporting counterparty to transmit the USI to the non-reporting counterparty to the swap. The requirement in § 45.10(b)(1) is unnecessary, as it is already located in § 45.5(b)(2) and (c)(2), depending on the type of counterparty.

Finally, the Commission is adding the qualifier to the end of § 45.10(b)(2) that all swap data and swap transaction and pricing data for a swap must be reported to a single SDR ''unless the reporting counterparty changes the [SDR] to

[233] The Commission's addition of terms for ''swap data'' and ''swap transaction and pricing data'' to § 45.1(a) is discussed in section II.A.1 above.

[234] The Commission discusses § 45.10(d) in section II.H.5 below.

[235] This change is due to the new regulations the Commission is adding for changing SDRs in § 45.10(d). The Commission discusses § 45.10(d) in section II.H.5 below.

[236] *Id.*

[237] The Commission discusses the requirements of existing § 45.10(c) in section II.H.4 below.

[238] This change is due to the new regulations the Commission is adopting for changing SDRs in § 45.10(d). The Commission discusses § 45.10(d) in section II.H.5 below.

which such data is reported'' pursuant to proposed § 45.10(d).[239]

The Commission did not receive any comments on the proposed changes to § 45.10(b). For the reasons discussed above, the Commission is adopting the changes as proposed.

4. § 45.10(c)—Off-Facility Swaps With a Non-SD/MSP Reporting Counterparty

The Commission is moving the requirements in § 45.10(d) to § 45.10(c). The Commission discusses the requirements of existing § 45.10(d) in the following section, II.H.5. The Commission discusses the requirements of existing § 45.10(c) that it proposed moving to § 45.10(b) in section II.H.3 above.

5. § 45.10(d)—Clearing Swaps

a. Amendments to Existing § 45.10(d) [240]

Existing § 45.10(d)(1) requires that to ensure that all swap data for a given clearing swap, and for clearing swaps that replace a particular original swap or that are created upon execution of the same transaction and that do not replace an original swap, is reported to a single SDR the DCO that is a counterparty to the clearing swap report all required swap creation data for that clearing swap to a single SDR, and ASATP after acceptance of an original swap by a DCO for clearing or execution of a clearing swap that does not replace an original swap, the DCO transmit to the counterparty to each clearing swap the LEI of the SDR to which the DCO reported the required swap creation data for that clearing swap.

Thereafter, existing § 45.10(d)(2) requires the DCO report all required swap creation data and all required swap continuation data reported for that clearing swap to the SDR to which swap data has been reported pursuant to § 45.10(d)(1) (or to its successor in the event that it ceases to operate, as provided in part 49). Existing § 45.10(d)(3) requires that for clearing swaps that replace a particular original swap, and for equal and opposite clearing swaps that are created upon execution of the same transaction and that do not replace an original swap, the DCO report all required swap creation data and all required swap continuation data for such clearing swaps to a single SDR.

Newly re-designated § 45.10(c) would include several changes to the requirements in existing § 45.10(d). First, the Commission is removing the phrase ''(or to its successor in the event that it ceases to operate, as provided in part 49)'' in existing § 45.10(d)(2) from re-designated § 49.10(c)(2).[241]

Second, the Commission is updating all references to swap data now found throughout existing § 45.10(d) with references to ''swap transaction and pricing data and swap data.'' Third, the Commission is adding the following qualifier: ''unless the reporting counterparty changes the [SDR] to which such data is reported'' pursuant to the new regulations in § 45.10(d). Finally, the Commission is making numerous language edits to improve readability and to update certain cross-references.

The Commission did not receive any comments on the proposed changes to § 45.10(d), as moved to § 45.10(c). For the reasons discussed above, the Commission is adopting the changes as proposed.

b. New Regulations for Changing SDRs

The Commission is adding new § 45.10(d) to permit reporting counterparties to change the SDR to which they report swap data and swap transaction and pricing data. Existing § 45.10 provides all swaps must be reported to a ''single [SDR].'' [242]

The Commission is titling new § 45.10(d) ''Change of [SDR] for swap transaction and pricing data and swap data reporting.'' The introductory text to § 45.10(d) states a reporting counterparty may change the SDR to which swap transaction and pricing data and swap data is reported as outlined in § 45.10(d).

New § 45.10(d)(1) will require that at least five business days prior to changing the SDR to which the reporting counterparty reports swap transaction and pricing data and swap data for a swap, the reporting counterparty provide notice of such change to the other counterparty to the swap, the SDR to which swap transaction and pricing data and swap data is currently reported, and the SDR to which swap transaction and pricing data and swap data will be reported going forward. Such notification will include the UTI of the swap and the date on which the reporting counterparty will begin reporting such swap transaction and pricing data and swap data to a different SDR.

New § 45.10(d)(2) will require that after providing notification, the reporting counterparty: (i) Report the change of SDR to the SDR to which the reporting counterparty is currently reporting swap transaction and pricing data and swap data as a life cycle event for such swap pursuant to § 45.4; (ii) on the same day that the reporting counterparty reports required swap continuation data as required by § 45.10(d)(2)(i), the reporting counterparty also report the change of SDR to the SDR to which swap transaction and pricing data and swap data will be reported going forward, as a life cycle event for such swap pursuant to § 45.4, and the report identify the swap using the same UTI used to identify the swap at the previous SDR; (iii) thereafter, all swap transaction and pricing data, required swap creation data, and required swap continuation data for the swap be reported to the new SDR, unless the reporting counterparty for the swap makes another change to the SDR to which such data is reported pursuant to § 45.10(d).

When the Commission adopted § 45.10 in 2012, it believed regulators' ability to see necessary information concerning swaps could be impeded if data concerning a swap was spread over multiple SDRs.[243] However, since then, the Commission has come to recognize it can aggregate swap data from different SDRs, and the Commission has received requests to permit reporting counterparties to change SDRs.[244]

However, the ability to change SDRs cannot frustrate the Commission's ability to use swap data due to duplicative swap reports housed at multiple SDRs. For this reason, the Commission is permitting reporting counterparties to change SDRs in § 49.10(d), subject to certain notification procedures described below to ensure swaps are properly transferred between SDRs.

The Commission received five comments supporting new § 45.10(d).[245] In particular, GFXD does not believe counterparties changing SDRs raises any operational issues and does not believe any additional requirements should be adopted.[246]

[239] The Commission discusses new § 45.10(d) in section II.H.5 below.

[240] The Commission is moving the requirements for reporting clearing swaps to a single SDR from § 45.10(d) to § 45.10(c). The Commission is replacing § 45.10(d) with new requirements for reporting counterparties to change SDRs. This section discusses the changes to the requirements for reporting clearing swaps to a single SDR in newly re-designated § 45.10(c) (existing § 45.10(d)), followed by a discussion of the new regulations permitting reporting counterparties to change SDRs.

[241] This change is due to the new regulations the Commission is adopting for changing SDRs in § 45.10(d). The Commission discusses § 45.10(d) in section II.H.5.b below.

[242] 17 CFR 45.10(a) through (d).

[243] *See* 77 FR 2136, 2168 (Jan. 13, 2012).

[244] *See, e.g.,* Joint letter from Bloomberg SDR LLC, Chicago Mercantile Exchange Inc., and ICE Trade Vault, LLC (Aug. 21, 2017) at 15.

[245] GFXD at 24; Eurex at 4; JBA at 5; DTCC at 7; Markit at 6.

[246] GFXD at 24.

The Commission did not receive any comments opposing § 45.10(d), but did receive comments seeking clarification or commenting on some aspects of the new regulation. Markit supports § 45.10(d), but does not believe the notice period and other formal procedures are necessary, and notes a swap transaction that has been moved will be evident from the ''Events'' data elements in appendix 1.[247] The Commission agrees with Markit that data elements showing a swap has been moved to a different SDR will be beneficial, but as explained above, the Commission needs to ensure swaps are properly transferred. The Commission believes it has kept the notification requirements simple enough to provide the Commission the notification it needs without placing an unreasonable burden on the parties involved in the transfer.

ISDA–SIFMA suggest the § 45.10(d)(1) notification obligation could be satisfied via an email notification, reporting counterparty portal, or the reporting counterparty's public-facing website.[248] The Commission agrees with ISDA–SIFMA and clarifies the aforementioned methods could satisfy the notification requirements in § 49.10(d).

ISDA–SIFMA and DTCC have questions relating to transferring historical swap data. ISDA–SIFMA believe, where a reporting counterparty elects to transfer from an SDR due to the deregistration of the SDR, the deregistering SDR should be required to bear the reporting counterparty's costs of porting.[249] DTCC requests confirmation that the transferability requirement will only apply to trades that are live at the time of the transfer, not historical trades.[250] Transferring historical data in the context of SDR withdrawals from registration is covered by § 49.4 regulations (Withdrawal from registration). New § 45.10(d) does not apply to that process, with respect to costs or the process itself, among other things. The Commission believes ISDA–SIFMA and DTCC's comments are addressed by § 49.4.

I. § 45.11—Data Reporting for Swaps in a Swap Asset Class Not Accepted by Any Swap Data Repository

The Commission is making non-substantive changes to the § 45.11 regulations for reporting swaps in an asset class not accepted by any SDR. Existing § 45.11(a) requires that, should there be a swap asset class for which no SDR registered with the Commission currently accepts swap data, each registered entity or counterparty required by part 45 to report any required swap creation data or required swap continuation data with respect to a swap in that asset class report that same data to the Commission.

For instance, the Commission is removing the phrase ''registered with the Commission'' following the term SDR. The Commission believes this phrase is confusing, as the three SDRs are provisionally registered with the Commission pursuant to § 49.4(b) of the Commission's regulations. The Commission also believes this phrase is unnecessary, as provisionally registered SDRs and fully registered SDRs are subject to the same requirements in the CEA and the Commission's regulations. The Commission is also replacing ''each registered entity or counterparty'' with a reference to SEFs, DCMs, and DCOs, and the term ''reporting counterparty.'' The list of entities is more precise and does not modify the types of entities to which the requirements of § 49.11 would apply.

Existing § 45.11(c) and (d) contain a delegation of authority to the Chief Information Officer of the Commission concerning the requirements in § 45.11(a) and (b). The Commission is moving this delegation to a new section, § 45.15, for delegations of authority. The Commission discusses § 45.15 in section II.L below.

The Commission did not receive any comments on the proposed changes to existing § 45.11. For the reasons discussed above, the Commission is adopting the changes as proposed.

J. § 45.12—Voluntary Supplemental Reporting

The Commission is removing the § 45.12 regulations for voluntary supplemental reporting from part 45. Existing § 45.12 permits the submission of voluntary supplemental swap data reports by swap counterparties.[251] Voluntary supplemental swap data reports are defined as any report of swap data to a [SDR] that is not required to be made pursuant to part 45 or any other part in this chapter.[252]

When it adopted § 45.12 in 2012, the Commission believed voluntary supplemental reporting could have benefits for data accuracy and counterparty business processes, especially for counterparties that were not the reporting counterparty to a swap.[253] The Commission recognized § 45.12 would lead to the submission of duplicative reports for the same swap,[254] but believed an indication voluntary supplemental reports were voluntary would prevent double-counting of the same swaps within SDRs.[255]

In practice, the Commission is concerned voluntary supplemental reports compromise data quality and provide no clear regulatory benefit. In analyzing reports that have been marked as ''voluntary reports,'' it is not immediately apparent to the Commission why reporting counterparties mark the reports as voluntary. In some cases, it appears these reports can be related to products outside the Commission's jurisdiction. The Commission believes it should not accept duplicative or non-jurisdictional reports at the expense of the Commission's technical and staffing resources with no clear regulatory benefit. The Commission adopted existing § 45.12 in 2012 without the benefit of having swap data available to consider the practical implications of existing § 45.12. However, after years of use by Commission staff, the Commission now believes existing § 45.12 has led to swap data reporting that inhibits the Commission's use of the swap data. The Commission believes eliminating § 45.12 will help improve data quality.

The Commission received three comments on the removal of § 45.12. NRECA–APPA and ISDA–SIFMA support removing § 45.12.[256] Eurex believes this removal would lead non-U.S. DCOs to only report part 45 data for swap transactions involving SDs, MSPs, and other U.S. counterparties.[257] Furthermore, Eurex agrees that this removal would significantly lessen the operational cost currently incurred from reporting data for all cleared swaps.[258] However, Eurex requests a list of SDs, MSPs, and other U.S. counterparties so, as a non-U.S. DCO, Eurex can appropriately filter out swap transactions that do not fall under the jurisdiction of the Commission.[259] The Commission believes Eurex is confusing

[247] Markit at 6.

[248] ISDA–SIFMA at 16.

[249] *Id.*

[250] DTCC at 7.

[251] 17 CFR 45.12(b) through (e). Existing § 45.12(d) requires voluntary supplemental reports contain an indication the report is voluntary, a USI, the identity of the SDR to which required swap creation data and required swap continuation data were reported, if different from the SDR to which the voluntary supplemental report was reported, the LEI of the counterparty making the voluntary supplemental report, and an indication the report is made pursuant to laws of another jurisdiction, if applicable.

[252] 17 CFR 45.12(a).

[253] 77 FR at 2169 (Jan. 13, 2012).

[254] *Id.*

[255] *Id.*

[256] NRECA–APPA at 5; ISDA–SIFMA at 16.

[257] Eurex at 5.

[258] *Id.*

[259] *Id.*

voluntary supplemental reporting with cross-border reporting, possibly due to the Commission's example of some voluntary reports being non-jurisdictional. The Commission clarifies that removing the regulations for voluntary supplemental reporting does not impact cross-border reporting requirements, and non-U.S. DCOs should continue reporting swap data to SDRs, to the extent the Commission's cross-border rules and guidance require it.

K. § 45.13—Required Data Standards

1. § 45.13(a)—Data Maintained and Furnished to the Commission by SDRs

The Commission is changing the § 45.13(a) regulations for data maintained and furnished to the Commission by SDRs. Existing § 45.13(a) requires each SDR maintain all swap data reported to it in a format acceptable to the Commission, and transmit all swap data requested by the Commission to the Commission in an electronic file in a format acceptable to the Commission.

The Commission is removing existing § 45.13(a), and moving existing § 45.13(b) to § 45.13(a)(3). The May 2019 notice of proposed rulemaking relating to the Commission's SDR regulations in parts 23, 43, 45, and 49 (the ''2019 Part 49 NPRM'') [260] proposed moving the requirements of § 45.13(a) to § 49.17(c).[261] The Commission did not propose corresponding modifications to § 45.13 in that release.[262] Therefore, the Commission is changing § 45.13(a) in this release by removing language that the 2019 Part 49 NPRM proposed incorporating in § 49.17(c). The Commission discusses the changes to § 45.13(b), including moving the requirement to § 45.13(a)(3), in this section.

Existing § 45.13(b) requires that in reporting swap data to an SDR as required by part 45, each reporting entity or counterparty shall use the facilities, methods, or data standards provided or required by the SDR to which the entity or counterparty reports the data. Existing § 45.13(b) further provides that an SDR may permit reporting entities and counterparties to use various facilities, methods, or data standards, provided that its requirements in this regard enable it to meet the requirements of § 45.13(a) with respect to maintenance and transmission of swap data.

In new § 43.13(a)(1), the Commission is requiring that in reporting required swap creation data and required swap continuation data to an SDR, each reporting counterparty, SEF, DCM, and DCO shall report the swap data elements in appendix 1 in the form and manner provided in the technical specifications published by the Commission pursuant to § 45.15. This requirement is implied in the current regulations through the requirements in the introductory text to § 45.3 and § 45.4, the definitions of ''required swap creation data'' and ''required swap continuation data,'' and § 45.13(b) and (c), but new § 45.13(a)(1) would make the existing requirement explicit.

In new § 45.13(a)(2), the Commission is requiring that in reporting required swap creation data and required swap continuation data to an SDR, each reporting counterparty, SEF, DCM, and DCO making such report satisfy the swap data validation procedures of the SDR receiving the swap data. The Commission is adopting companion requirements for SDRs to validate swap data in § 49.10.[263] New § 45.13(a)(2) will establish the regulatory requirement for reporting counterparties, SEFs, DCMs, and DCOs to satisfy the data validation procedures established by SDRs pursuant to § 49.10. The Commission is specifying the requirements for the validation messages in § 45.13(b). The Commission discusses these requirements, and comments received, in section IV.C.3 below.

Finally, the Commission is moving existing § 45.13(b) to § 45.13(a)(3) and changing the regulatory requirements. Existing § 45.13(b) requires that in reporting swap data to an SDR as required by part 45, each reporting entity or counterparty use the facilities, methods, or data standards provided or required by the SDR to which the entity or counterparty reports the data. An SDR may permit reporting entities and counterparties to use various facilities, methods, or data standards, provided its requirements in this regard enable it to meet the requirements of § 45.13(a) with respect to maintenance and transmission of swap data.

First, the Commission is replacing ''each reporting entity or counterparty'' with ''each reporting counterparty [SEF, DCM, and DCO]'' to be more precise. Second, the Commission is removing the second sentence in existing § 45.13(b) because it pertains to the requirements of § 45.13(a), which the Commission is moving to part 49.

The Commission did not receive any comments on the changes to § 45.13(a) and (b). For the reasons discussed above, the Commission is adopting the changes as proposed.

2. New Regulations for Data Validation Messages

The Commission is specifying the requirements for data validation acceptance messages for SDRs, SEFs, DCMs, DCOs, and reporting counterparties. New § 45.13(b)(1) will require that for each required swap creation data or required swap continuation data report submitted to an SDR, an SDR notify the reporting counterparty, SEF, DCM, DCO, or third-party service provider submitting the report whether the report satisfied the swap data validation procedures of the SDR. The SDR will have to provide such notification ASATP after accepting the required swap creation data or required swap continuation data report. An SDR satisfies these requirements by transmitting data validation acceptance messages as required by proposed § 49.10.

New § 45.13(b)(2) will require that if a required swap creation data or required swap continuation data report to an SDR does not satisfy the data validation procedures of the SDR, the reporting counterparty, SEF, DCM, or DCO required to submit the report has not yet satisfied its obligation to report required swap creation or continuation data in the manner provided by paragraph (a) within the timelines set forth in §§ 45.3 and 45.4. The reporting counterparty, SEF, DCM, or DCO has not satisfied its obligation until it submits the required swap data report in the manner provided by paragraph (a), which includes the requirement to satisfy the data validation procedures of the SDR, within the applicable time deadline outlined in §§ 45.3 and 45.4.

The Commission did not receive any comments on the new validations requirements in § 45.13(b). As the new regulations for data validations in § 45.13(b) are analogous to new regulations for SDRs to validate data in § 49.10, the Commission discusses its reasoning behind requiring validations in one section in section IV.C.3, below.

3. § 45.13(c)—Delegation of Authority to the Chief Information Officer

Existing § 45.13(c) and (d) contain a delegation of authority to the Chief Information Officer of the Commission concerning the requirements in existing § 45.13(a) and (b). The Commission is deleting § 45.13(c) and (d) and moving

[260] *See* Certain Swap Data Repository and Data Reporting Requirements, 84 FR 21044 (May 13, 2019).

[261] 84 FR at 21060 (May 13, 2019).

[262] *Id.* at n.132 (noting the Commission's expectation to modify § 45.13 in a subsequent Roadmap rulemaking).

[263] The Commission discusses § 49.10 in section IV.C below.

the delegation to new § 45.15 and delegating authority to the DMO Director. The Commission believes the updated delegation will enhance efficiency by including DMO. The Commission discusses new § 45.15 in the next section.

L. § 45.15[264] *– Delegation of Authority*

1. New Regulation for Delegations of Authority

The Commission is adding a new regulation to part 45 for delegations of authority. New § 45.15 is titled ''Delegation of authority'' and contains the delegation of authority in existing § 45.11(c) and (d) and § 45.13(c) and (d) with a new delegation to the DMO Director regarding reporting under § 45.13.

Existing § 45.11(c) delegates to the Chief Information Officer of the Commission, or another such employee he or she designates, with respect to swaps in an asset class not accepted by any SDR, the authority to determine the manner, format, coding structure, and electronic data transmission standards and procedures acceptable to the Commission; whether the Commission may permit or require use by reporting entities or counterparties in reporting pursuant to § 45.11 of one or more particular data standards (such as FIX, FpML, ISO 20022, or some other standard), in order to accommodate the needs of different communities of users; and the dates and times at which required swap creation data or required swap continuation data must be reported to the Commission.

Existing § 45.11(d) requires the Chief Information Officer to publish from time to time in the **Federal Register** and on the website of the Commission, the format, data schema, electronic data transmission methods and procedures, and dates and times for reporting acceptable to the Commission with respect to swap data reporting pursuant to § 45.11.

Separately, existing § 45.13(c) delegates to the Chief Information Officer, until the Commission orders otherwise, the authority to establish the format by which SDRs maintain swap data reported to them, and the format by which SDRs transmit the data to the Commission. The authority includes the authority to determine the manner, format, coding structure, and electronic data transmission standards and procedures acceptable to the Commission for § 45.13(a); and the authority to determine whether the Commission may permit or require use by reporting entities or counterparties, or by SDRs, of one or more particular data standards (such as FIX, FpML, ISO 20022, or some other standard), to accommodate the needs of different communities of users, or to enable SDRs to comply with § 45.13(a).

Existing § 45.13(d) requires the Chief Information Officer to publish from time to time in the **Federal Register** and on the website of the Commission the format, data schema, and electronic data transmission methods and procedures acceptable to the Commission.

The Commission is moving the delegations in existing §§ 45.11(c) and (d) and 45.13(c) and (d) to new § 45.15(a) and (b). The Commission is also updating the delegations to reflect the changes to the cross-references resulting from the Commission's other proposed amendments to part 45, and changing the delegation in § 45.13 from the Chief Information Officer to the Director of the Division of Market Oversight due to different responsibilities over swap data within the Commission.

The Commission received one comment on new § 45.15. NRECA–APPA support the delegation to DMO.[265] The Commission agrees with NRECA–APPA and believes delegation to DMO will benefit data element harmonization. The Commission did not receive any other comments on new § 45.15. The Commission is adopting the regulation as proposed.

2. Request for Comment on Data Standards

The Proposal solicited comment on whether the Commission should mandate a specific data standard for reporting swap data to SDRs, and whether that standard should be ISO 20022. Existing § 45.13(c) delegates to the Commission's Chief Information Officer the authority to determine whether the Commission may permit or require use by reporting entities or counterparties, or by SDRs, of one or more particular data standards, including ISO 20022, in order to accommodate the needs of different communities of users. The Commission is retaining this delegation but moving the authority to § 45.15(b)(2) and transferring it to the DMO Director.

While the Commission would mandate any standards via the delegated authority in § 45.15(b)(2), the Commission took the opportunity presented by the Proposal to solicit public comment on the topic.[266] As explained in the Proposal, the Commission is currently part of an effort to develop a standardized ISO message for the data elements in the CDE Technical Guidance. The Commission sought comment on whether market participants believe mandating ISO 20022 would be beneficial.

The Commission received five comments supporting mandating data standards for swap data reporting.[267] In particular, GFXD encourages the Commission to harmonize with the CPMI–IOSCO reporting standards to the extent the Commission chooses to implement those data elements.[268] Similarly, XBRL ''strongly'' recommends the Commission ''require all SDRs to adopt a single data standard.'' XBRL believes allowing SDRs to choose any data standard will lead to inconsistencies in the data, and unnecessary spending by counterparties, SDRs, data users, and the Commission, to accommodate multiple data sets that are standardized in different ways.''[269]

The Commission received two comments opposing mandating standards for SDR reporting. ISDA–SIFMA state that, even if the Commission mandates that certain messaging formats (*e.g.,* XML, FpML, CSV) for reporting from the SDR to the Commission, ISDA–SIFMA do not believe this should result in a mandate that the same message format type be required from the reporting counterparty to the SDRs, as not all reporting counterparties are built uniformly with respect to messaging formats and technology.[270]

ICE SDR believes SDRs need flexibility to determine how to implement the requirement. For example, an SDR may choose to provide notifications through a graphical user interface so that less-sophisticated reporting entities are not forced to write an application programming interface.[271]

The Commission received four comments supporting mandating the ISO 20022 standard specifically.[272] In particular, GFXD believes including the CDE data elements in the ISO 20022 data dictionary would reduce the

[264] The Commission proposed amendments to § 45.14 in the 2019 Part 49 NPRM. Therefore, § 45.14 will not be discussed in this release. *See* 84 FR at 21067 (May 13, 2019).

[265] NRECA–APPA at 6.

[266] The Commission last solicited comment on the topic in 2012 when it adopted § 45.13. 77 FR 2136 at 2169–70.

[267] GFXD at 25; Chatham at 3–4; Eurex at 5; Data Coalition at 2; XBRL at 2.

[268] GFXD at 25.

[269] XBRL at 2.

[270] ISDA–SIFMA at 16–18.

[271] ICE SDR at 6, 10.

[272] GFXD at 25; Eurex at 5–6; JBA at 5; DTCC at 7.

mapping required by market participants and third parties, but believes the Commission should coordinate with fellow international regulators to coordinate the adoption of CDE data elements.[273] GFXD also believes it is ''extremely advisable'' for the Commission and ESMA to come to the same determination on the adoption of the ISO 20022 messaging scheme and coordinate on implementation to reduce operational complexity and risk to data quality from mapping different message schemes in the interim.[274] DTCC also encourages the Commission to ''adopt a messaging methodology that is broadly consistent and aligned with the methodology adopted and used in other jurisdictions'' and notes ESMA has proposed ISO 20022 in its EMIR REFIT consultation published in March 2020.[275]

The Commission received three comments opposing mandating ISO 20022. CME questions the value of using ISO 20022 values for reporting certain data elements given the significant implementation cost.[276] ISDA–SIFMA oppose mandating ISO 20022 due to costs imposed on market participants without benefits to regulatory oversight.[277] ICE SDR does not support prescribed facilities and methods for SDRs to communicate with and take in data from participants.[278] According to ICE SDR, the Commission should not consider mandating the ISO 20022 message scheme for reporting to SDRs as non-SD/MSP reporting entities often are not as sophisticated as SDs/MSPs and cannot follow such a standard.[279]

The Commission agrees with some commenters that mandating one standard for reporting swap data to SDRs is necessary to ensure data quality. The Commission believes if the data is reported using different standards or protocols, the data is then subject to interpretation by the SDRs, as it is transformed or translated into the SDRs' systems and further transformed when it is reported to the Commission. These successive layers of transformation inject ambiguity and data quality issues into the life cycle of the data. Such layers of transformation are unnecessary if the reporting solution is straight through processing. Consistency of data from the source, in a common format, regardless of SDR, will lead to better quality data.

Several commenters note aligning with other jurisdictions will help reduce burden on market participants. Staff supports the idea that having a consistent standard for reporting, such as ISO 20022, across the globe would reduce reporting burden, streamline processing and allow industry to leverage scaled solutions bringing down the cost of changes and updates. As previously noted by a commenter, ESMA has proposed ISO 20022 in its EMIR REFIT consultation published in March 2020 and has implemented ISO 20022 for other reporting regimes, including SFTR.

As discussed in the Proposal, CPMI–IOSCO assigned ISO to execute the maintenance functions for the CDE Technical Guidance because ISO has significant experience maintaining financial data standards and almost half of the CDE data elements in the CDE Technical Guidance are already tied to an ISO standard. CPMI–IOSCO also decided that the CDE data elements should be included in the ISO 20022 data dictionary and the development of an ISO 20022-compliant message for CDE data elements is in progress. Further, a majority of the data elements in the technical specification are from the CDE Technical Guidance. For these reasons, and because comprehensive and unambiguous rules regarding reporting format will ensure the quality and usefulness of the data, the Commission will mandate ISO 20022 for reporting to SDRs according to § 45.15(b)(2) when the standard is developed.

III. Amendments to Part 46

CEA sections 4r(a)(2)(A) and 2(h)(5) provide for the reporting of pre-enactment and transition swaps.[280] Part 46 of the Commission's regulations establishes the requirements for reporting pre-enactment and transition swaps to SDRs. In some instances, the revisions to part 45 necessitate corresponding amendments to the regulations in part 46. The Commission describes any substantive amendments in this section. However, the Commission does not repeat the reasoning for changes if the Commission has discussed the reasoning for analogous part 45 provisions above.

A. § 46.1—Definitions

Existing § 46.1 contains the definitions for terms used throughout the regulations in part 46. The Commission is separating § 46.1 into two paragraphs: § 46.1(a) for definitions and § 46.1(b), which would state that terms not defined in part 46 have the meanings assigned to the terms in § 1.3, to be consistent with the same change in § 45.1.

The Commission is adding a definition of ''historical swaps'' to § 46.1(a). ''Historical swaps'' means pre-enactment swaps or transition swaps. This term will provide clarity as it is already used in part 46.

The Commission is adding a definition of ''substitute counterparty identifier'' to § 46.1(a). ''Substitute counterparty identifier'' means a unique alphanumeric code assigned by an SDR to a swap counterparty prior to the Commission designation of an LEI identifier system on July 23, 2012. The term ''substitute counterparty identifier'' is already used throughout § 46.4.

The Commission is making non-substantive minor technical changes to ''asset class'' and ''required swap continuation data.''

The Commission is amending the definition of ''non-SD/MSP counterparty'' in § 46.1(a) to conform to the amendments proposed to the corresponding term in § 45.1(a).[281] The Commission is updating the term throughout part 46.

The Commission is amending the definition of ''reporting counterparty'' to update the reference to ''swap data.'' Currently, ''reporting counterparty'' means the counterparty required to report swap data pursuant to part 46, selected as provided in § 46.5. As discussed in section II.A.1 above, the Commission is defining ''swap data'' to mean swap data reported pursuant to part 45. As a result, the Commission is changing the reference to ''data for a pre-enactment swap or transition swap'' to reflect the reference is to part 46 data.

The Commission is removing the following definitions from § 46.1. The Commission has determined that the

[273] GFXD at 25.

[274] *Id.*

[275] DTCC at 7. *See* Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (''EMIR REFIT'').

[276] CME at 21.

[277] ISDA–SIFMA at 18–20.

[278] ICE SDR at 10.

[279] *Id.*

[280] *See* 7 U.S.C. 6r(a)(2)(A) and 7 U.S.C. 2(h)(5); *see also* 17 CFR 46.1 (defining ''pre-enactment swap'' as any swap entered into prior to enactment of the Dodd-Frank Act of 2010 (July 21, 2010), the terms of which have not expired as of the date of enactment of that Act, and ''transition swap'' as any swap entered into on or after the enactment of the Dodd-Frank Act of 2010 (July 21, 2010) and prior to the applicable compliance date on which a registered entity or swap counterparty subject to the jurisdiction of the Commission is required to commence full compliance with all provisions of part 46).

[281] The Commission discusses the changes to the term in § 45.1(a) in section II.A.2 above.

following definitions are redundant because the terms are already defined in either Commission regulation § 1.3 or CEA section 1a: ''credit swap;'' ''foreign exchange forward;'' ''foreign exchange instrument;'' ''foreign exchange swap;'' ''interest rate swap;'' ''major swap participant;'' ''other commodity swap;'' ''swap data repository;'' and ''swap dealer.''

The Commission is removing the definition of ''international swap,'' as there are no regulations for international swaps in part 46.

The Commission did not receive any comments on the changes to § 46.1.

B. § 46.3—Data Reporting for Pre-Enactment Swaps and Transition Swaps

Existing § 46.3(a)(2)(i) [282] requires that for each uncleared pre-enactment or transition swap in existence on or after April 25, 2011, throughout the existence of the swap following the compliance date, the reporting counterparty must report all required swap continuation data required to be reported pursuant to part 45, with the exception that when a reporting counterparty reports changes to minimum PET data for a pre-enactment or transition swap, the reporting counterparty is required to report only changes to the minimum PET data listed in appendix 1 to part 46 and reported in the initial data report made pursuant to § 46(a)(1), rather than changes to all minimum PET data listed in appendix 1 to part 45.

The Commission is amending § 46.3(a)(2)(i) to remove the exception from PET data reporting for pre-enactment and transition swaps to specify that reporting counterparties would report updates to pre-enactment and transition swaps according to part 45. The Commission believes this is current practice and would not result in any significant change for the entities reporting updates to historical swaps.

The Commission received one comment supporting the proposal. ISDA–SIFMA believe SDs should benefit from more limited part 46 reporting obligations. The Commission is adopting the changes as proposed.

C. § 46.10—Required Data Standards

Existing § 46.10 requires that in reporting swap data to an SDR as required by part 46, each reporting counterparty use the facilities, methods, or data standards provided or required by the SDR to which counterparty reports the data.

The Commission is adding a provision that in reporting required swap continuation data as required by this part, each reporting counterparty shall comply with the required data standards outlined in part 45 of this chapter, including those set forth in § 45.13(a) of this chapter. As discussed above in the previous section, the Commission believes this is current practice for reporting counterparties and should not result in any significant change for reporting counterparties. The Commission did not receive any comments on the changes to § 46.10. The Commission is adopting the changes as proposed.

D. § 46.11—Reporting of Errors and Omissions in Previously Reported Data

Consistent with the Commission's removal of the option to report required swap continuation data by the state data reporting method, discussed in section II.D.2 above, the Commission is removing the option in § 46.11(b) for pre-enactment/transition swaps reporting. Specifically, existing § 46.11(b) provides that for pre-enactment or transition swaps for which part 46 requires reporting of continuation data, reporting counterparties reporting state data as provided in part 45 may fulfill the requirement to report errors or omissions by making appropriate corrections in their next daily report of state data pursuant to part 45. Further to the removal of existing § 46.11(b), the Commission is re-designating existing § 46.11(c) and (d) as new § 46.11(b) and (c), respectively.

The Commission received two comments supporting the proposal. Consistent with its position supporting removing state data reporting in § 45.4, Chatham believes this will significantly reduce the number of reports as life cycle data reporting provides the same critical information as state data reporting.[283] CEWG believes the proposal will improve the effectiveness and efficiency of reporting.[284] The Commission agrees removing state data reporting from part 46 will be beneficial for the reasons described above relating to § 45.4. The Commission did not receive any other comments on the proposed changes to § 46.11. The Commission is adopting the changes as proposed.

IV. Amendments to Part 49

A. § 49.2—Definitions

The Commission is adding four definitions to § 49.2(a): ''data validation acceptance message,'' ''data validation error,'' ''Data validation error message,'' and ''data validation procedures.'' [285] The Commission discusses the impact of the four definitions in section IV.C below. The four definitions encompass the messages and validations reports SDRs would be required to send reporting counterparties under new regulations in § 49.10(c).

''Data validation acceptance message'' means a notification that SDR data satisfied the data validation procedures applied by a SDR. ''Data validation error'' means that a specific data element of SDR data did not satisfy the data validation procedures applied by a SDR. ''Data validation error message'' means a notification SDR data contained one or more data validation error(s). ''Data validation procedures'' means procedures established by a SDR pursuant to § 49.10 to validate SDR data reported to the SDR.

B. § 49.4—Withdrawal From Registration

The Commission is amending the § 49.4 regulations for SDR withdrawals from registration. Existing § 49.4(a)(1)(iv) requires that a request to withdraw filed pursuant to § 49.4(a)(1) shall specify, among other items, a statement that the custodial SDR is authorized to make such data and records available in accordance with § 1.44.[286]

Existing § 49.4(a)(2) requires that before filing a request to withdraw, a registered SDR shall file an amended Form SDR to update any inaccurate information. A withdrawal of registration shall not affect any action taken or to be taken by the Commission based upon actions, activities, or events occurring during the time that the facility was designated by the Commission.

First, the Commission is removing the § 49.4(a)(1)(iv) requirement for SDRs to submit a statement to the Commission that the custodial SDR is authorized to make the withdrawing SDR's data and records available in accordance with § 1.44. The reference to § 1.44 is erroneous. Existing § 1.44 requires ''depositories'' to maintain all books, records, papers, and memoranda relating to the storage and warehousing of commodities in such warehouse,

[282] The Commission is not making substantive amendments outside of § 46.3(a)(2)(i).

[283] Chatham at 2.

[284] CEWG at 3.

[285] The Commission also proposed defining ''SDR data'' in the 2019 Part 49 NPRM. As proposed, ''SDR data'' would mean the specific data elements and information required to be reported to an SDR or disseminated by an SDR, pursuant to two or more of parts 43, 45, 46, and/or 49, as applicable. *See* 84 FR at 21047. The term ''SDR data'' is also used in the amendments to § 49.10 in this release.

[286] The Commission is not making substantive amendments to § 49.4(a)(1)(i) through (iii). The Commission is limiting the discussion in this release to § 49.4(a)(1)(iv).

depository or other similar entity for a period of 5 years from the date thereof.[287] The recordkeeping requirements for SDRs are located in § 49.12.[288] The Commission is removing erroneous § 49.4(a)(1)(iv) to avoid confusion.

Second, the Commission is removing the § 49.4(a)(2) requirement that prior to filing a request to withdraw, a registered SDR file an amended Form SDR to update any inaccurate information.[289] The Commission is adding a new requirement in § 49.4(a)(2) for SDRs to execute an agreement with the custodial SDR governing the custody of the withdrawing SDR's data and records prior to filing a request to withdraw with the Commission. New § 49.4(a)(2) will also specify that the custodial SDR retain such records for at least as long as the remaining period of time the SDR withdrawing from registration would have been required to retain such records pursuant to part 49.

The Commission did not receive any comments on the changes to § 49.4. The Commission believes the existing § 49.4(a)(2) requirement is unnecessary and does not help the Commission confirm the successful transfer of data and records to a custodial SDR. The Commission has a significant interest in ensuring that the data and records of an SDR withdrawing from registration are successfully transferred to a custodial SDR. In addition, the Commission needs confirmation that the custodial SDR will retain the data and records for at least the remainder of the time that records are required to be retained according to the Commission's recordkeeping rules. When an SDR is withdrawing from registration, the Commission would no longer have a regulatory need for the information in Form SDR to be updated. The Commission believes § 49.4(a)(2) will better address the Commission's primary concerns in an SDR withdrawal from registration.

The Commission is adopting the changes to § 49.4 as proposed.

C. § 49.10—Acceptance and Validation of Data

The Commission is changing the § 49.10(a) through (d)[290] and (f) requirements for the acceptance of data. As part of these changes, the Commission is re-titling the section to reflect new requirements for SDRs to validate data proposed in § 49.10(c) as ''Acceptance and validation of data.''

1. § 49.10(a)—General Requirements

The Commission is making non-substantive amendments to the general requirements in existing § 49.10(a) for SDRs to have policies and procedures to accept swap data and swap transaction and pricing data. Existing § 49.10(a) requires that registered SDRs establish, maintain, and enforce policies and procedures for the reporting of swap data to the registered SDR and shall accept and promptly record all swap data in its selected asset class and other regulatory information that is required to be reported pursuant to parts 43 and 45 by DCMs, DCOs, SEFs, SDs, MSPs, or non-SD/MSP counterparties.

The non-substantive amendments include titling § 49.10(a) ''General requirements'' to distinguish it from the rest of § 49.10 and renumbering the sections. The Commission is revising the first sentence to specify that SDRs shall maintain and enforce policies and procedures reasonably designed to facilitate the complete and accurate reporting of SDR data. The Commission is removing the last phrase of § 49.10(a) beginning with ''all swap data in its selected asset class'' and create a second sentence requiring SDRs to promptly accept, validate, and record SDR data. Finally, the Commission is correcting references to defined terms.

Together, the amendments to § 49.10(a)(1) through (2) will improve the readability of § 49.10(a) while updating the terminology to use the proposed ''SDR data'' term for the data SDRs are required to accept, validate, and record pursuant to § 49.10.[291]

The Commission did not receive any comments on the proposed changes to § 49.10(a). For reasons discussed above, the Commission is adopting the changes as proposed.

2. § 49.10(b)—Duty To Accept SDR Data

The Commission is adopting non-substantive amendments to the § 49.10(b) requirements for SDRs to accept SDR data. Existing § 49.10(b) requires a registered SDR set forth in its application for registration as described in § 49.3 the specific asset class or classes for which it will accept swaps data. If an SDR accepts swap data of a particular asset class, then it shall accept data from all swaps of that asset class, unless otherwise prescribed by the Commission.

The non-substantive changes include titling § 49.10(b) ''Duty to accept SDR data'' and updating references to data in § 49.10(b) to ''SDR data'' to use the correct defined term. The Commission did not receive any comments on the changes. For the reasons discussed above, the Commission is adopting the changes as proposed.

3. § 49.10(c)—Duty To Validate SDR Data

The Commission is adding new regulations for the SDR validation of SDR data in § 49.10(c). The Commission is moving the requirements in existing § 49.10(c) to § 49.10(d).[292] In § 49.10(c), the Commission is requiring SDRs to apply validations and inform the entity submitting the swap report of any associated rejections. SDRs will be required to apply the validations approved in writing by the Commission. The Commission is also adopting regulations for SDRs to send validation messages to SEFs, DCMs, and reporting counterparties in § 45.13(b).[293] The Commission discusses § 49.10(c) and § 45.13(b) together in this section.

The Commission believes the consistent application of validation rules across SDRs will lead to an improvement in the quality of swap data maintained at SDRs. SDRs currently check each swap report for compliance with a list of rules specific to each SDR. However, the Commission is concerned SDRs apply different validation rules that could be making it difficult for SDR data to either be reported to the SDR or the SDRs' real-time public data feeds. The SDRs applying different validations to swap reports creates numerous challenges for the Commission and

[287] 17 CFR 1.44(d).

[288] The Commission proposed amendments to § 49.12 in the 2019 Part 49 NPRM. However, these amendments do not impact the substance of the SDR recordkeeping requirements. *See* 84 FR at 21055 (May 13, 2019). Pursuant to § 49.12(b), SDRs must maintain swap data, including historical positions, throughout the existence of the swap and for five years following final termination of the swap, during which time the records must be readily accessible to the Commission via real-time electronic access; and in archival storage for which the swap data is retrievable by the SDR within three business days.

[289] Existing § 49.4(a)(2) further provides that a withdrawal of registration shall not affect any action taken or to be taken by the Commission based upon actions, activities or events occurring during the time that the facility was designated by the Commission. The Commission is removing this part of § 49.4(a)(2) as well.

[290] The Commission proposed amendments to the § 49.10(e) requirements for correction of errors and omissions in SDR data in the 2019 Part 49 NPRM. *See* 84 FR at 21050.

[291] The background for the validations is discussed in section IV.C.3 below.

[292] The amendments to the existing requirements of § 49.10(c), to be moved to § 49.10(d), are discussed in section IV.C.4 below.

[293] The Commission is adopting regulations for reporting counterparties, SEFs, and DCMs to address the validations messages sent by SDRs and to resubmit any rejected swap reports in time to meet their obligations to report creation and continuation data. The requirements for reporting counterparties, SEFs, and DCMs to comply with SDR validations are proposed in § 45.13(b).

market participants. While one SDR may reject a report based on an incorrect value in a particular data element, another SDR may accept reports containing the same erroneous value in the same data element. Further, the Commission is concerned responses to SDR validation messages vary across reporting counterparties, given the lack of current standards.

ESMA has published specific validations for TRs to perform to ensure that derivatives data meets the requirements set out in their technical standards pursuant to EMIR.[294] ESMA's validations, for instance, set forth when data elements are mandatory, conditional, optional, or must be left blank, and specify conditions for data elements along with the format and content of allowable values for almost 130 data elements.[295] The Commission believes similarly consistent SDR validations will help improve data quality.

The Commission received two comments supporting data validations regulations in § 45.13. FIA believes the validations should strengthen data accuracy and appreciates using the SDRs' current processes.[296] Markit believes validation requirements will enable third-party service providers to develop data validation mechanisms that will substantially reduce the cost of complying with new SDR data validation procedures.[297]

The Commission received two comments on the new validations requirements in § 49.10(c) and § 45.13(b). NRECA–APPA request the Commission provide evidence that the validation process will achieve a specific regulatory benefit to offset the significant additional burden on non-SD/MSP/DCO counterparties to off-facility swaps.[298] As discussed above, the Commission believes consistent SDR validations will improve data quality without placing unnecessary burdens on any swap counterparties as SDRs validate data today.

GFXD believes limited exceptions to the validation requirements should be in place but believes such exceptions may have limited use.[299] The Commission agrees, and believes the regulations, along with the existing delegations of authority that the Commission is moving to § 45.15, give the Commission the discretion to specify validations exceptions in the case of new products or changes that require flexibility.

The Commission did not receive any additional comments on § 49.10(c) or § 45.13(b). The Commission is adopting the regulations as proposed.

4. § 49.10(d)—Policies and Procedures To Prevent Invalidation or Modification

As described above, the Commission is moving the requirement in § 49.10(c) for SDRs to have policies and procedures to prevent invalidations or modifications of swaps to § 49.10(d). As a result, the Commission is re-designating § 49.10(d) as new § 49.10(f).[300] Existing § 49.10(c) requires registered SDRs to establish policies and procedures reasonably designed to prevent any provision in a valid swap from being invalidated or modified through the confirmation or recording process of the SDR.[301]

The Commission is making non-substantive amendments to existing § 49.10(c), moved to § 49.10(d). For instance, the Commission is titling § 49.10(c) ''Policies and procedures to prevent invalidation or modification'' to distinguish it from the other requirements in § 49.10.

The Commission did not receive any comments on the non-substantive changes to § 49.10(d). For the reasons discussed above, the Commission is adopting the changes as proposed.

5. § 49.10(f)—Policies and Procedures for Resolving Disputes Regarding Data Accuracy

As described above, the Commission is re-designating § 49.10(d) as § 49.10(f).[302] The Commission is making non-substantive amendments to the requirements in existing § 49.10(d), re-designated as § 49.10(f). Existing § 49.10(d) requires that registered SDRs establish procedures and provide facilities for effectively resolving disputes over the accuracy of the swap data and positions that are recorded in the SDR.

The Commission is re-titling § 49.10(f) ''Policies and procedures for resolving disputes regarding data accuracy'' and updating terminology in the regulation. The Commission did not receive any comments on the amendments to § 49.10(f). For the reasons discussed above, the Commission is adopting the changes as proposed.

V. Swap Data Elements Reported to Swap Data Repositories

A. Proposal

The Commission is updating and standardizing the data elements in appendix 1 to part 45. The Commission's minimum PET for swaps in each swap asset class are found in existing appendix 1 to part 45. The existing PET for swaps contain a set of ''data categories and fields'' followed by ''comments'' instead of specifications such as allowable values, formats, and conditions.[303] In some cases, these comments include directions, such as to use ''yes/no'' indicators for certain data elements.[304] In others, the comments reference Commission regulations (*e.g.,* to report the LEI of the non-reporting counterparty ''[a]s provided in § 45.6'').[305]

In adopting part 45, the Commission intended the PET would ensure uniformity in ''essential data'' concerning swaps across all of the asset classes and across SDRs to ensure the Commission had the necessary information to characterize and understand the nature of reported swaps.[306] However, in practice, this approach permitted a degree of discretion in reporting swap data that led to a lack of standardization which makes it more difficult for the Commission to analyze and aggregate swap data. Each SDR has worked to standardize the data within each SDR over recent years, and Commission staff has noted the improvement in data quality. However, the Commission believes a significant effort must be made to standardize swap data across SDRs. As a result, the Commission is revisiting the data currently required to be reported to SDRs in appendix 1.

In the course of revisiting which swap data elements should be reported to SDRs, the Commission reviewed the swap data elements currently in appendix 1 to part 45 to determine if any currently required data elements should be eliminated and if any additional data elements should be added. The Commission then reviewed the CDE Technical Guidance to determine which data elements the Commission could adopt according to the CDE Technical Guidance.

As a general matter, the Commission believes the implementation of the CDE Technical Guidance will further

[294] *See* ''*EMIR Reporting*'' *at https://www.esma.europa.eu/policy-rules/post-trading/trade-reporting.*

[295] *See id.*

[296] FIA at 7.

[297] Markit at 3.

[298] NRECA–APPA at 5.

[299] GFXD at 25.

[300] The amendments to the existing requirements of § 49.10(d), re-designated as § 49.10(f), are discussed in section IV.C.5 below.

[301] Existing § 49.10(c) further provides that the policies and procedures must ensure that the SDR's user agreements must be designed to prevent any such invalidation or modification. 17 CFR 49.10(c).

[302] The Commission's proposed revisions to § 49.10(e) are discussed in the 2019 Part 49 NPRM. *See* 84 FR at 21050 (May 13, 2019).

[303] *See generally* 17 CFR part 45 appendix 1.

[304] *Id.*

[305] *Id.*

[306] *See* 77 FR at 2149 (Jan. 13, 2012).

improve the harmonization of SDR data across FSB member jurisdictions. This international harmonization, when widely implemented, would allow market participants to report swap data to several jurisdictions in the same format, allowing for potential cost-savings. This harmonization, when widely implemented, would also allow the Commission to potentially receive more standardized information regarding swaps reported to TRs regulated by other authorities. For instance, such standardization across SDRs and TRs could support data aggregation for the analysis of global systemic risk in swaps markets.

As part of this process, the Commission also reviewed the part 43 swap transaction and pricing data and part 45 swap data elements to determine whether any differences could be reconciled.[307] Having completed this assessment, the Commission proposed listing the swap data elements required to be reported to SDRs pursuant to part 45 in appendix 1 to part 45. In a separate proposal, the Commission proposed listing the swap transaction and pricing data elements required to be reported to, and then publicly disseminated by, SDRs pursuant to part 43 in appendix A to part 43. The swap transaction and pricing data elements will be a harmonized subset of the swap data elements in appendix 1 to part 45.

At the same time as the Commission proposed updating the swap data elements in appendix 1, DMO published draft technical specifications for reporting the swap data elements in appendix 1 to part 45 to SDRs, and for reporting and publicly disseminating the swap transaction and pricing data elements in appendix A to part 43 described in a separate proposal. Once finalized, DMO would then publish the technical specification in the **Federal Register** pursuant to the delegation of authority proposed in § 45.15(b). Overall, DMO is establishing a technical specification for certain swap data elements according to the CDE Technical Guidance, where possible.

The swap data elements to be reported to SDRs will therefore consist of: (i) The data elements implemented in the CDE Technical Guidance; and (ii) additional CFTC-specific data elements that support the Commission's regulatory responsibilities.[308] While much of this swap data is already being reported to SDRs according to each SDR's technical specifications, as explained below, the technical specification and validation conditions will be new. A discussion of the swap data elements and comments on the technical specification follows below. Data elements specific to part 43 are discussed in a separate part 43 final rule.

DMO's technical specification contains an extensive introduction to help reviewers. As a preliminary matter, the Commission notes the swap data elements in appendix 1 do not include swap data elements specific to swap product terms. The Commission is currently heavily involved in separate international efforts to introduce UPIs.[309] The Commission expects UPIs will be available within the next two years.[310] Until the Commission designates a UPI pursuant to § 45.7, SDRs will continue to accept, and reporting counterparties will continue to report, the product-related data elements unique to each SDR. The Commission believes this temporary solution will have SDRs change their systems only once when UPI becomes available, instead of twice if the Commission adopted standardized product data elements in this release before UPIs are available and then later designates UPIs pursuant to § 45.7.

In addition, the Commission is adopting the CDE Technical Guidance data elements as closely as possible. Where the Commission adopts a CDE Technical Guidance data element, the Commission adopts the terms used in the CDE Technical Guidance. This means that some terms may be different for certain concepts. For instance, ''derivatives clearing organization'' is the Commission's term for registered entities that clear swap transactions, but the CDE Technical Guidance uses the term ''central counterparty.''

To help clarify, DMO includes footnotes in the technical specification to explain these differences as well as provide examples and jurisdiction-specific requirements. However, the Commission is not including these footnotes in appendix 1. In addition, the definitions from CDE Technical Guidance data elements included in appendix 1 sometimes include references to allowable values in the CDE Technical Guidance, which may not be included in appendix 1, but are in the technical specification.

Finally, the CDE Technical Guidance did not harmonize many data elements that would be particularly relevant for commodity and equity swap asset classes (*e.g.,* unit of measurement for commodity swaps). CPMI and IOSCO, in the CDE Governance Arrangements, address both implementation and maintenance of CDE, together with their oversight. One area of the CDE Governance Arrangements includes updating the CDE Technical Guidance, including the harmonization of certain data elements and allowable values that were not included in the CDE Technical Guidance (*e.g.,* data elements related to events and allowable values for the following data elements: Price unit of measure, Quantity unit of measure, and Custom basket constituents' unit of measure).

The Commission anticipates addressing implementation issues through the international working groups to help ensure that authorities follow the established processes for doing so. In addition, the Commission anticipates updating its rules to adopt any new or updated CDE Technical Guidance, as necessary.

B. Comments on the Proposal and Commission Determination

1. Category: Clearing

The Commission proposed requiring reporting counterparties report 12 clearing data elements.[311] The Commission received two comments on whether it should require a data element for indicating whether a swap is subject to the Commission's clearing requirement in § 50.4 and the trade execution requirement in CEA section 2(h)(8). ISDA–SIFMA do not believe the Commission should add these data elements because it is static data and the Commission already gets all the data elements necessary to determine whether a swap is subject to the clearing requirement or trade execution

[307] The Commission intended the data elements in appendix A to part 43 would be harmonized with the data elements required to be reported to an SDR for regulatory purposes pursuant to part 45. *See* 77 FR at 1226 (Jan. 9, 2012) (noting that it is important that the data fields for both the real-time and regulatory reporting requirements work together). However, there is no existing regulatory requirement linking the two sets of data elements.

[308] The update of appendix 1 and the technical specification are expected to represent a significant reduction in the number of swap data elements that could be reported to an SDR by market participants.

[309] *See* FSB, Governance arrangements for the UPI: Conclusions, implementation plan and next steps to establish the International Governance Body (Oct. 9, 2019), *available at https://www.fsb.org/2019/10/governance-arrangements-for-the-upi/.*

[310] *See id.* The FSB recommends that jurisdictions undertake necessary actions to implement the UPI Technical Guidance and that these take effect no later than the third quarter of 2022.

[311] In appendix 1, these data elements are: Cleared (1); Central counterparty (2); Clearing account origin (3); Clearing member (4); Clearing swap USIs (5); Clearing swap UTIs (6); Original swap USI (7); Original swap UTI (8); Original swap SDR identifier (9); Clearing receipt timestamp (10); Clearing exceptions and exemptions—Counterparty 1 (11); and Clearing exceptions and exemptions—Counterparty 2 (12).

requirement.[312] They believe the data elements would be burdensome due to their granularity and the prescriptiveness of the clearing mandates under § 50.4, and that the Commission will ultimately be able to use the global UPI to analyze data related to swaps subject to clearing.[313] Chatham believes the Commission can determine whether a product is subject to the clearing requirement or the trade execution requirement by other related data elements in the report.[314] The Commission agrees with Chatham and ISDA–SIFMA and is declining to add the mandatory clearing and trade execution indicators in appendix 1 at this time.[315]

The Commission is adopting the clearing data elements for clearing in appendix 1 as proposed. Nearly all of this information is currently being reported to SDRs. Three of these data elements are consistent with the CDE Technical Guidance. Four of these data elements would transition clearing swap and original swap USIs to UTIs. All of these data elements help the Commission monitor the cleared swaps market.

2. Category: Counterparty

The Commission proposed requiring reporting counterparties to report ten counterparty data elements.[316] The Commission received eight comments on whether it should require an ultimate parent data element. GLEIF support the proposed addition of ultimate parent data elements, but acknowledges that the Commission could instead retrieve this information through its LEI data search engine.[317] GFXD, ISDA–SIFMA, BP, CEWG, DTCC, Chatham, and FIA all oppose requiring this information at a transaction level, with most commenters pointing out that the Commission could obtain this information from the Global Legal Entity Identifier System.[318] The Commission agrees with GFXD, ISDA–SIFMA, BP, CEWG, DTCC, Chatham, and FIA that the Commission can obtain this information outside of SDR data. As a result, the Commission is declining to adopt any parent/ultimate parent swap data elements.

Reflecting input received from the Department of Treasury, the Commission is adopting two counterparty swap data elements that were not in the Proposal: Counterparty 1 federal entity indicator and Counterparty 2 federal entity indicator.[319] The Commission believes these swap data elements will help identify swaps use by federal entities. The Commission is adopting the rest of the counterparty data elements in appendix 1 as proposed. Nearly all of this information is currently being reported to SDRs. Six of these data elements are consistent with the CDE Technical Guidance.

3. Category: Events

The Commission proposed requiring reporting counterparties to report four event data elements.[320] The Commission received four comments on the event model generally. GFXD encourages the Commission harmonize the event model with ESMA.[321] CME and DTCC point out the differences between the Commission's event model and ESMA's.[322] The Commission has worked to harmonize its event model with ESMA's as much as possible. Any remaining differences between its and ESMA's event models reflect differences in regulations referenced by the event model in the two jurisdictions.

The Commission is adopting the event data elements as proposed, with one modification. The Commission is adding an Amendment indicator data element to flag changes to a previously submitted transaction due to a newly negotiated modification. The Amendment indicator will notify the public a swap is being amended on the public tape pursuant to part 43, to indicate that the change to the previously disseminated swap transaction is price-forming.

The Commission is adopting the rest of the events swap data elements as proposed. Nearly all of this information is currently being reported to SDRs. Event data elements were not included in the CDE Technical Guidance. This information is, however, critical for the Commission to be able to properly utilize swap data. Without it, the Commission would be unable to discern why each swap event is reported following the initial required swap creation data report.

4. Category: Notional Amounts and Quantities

The Commission proposed requiring reporting counterparties report 12 notional data elements.[323] The Commission requested comment on whether it should adopt the CDE Technical Guidance data elements for notional schedules. ISDA–SIFMA support the inclusion of ''Notional Amount Schedule'' data elements.[324] They explain that the Notional amount data element does not provide a way to report changes (if applicable) in notional amounts, such as for amortizing swaps.[325] The Commission agrees with ISDA–SIFMA that the Notional amount schedule data elements would remedy an issue with reporting changing notionals. As such, the Commission is adding the notional amount schedule data elements to appendix 1.

The Commission also requested comment on whether it should require the reporting of a USD equivalent notional amount data element. Four commenters oppose the data element on the grounds it would impose an unnecessary burden on reporting counterparties.[326] The Commission agrees with commenters that the USD equivalent notional amount data element would be burdensome to compute and is declining to add the swap data element to appendix 1.

The Commission is adopting the notional data elements as proposed, with the modification described above for Notional amount schedule data elements and the data element Delta (109) which will be moved and included with valuation data elements. Nearly all of this information is currently being reported to SDRs. Eleven of the data elements are consistent with the CDE Technical Guidance. Exposure information, in conjunction with valuation information, is critical for, and currently used

[312] ISDA–SIFMA at 21.

[313] *Id.*

[314] Chatham at 4.

[315] The Commission acknowledges that it can determine which swaps are subject to the clearing requirement or the trade execution requirement, but notes there have been certain difficulties with obtaining all of the necessary information in the past due to data quality concerns. The Commission expects significant data quality improvements in response to this final rule to make that process easier.

[316] In appendix 1, these data elements are: Counterparty 1 (reporting counterparty) (13); Counterparty 2 (14); Counterparty 2 identifier source (15); Counterparty 1 financial entity indicator (16); Counterparty 2 financial entity indicator (17); Buyer identifier (18); Seller identifier (19); Payer identifier (20); Receiver identifier (21); and Submitter identifier (22).

[317] GLEIF at 3.

[318] GFXD at 27; ISDA–SIFMA at 23; BP at 5–6; CEWG at 8; DTCC at 6; Chatham at 4; FIA at 4–6.

[319] *https://www.cftc.gov/LawRegulation/DoddFrankAct/ExternalMeetings/dfmeeting_060320_1568.*

[320] In appendix 1, these data elements are: Action type (26); Event type (27); Event identifier (29); Event timestamp (30);

[321] GFXD at 28.

[322] CME at 18; DTCC at 3.

[323] In appendix 1, these data elements are: Notional amount (31); Notional currency (32); Delta (109); Call amount (36); Call currency (37); Put amount (38); Put currency (39); Notional quantity (40); Quantity frequency (41); Quantity frequency multiplier (42); Quantity unit of measure (43); and Total notional quantity (44).

[324] Notional amount schedule is three data elements in the CDE Technical Guidance.

[325] ISDA–SIFMA at 25.

[326] CME at 19–20; GFXD at 29; ISDA–SIFMA at 25–26; FIA at 4–6.

extensively by, the Commission to monitor activity and risk in the swaps market.

5. Category: Packages

The Commission proposed requiring reporting counterparties report four package transaction data elements.[327] The Commission received three comments related to package data elements. GFXD supports the decision to implement package transaction elements, but GFXD requests the Commission coordinate with ESMA to ensure that implementation is consistent across jurisdictions.[328] ISDA–SIFMA do not support additional package data elements because they are exceptionally complex and there is no consistent approach to decomposing a package transaction or their associated definitions.[329] Markit opposes package transaction data elements because it believes they are too complex to provide a benefit to the Commission.[330]

The Commission believes package transaction data is necessary for the Commission to monitor the exposure of its registrants to these complex transactions. As a result, despite the objections of ISDA–SIFMA and Markit, the Commission is adding three package transaction swap data elements to appendix 1 from the CDE Technical Guidance: Package transaction spread; Package transaction spread currency; and Package transaction spread notation. The Commission is also adding Package indicator data element to appendix 1. The Commission agrees with GFXD that it should harmonize with ESMA to ensure consistent implementation across jurisdictions, and that is why the Commission adopted the package data elements according to the CDE Technical Guidance where possible. The Package indicator will alert the public on the part 43 tape that the swap is part of a package, so the public will know the price is impacted by factors beyond the swap.

The Commission is adopting the rest of the package data elements as proposed. Some of this information is currently being reported to SDRs. Seven of these data elements are consistent with the CDE Technical Guidance. The Commission anticipates using this information to better understand risk in the swaps market, as the Commission understands that many swaps are executed as part of packages.

6. Category: Payments

The Commission proposed requiring reporting counterparties to report 12 data elements related to payments.[331] The Commission did not receive any comments on adding or removing the payments data elements in appendix 1 and is adopting the data elements as proposed. Nine of these data elements are consistent with the CDE Technical Guidance. Nearly all of this information is currently being reported to SDRs.

7. Category: Prices

The Commission proposed requiring reporting counterparties to report 18 data elements related to swap prices.[332] The Commission received two comments on whether the Commission should continue to require the reporting of the Non-standardized pricing indicator. ISDA–SIFMA and GFXD oppose the indicator[333] and raise a concern that it could lead to reporting counterparties reporting additional terms to address the vague direction the data element provides. The Commission disagrees with ISDA–SIFMA and GFXD and is declining to remove this data element from appendix 1. While broad, the Non-standardized term indicator alerts the public a price may be due to unique terms when SDRs disseminate it to the public. The Commission does not share ISDA–SIFMA's concerns about additional terms, as the data element is just an indicator to flag terms of the swap that may not be reported to an SDR.

The Commission is adopting the price data elements in appendix 1 as proposed. Nearly all of this information is currently being reported to SDRs. Seventeen of these data elements are consistent with the CDE Technical Guidance. This information is critical for, and used by, the Commission in understanding pricing in the swaps market.

8. Category: Product

The Commission proposed requiring reporting counterparties to report five product-related data elements.[334] The Commission received two comments on its approach to product data elements until the UPI is available. GFXD and ISDA–SIFMA support the Commission's approach.[335]

The Commission is adopting the product data elements in appendix 1 as proposed. Product data elements are currently being reported to SDRs. The Commission has determined these data elements are critical for monitoring risk in the swaps market, even though the Commission expects any additional product data elements to remain unstandardized until the UPI is introduced.

9. Category: Settlement

The Commission proposed requiring reporting counterparties to report two settlement data elements.[336] The Commission received two comments on additional settlement data elements. GFXD and ISDA–SIFMA recommend the Commission consider including the Settlement location data element in the CDE Technical Guidance, as it would be an efficient option to collect additional information on trades involving offshore currencies.[337] The Commission agrees with GFXD and ISDA–SIFMA that the Settlement location data element would help the Commission collect information on trades involving offshore currencies. As a result, the Commission is adding the CDE Technical Guidance data element for Settlement location to appendix 1. For reasons articulated in the Proposal and reiterated above, the Commission is adopting the rest of the settlement data elements in appendix 1 as proposed.

10. Category: Transaction-Related

The Commission proposed requiring reporting counterparties to report 15 data elements that provide information about each swap transaction.[338] The

[327] In appendix 1, these data elements are: Package identifier (46); Package transaction price (47); Package transaction price currency (48); and Package transaction price notation (49).

[328] GFXD at 29.

[329] ISDA–SIFMA at 26.

[330] Markit at 5.

[331] In appendix 1, these data elements are: Day count convention (53); Fixing date (54); Floating rate reset frequency period (55); Floating rate reset frequency period multiplier (56); Other payment type (57); Other payment amount (58); Other payment currency (59); Other payment date (60); Other payment payer (61); Other payment receiver (62); Payment frequency period (63); and Payment frequency period multiplier (64).

[332] In appendix 1, these data elements are: Exchange rate (65); Exchange rate basis (66); Fixed rate (67); Post-priced swap indicator (68); Price (69); Price currency (70); Price notation (71); Price unit of measure (72); Spread (73); Spread currency (74); Spread notation (75); Strike price (76); Strike price currency/currency pair (77); Strike price notation (78); Option premium amount (79); Option premium currency (80); Option premium payment date (81); and First exercise date (82).

[333] GFXD at 31; ISDA–SIFMA at 29.

[334] In appendix 1, these data elements are: CDS index attachment point (83); CDS index detachment point (84); Index factor (85); Embedded option type (86); and Unique product identifier (87).

[335] ISDA–SIFMA at 26–27; GFXD at 30.

[336] In appendix 1, these data elements are: Final contractual settlement date (88) and Settlement currency (89).

[337] GFXD at 30; ISDA–SIFMA at 27.

[338] In appendix 1, these data elements are: Allocation indicator (91); Non-standardized term indicator (92); Block trade election indicator (93); Effective date (94); Expiration date (95); Execution timestamp (96); Reporting timestamp (97); Platform identifier (98); Prime brokerage transaction identifier (89 in the Proposal); Prime brokerage transaction indicator (99); Prior USI (for one-to-one and one-to-many relations between transactions) (100); Prior UTI (for one-to-one and one-to-many

Commission received one comment on whether the Commission should include the data element for Jurisdiction indicator. ISDA–SIFMA oppose the indicator as the reporting counterparty would need to reach out to each of its counterparties for each transaction at or shortly after execution.[339] They also question whether and how the list of jurisdictions could change and whether they would be subject to the public rulemaking process, and note this is not a CDE data element.[340] The Commission is adopting the data element with one change to address ISDA–SIFMA's concerns about complicated implementation: the data element will be named Jurisdiction and will include limited allowable values.

The Commission received one comment on whether the Commission should add a Prime brokerage transaction identifier data element in appendix 1. ISDA–SIFMA have significant concerns with the Prime brokerage transaction identifier data element and opposes its adoption.[341] ISDA–SIFMA point out that the Commission can require any SD to provide any information relating to a swap, including asking any prime broker to map swaps that result from a trigger swap and to which such SD is a party.[342] In addition, the Prime brokerage transaction indicator data element should help identify prime broker intermediated transactions in SDR data.[343] The Commission agrees with ISDA–SIFMA that the identifier would be too complex to implement at this time. As such, the Commission is declining to add Prime brokerage transaction identifier to appendix 1.

The Commission is adopting the rest of the transaction data elements in appendix 1 as proposed. Most of this information is currently being reported to SDRs and the Commission requires data elements like transaction identifiers to properly track new and amended swaps.

11. Category: Transfer

The Commission proposed requiring reporting counterparties to report one data element related to changing SDRs.[344] The Commission did not receive any comments on the New SDR identifier data element and is adopting the data element as proposed. This data element is necessary as the Commission is adopting § 45.10(d) permitting reporting counterparties to change the SDR to which they report data for a given swap. Without this data element, the Commission is concerned there would be swaps in the SDR that would appear open but not updated because the reporting counterparty reports to a different SDR.

12. Category: Valuation

The Commission proposed requiring reporting counterparties to report six valuation data elements.[345] The Commission received several comments on the valuation data elements. ISDA–SIFMA, GFXD, and Markit generally oppose the valuation data elements. GFXD and ISDA–SIFMA do not support any valuation data elements outside of those required by the CDE Technical Guidance.[346] Markit opposes the valuation data elements as it would be difficult for firms to report them each day because (i) valuation data comes from systems separate from risk management systems that hold the transaction information; and (ii) daily valuation reporting that is prepared for other jurisdictions only involves minimum transaction information (trade reference, USI or UTI) that are used to link the valuation to the right trade.[347]

The Commission is adopting Next floating reference reset date, along with the other valuation data elements in appendix 1. Nearly all of this information is currently being reported to SDRs. Five data elements are consistent with the CDE Technical Guidance. Valuation information is critical for, and currently used by, the Commission to monitor risk in the swaps market.

13. Category: Collateral and Margins

The Commission proposed requiring reporting counterparties to report 14 collateral and margins data elements.[348] In light of the importance of this information, the Commission is adopting the margin and collateral data elements as proposed, with one change. The proposed Collateral portfolio code is now two separate data elements, Initial margin collateral portfolio code and Variation margin collateral portfolio code. This information is not currently being reported to SDRs. Eleven of these data elements are consistent with the CDE Technical Guidance. One data element, Affiliated counterparty for margin and capital indicator (114), will help the Commission monitor compliance with the uncleared margin requirements. The three remaining CFTC-specific data elements are indicators and codes that will help the Commission understand how the margin and collateral data is being reported by reporting counterparties. Margin and collateral information is critical for the Commission to monitor risk in the swaps market. When other jurisdictions implement the CDE Technical Guidance, sharing this information with other regulators will permit regulators to create a global picture of swaps risk.

14. Category: Miscellaneous

CME requests clarification on whether SDRs can add proprietary data elements to its technical specification or whether an SDR can reject submissions due to validation failures of these data elements, and gave two examples of certain data elements for internal processing purposes (*e.g.,* billing) and data elements to satisfy its regulatory obligations (*e.g.,* implementation of certain data elements at the leg level).[349] The Commission understands SDRs may have data elements for internal processing, and the Commission does not want to interrupt an SDR's ability to efficiently function. Beyond that, the Commission opposes SDRs adding data elements outside of those mandated by the Commission to satisfy the Commission's rules to avoid creating the issue SDRs and the Commission currently face of each SDR creating their own data elements according to different standards and thus inhibiting data quality.

ISDA–SIFMA request the Commission follows EMIR's process on the data elements in the future: ESMA publishes the data validation table on an ''EMIR Reporting'' web landing page, while

relations between transactions) (101); Unique swap identifier (USI) (102); Unique transaction identifier (UTI) (103); and Jurisdiction (104).

[339] ISDA–SIFMA at 28.

[340] *Id.*

[341] ISDA–SIFMA at 27–28.

[342] *Id.*

[343] *Id.*

[344] In appendix 1, this data element is: New SDR identifier (105).

[345] In appendix 1, these data elements are: Last floating reference value (107); Last floating reference reset date (108); Valuation amount (110); Valuation currency (111); Valuation method (112); and Valuation timestamp (113).

[346] ISDA–SIFMA at 30–31; GFXD at 31–32.

[347] Markit at 7.

[348] In appendix 1, these data elements are: Affiliated counterparty for margin and capital indicator (114); Collateralisation category (115); collateral portfolio code (105 in the Proposal); Portfolio containing non-reportable component indicator (117); Initial margin posted by the reporting counterparty (post-haircut) (118); Initial margin posted by the reporting counterparty (pre-haircut) (119); Currency of initial margin posted (120); Initial margin collected by the reporting counterparty (post-haircut) (121); Initial margin collected by the reporting counterparty (pre-haircut) (122); Currency of initial margin collected (123); Variation margin posted by the reporting counterparty (pre-haircut) (125); Currency of variation margin posted (126); Variation margin collected by the reporting counterparty (pre-haircut) (127); and Currency of variation margin collected (128).

[349] CME at 20.

only the data elements required to be reported, format and applicable types of derivatives contracts appear in the rule text.[350] The approach would allow for public comment on any future changes to the data required to be reported to the SDRs, but would provide greater flexibility to make adjustments (*e.g.,* due to industry feedback or completion of developing the ISO message for example) that do not change the data elements required to be reported.[351] The Commission has endeavored to follow ESMA's approach as reflected by the steps taken to solicit public comment on the data elements and have DMO publish its technical specification.

VI. Compliance Date

In the Proposal, the Commission acknowledged that market participants will need a sufficient implementation period to accommodate the changes proposed in the three Roadmap proposals that would be adopted by the Commission. The Commission expected to finalize all rules at the same time, even though the three Roadmap proposals were approved separately. The Commission also expected that the compliance date for the Roadmap rules that the Commission adopts other than the rules on UTIs in § 45.5 would be one year from the date the final rulemakings are published in the **Federal Register**.

The Commission expected that the compliance date for the rules on UTIs in § 45.5 would be December 31, 2020, according to the UTI implementation deadline recommended by the FSB.[352]

The Commission received three comments supporting the proposed one-year compliance period. ISDMA–SIFMA support a single compliance date for parts 43, 45, and 49 at a minimum of 12 months from the date the final rules are published in the **Federal Register**. If the Commission does not implement all rules at the same time, ISDA–SIFMA support a compliance date a minimum of 12 months from the date the last rule of the final set of rules is published in the **Federal Register**.[353]

Similarly, LCH recommends the Commission set the compliance date for all requirements under the proposal to 12 months from publication to comply with all aspects of the rules, as LCH believes the current date of December 31, 2020, related to UTI implementation does not allow enough time for market participants to comply.[354]

ICE SDR suggests the Commission allow voluntary early implementation before the compliance effective date, and points out that having SDRs and market participants implement immediately after publication would be advantageous to the market and would eliminate the need for reporting counterparties to report valuation data.[355]

The Commission received five comments opposing the proposed implementation period. GFXD suggests 12 months from publication of final rules should be the minimum implementation period and that GFXD believes the changes to the technical specification in parts 43 and 45 should be implemented and allowed to imbed before the validation changes under part 49 are implemented.[356]

CME believes SDRs will need an extra six months beyond the Commission's proposal because the Commission expects SDRs to implement all changes simultaneously. CME notes this timing assumes the technical specification would be finalized at the same time and would not be modified in any material respect prior. CME's DCO also believes the Commission underestimated the number of man-hours that it will take reporting entities, including CME's DCO, to implement the Commission's proposed changes to the reporting requirements.[357]

DTCC requests clarification regarding the implementation period for any proposed changes to the reporting requirements in § 45.15(a)(1) through (3) and in § 45.15(b)(1) through (3), because certain changes, including the potential use and ingestion of prescribed message standards, may take significant time to implement.[358]

ICE DCOs believe the Commission should adopt a realistic compliance period that allows for industry coordination.[359] FIA suggests extending the compliance date for all aspects of the proposals to the later of two years following the effective date of the final rules or one year following finalization of the required data elements and validation processes of the reporting counterparty's SDR. FIA is concerned the proposed dates do not provide enough time for market participants to undertake the extensive system developments necessary for compliance.[360]

The Commission received six comments opposing the UTI compliance date proposal. GFXD believes the December 31, 2020 compliance date for UTIs is ''extremely ambitious,'' and that there should be a later implementation period for UTI that is coordinated with the EU.[361] CME requests the Commission align the UTI transition with the main compliance date to reduce the potential for unnecessary duplication of effort and to allow for potential project implementation synergies.[362]

JBA believes aligning the UTI implementation timeline across jurisdictions will be more beneficial, and that deadlines should coincide with those of the UPI and CDE, in light of proposals offered in the ESMA consultation.[363] ISDA–SIFMA note the proposed date would give only two months for entities to complete builds and test systems, accounting for year-end code freezes and the exacerbation of budgeting and resource constraints caused by the COVID–19 pandemic. ISDMA–SIFMA want § 45.5 to be implemented at least at the same time as the rest of part 45 but would prefer the Commission wait until closer to the Australian Securities and Investments Commission's or ESMA's compliance dates in 2022.

CS recommends the Commission not separate the Proposal's compliance dates. If the Commission does keep them separate, CS suggests working closely with fellow IOSCO members in considering an extended implementation timeline for the UTI. In light of other initiatives for global SDs, the operationalizing requirements and operational hurdles present challenges for SDs. CS requests the Commission continue to weigh concerns related to data fragmentation in evaluating a bifurcated implementation of the proposals. CS also suggests the Commission continue to engage in dialogue with the Harmonisation Group and could suggest a timeframe that takes into account the Commission's proposals and other data reform efforts in other IOSCO jurisdictions.[364]

FIA believes the USI and UTI compliance changes will have to be addressed and should occur in tandem with the rest of the reporting rule requirements. It recommends eliminating the December 30, 2020

[350] ISDA–SIFMA at 34–35.

[351] *Id.*

[352] *See* Financial Stability Board, Governance Arrangements for the Unique Transaction Identifier (UTI), Conclusions and Implementation Plan (Dec. 2017), section 5.2.

[353] ISDSA–SIFMA at 36.

[354] LCH at 2 and 4.

[355] ICE SDR at 2 and 5.

[356] GFXD at 35.

[357] CME at 22–23.

[358] DTCC at 8.

[359] ICE DCOs at 1–2.

[360] FIA at 10–11.

[361] GFXD at 34–35.

[362] CME at 22.

[363] JBA at 1–2.

[364] CS at 2.

compliance date for UTIs and instead imposing one date for compliance for all final rules.[365]

The Commission received two questions on going-forward amendments for UTIs. ISDA–SIFMA request the amendments to the Commission's swap reporting rules clarify that requirements should be applied on a ''going forward'' basis and only apply to swaps and events occurring on or after the compliance date of the amended rules, including the clarification that UTI requirements only apply to new swap transactions and not to swaps prior to the compliance date that have a USI.[366] DTCC requests clarification on implementing UTI versus USI. It questions whether swaps that were reported using a USI prior to the end of the compliance period can continue being reported using the USI and only events requiring the creation of new UTIs will be reported using the UTI.[367]

Based on the many comments that requested one compliance date for all aspects of the Proposal and all of the Roadmap proposals, including final § 45.5, and the many comments that requested a compliance date that is more than one year from the date the proposals are finalized, the Commission has determined to adopt a unified compliance date that is 18 months from the date of publication of the final rule amendments in the **Federal Register**. The Commission agrees with the suggestion from ICE SDR that market participants should be able to adopt the rule changes ahead of the compliance date.

Regarding the UTI implementation, the Commission clarifies that UTI implementation should be on a going-forward basis. This means that all new swaps entered into after the compliance date should have UTIs according to final § 45.5. As a result, SDRs will need to accommodate both USIs and UTIs for a certain amount of time after the compliance date, but the Commission anticipates SDRs would be able to phase it out at a certain point after swaps using USIs are terminated or reach maturity.

Part 20 of the Commission's regulations governing large trader reporting for physical commodity swaps contains a ''sunset provision'' in § 20.9 that would take effect upon a Commission finding that, through the issuance of an order, operating SDRs are processing positional data and that such processing will enable the Commission to effectively surveil trading in paired swaps and swaptions and paired swap and swaption markets.[368] In the Proposal, the Commission asked whether in conjunction with the Commission's proposals to update its swap reporting regulations, should the Commission review part 20 to determine whether it would be appropriate to sunset part 20 reporting according to the § 20.9?[369]

The Commission received three comments on the appropriateness of sunsetting part 20. BP supports sunsetting part 20 since SDRs have been collecting and processing data for several years, Commission and industry resources should no longer be expended on part 20.[370] CEWG believes once the improvements in the proposed rules are implemented, CFTC should look towards ending part 20.[371] FIA believes the provisions in § 20.9 have been met and recommends CFTC sunset the part 20 reporting requirements.[372]

Since part 20 data is reported directly to the Commission and not to SDRs, the Commission did not propose any changes to part 20 in the Roadmap or in the Proposal, and therefore, the Commission is taking no action on part 20 in this release. The Commission nonetheless acknowledges the commenters' responses to the question. The Commission may address part 20 reporting at a future date after implementation of the Roadmap rules.

VII. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities.[373] The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on small entities under the RFA.[374] The changes to parts 45, 46, and 49 adopted herein would have a direct effect on the operations of DCMs, DCOs, MSPs, reporting counterparties, SDs, SDRs, and SEFs. The Commission has previously certified that DCMs,[375] DCOs,[376] MSPs,[377] SDs,[378] SDRs,[379] and SEFs[380] are not small entities for purpose of the RFA.

Various changes to parts 45, 46, and 49 would have a direct impact on all reporting counterparties. These reporting counterparties may include SDs, MSPs, DCOs, and non-SD/MSP/DCO counterparties. Regarding whether non-SD/MSP/DCO reporting counterparties are small entities for RFA purposes, the Commission notes CEA section 2(e) prohibits a person from entering into a swap unless the person is an eligible contract participant (''ECP''), except for swaps executed on or under the rules of a DCM.[381] The Commission has previously certified that ECPs are not small entities for purposes of the RFA.[382]

The Commission has analyzed swap data reported to each SDR[383] across all five asset classes to determine the number and identities of non-SD/MSP/DCOs that are reporting counterparties to swaps under the Commission's jurisdiction. A recent Commission staff review of swap data, including swaps executed on or under the rules of a DCM, identified nearly 1,600 non-SD/MSP/DCO reporting counterparties.

[365] FIA at 10–11.

[366] ISDA–SIFMA at 36.

[367] DTCC at 5.

[368] 17 CFR 20.9.

[369] Swap Data Recordkeeping and Reporting Requirements, 85 FR 21578, 21614 (Apr. 17, 2020).

[370] BP at 6.

[371] CEWG at 9.

[372] FIA at 14.

[373] *See* 5 U.S.C. 601–604.

[374] *See* Policy Statement and Establishment of ''Small Entities'' for purposes of the Regulatory Flexibility Act, 47 FR 18618 (Apr. 30, 1982).

[375] *See id.*

[376] *See* Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69334, 69428 (Nov. 8, 2011).

[377] *See* 77 FR at 20194 (basing determination in part on minimum capital requirements).

[378] *See* Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 76 FR 6715 (Feb. 8, 2011).

[379] *See* Swap Data Repositories; Proposed Rule, 75 FR 80898, 80926 (Dec. 23, 2010) (basing determination in part on the central role of SDRs in swaps reporting regime, and on the financial resource obligations imposed on SDRs).

[380] Core Principles and Other Requirements for Swap Execution Facilities, 78 FR 33476, 33548 (June 4, 2013).

[381] *See* 7 U.S.C. 2(e).

[382] *See* Opting Out of Segregation, 66 FR 20740, 20743 (Apr. 25, 2001). The Commission also notes this determination was based on the definition of ECP as provided in the Commodity Futures Modernization Act of 2000. The Dodd-Frank Act amended the definition of ECP as to the threshold for individuals to qualify as ECPs, changing ''an individual who has total assets in an amount in excess of'' to ''an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of. . . .'' Therefore, the threshold for ECP status is currently higher than was in place when the Commission certified that ECPs are not small entities for RFA purposes, meaning that there are likely fewer entities that could qualify as ECPs than when the Commission first made the determination.

[383] The sample data sets varied across SDRs and asset classes based on relative trade volumes. The sample represents data available to the Commission for swaps executed over a period of one month. These sample data sets captured 2,551,907 FX swaps, 98,145 credit swaps, 357,851 commodities swaps, 603,864 equities swaps, and 276,052 interest rate swaps.

Based on its review of publicly available data, the Commission believes the overwhelming majority of these non-SD/MSP/DCO reporting counterparties are either ECPs or do not meet the definition of ''small entity'' established in the RFA. Accordingly, the Commission does not believe the rules would affect a substantial number of small entities.

Based on the above analysis, the Commission does not believe this Final Rule will have a significant economic impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, pursuant to 5 U.S.C. 605(b), hereby certifies that the Final Rule will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act (''PRA'') [384] imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. The rule amendments adopted herein will result in the revision of three information collections, as discussed below. The Commission has previously received control numbers from the Office of Management and Budget (''OMB'') for each of the collections impacted by this rulemaking: OMB Control Numbers 3038–0096 (relating to part 45 swap data recordkeeping and reporting); 3038–0089 (relating to part 46 pre-enactment swaps and transition swaps); and 3038–0086 (relating to part 49 SDR regulations).

The Commission did not receive any comments regarding its PRA burden analysis in the preamble to the Proposal. The Commission is revising the three information collections to reflect the adoption of amendments to parts 45, 46, and 49, as discussed below, including changes to reflect adjustments that were made to the final rules in response to comments on the Proposal (not relating to the PRA). In addition, the Commission is revising the information collections for part 45 to include estimates of the burden hours that SDRs, SEFs, DCMs, and reporting counterparties could incur to report updated swap data elements in appendix 1 to part 45 in the form and manner provided in the technical specification published by the Commission, as discussed below, which were not included in the Proposal. The Commission has re-evaluated its analysis of the one-time costs that SDRs, SEFs, DCMs, and reporting counterparties could incur to modify their systems for part 45. These estimates have been updated to include software developer labor costs for amended § 45.3 related to the technical specification, as developed by staff in its Offices of the Chief Economist and Data and Technology. The Commission does not expect any ongoing costs after the initial builds. Further, the Commission previously included estimates for proposed § 45.4 of costs for SDRs and reporting counterparties to update systems for reporting required swap continuation data. However, after further analysis, the Commission is removing the estimates for § 45.4 to avoid double-counting, since the costs relate to reporting certain swap data elements that are included in the estimated one-time start-up costs for § 45.3. The Commission does not believe the rule amendments as adopted impose any other new collections of information that require the approval of OMB under the PRA.

Under the PRA, Federal agencies must obtain approval from OMB for each collection of information they collect or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 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** for each proposed collection of information before submitting the collection to OMB for approval. The Commission is publishing a 60-day notice (''60-day Notice'') in the **Federal Register** concurrently with the publication of this final rule in order to solicit comment on burden estimates for part 45 that were not included in the Proposal.

1. Part 45: Revisions to Collection 3038–0096 (Swap Data Recordkeeping and Reporting Requirements)

a. § 45.3—Swap Creation Data Reports

Existing § 45.3 requires SEFs, DCMs, and reporting counterparties to report confirmation data reports and PET data reports when entering into new swaps. The Commission is adopting changes that will remove the requirement for SEFs, DCMs, and reporting counterparties [385] to report confirmation data reports, and instead report a single swap creation data report. Commission staff estimates that for these entities, the change will reduce the number of swap creation data reports sent to SDRs from 10,000 reports per 1,732 respondents to 7,000 reports per 1,732 respondents, or 12,124,000 reports in the aggregate. The annual hourly burden is estimated to remain .01 average hours per report for the remaining reports, and the gross annual reporting burden is estimated to be 121,240 hours.

The Commission is also adopting changes that will remove the § 45.3(i) requirement for SEFs, DCMs, and reporting counterparties to report TR identifiers and swap identifiers for international swaps. The changes remove the requirement to report two pieces of information within a required swap creation data report without impacting the number of reports themselves. The requirement to report swap identifiers is duplicative, and will not change the burden estimate, as SEFs, DCMs, and reporting counterparties are required to report swap identifiers for all swaps pursuant to § 45.5. However, the removal of the requirement to report TR identifiers will slightly reduce the amount of time required to make each report, as SEFs, DCMs, and reporting counterparties will not need to report this information anymore.

The Commission estimates the removal of this requirement will lower the burden hours by .01 hour per report. However, at the same time, as discussed further below in section VII.B.1.c, the Commission is adopting changes to require the reporting of UTIs instead of USIs, which are currently reported in every required swap creation data report. The Commission estimates the new rules requiring SEFs, DCMs, and reporting counterparties to report UTIs will impact the burden calculations for § 45.3 by increasing the burden hours by .01 hour per report. As a result, the Commission estimates there will be no net change to the .01 burden hours per report for § 45.3 required swap creation data reporting resulting from the amendments to § 45.3(i).

The aggregate burden estimate for § 45.3 required swap creation data reports is as follows:

Estimated number of respondents: 1,732.

Estimated number of reports per respondent: 7,000.

Average number of hours per report: .01.

Estimated gross annual reporting burden: 121,240.

In addition, the Commission estimates SDRs, SEFs, DCMs, and reporting counterparties will incur capital/start-up costs related to adopting the changes proposed in § 45.3. The Commission

[384] *See* 44 U.S.C. 3501.

[385] The current requirement for SEFs and DCMs is in § 45.3(a), and the current requirement for off-facility swaps is in §§ 45.3(b) through (d).

estimates that SDRs will incur one-time initial costs in a range of $144,000 to $1,010,000 per SDR to update their systems, with each SDR spending approximately 3,000 to 5,000 hours on the updates. The Commission estimates SEFs, DCMs, and reporting counterparties will incur one-time initial costs in a range of $24,000 to $73,225 per reporting entity, with each reporting entity spending approximately 500 to 725 hours per reporting entity on the updates.[386] The cost per entity is estimated to be $28,923 for a total cost across entities of $50,094,636.

b. § 45.4—Swap Continuation Data Reports

Existing § 45.4 requires reporting counterparties to report data to SDRs when swap terms change, as well as daily and quarterly swap valuation data, depending on the type of reporting counterparty. As a preliminary matter, the Commission is correcting the estimated number of respondents for § 45.4 from 1,732 SDRs, SEFs, DCMs, and reporting counterparties to 1,705 SDRs and reporting counterparties to reflect that SEFs and DCMs do not report required swap continuation data.

Existing § 45.4(a) permits reporting counterparties to report changes to swap terms when they occur (life cycle reporting), or to provide a daily report of all of the swap terms (state data reporting). The Commission is adopting changes that will remove the option for state data reporting for reporting counterparties. The Commission estimates that this will reduce the number of § 45.4 continuation data reports that reporting counterparties report from 207,543 reports per respondent to 103,772 reports per respondent.

The Commission is also adopting changes to remove the requirement for non-SD/MSP/DCO reporting counterparties to report quarterly valuation data. For the 1,585 non-SD/MSP/DCO reporting counterparties, the Commission estimates this will further reduce the number of § 45.4 swap continuation data reports they send to SDRs by four quarterly reports per 1,585 non-SD/MSP/DCO reporting counterparties. This is estimated to reduce the number of § 45.4 continuation data reports sent by reporting counterparties from 103,772 reports per respondent to 97,431 reports per respondent.

Separately, the Commission is adopting changes to expand the daily valuation data reporting requirement for SD/MSP reporting counterparties to report margin and collateral data in addition to valuation data. This is a change from the Proposal, in which the Commission proposed requiring DCO counterparties to report the information as well. The frequency of the report will not change for SD/MSP reporting counterparties, but the Commission estimated SD/MSP/DCO reporting counterparties would require more time to prepare each report. However, since all of this information is reported electronically, the Commission expected the increase per report to be small, from .003 to .004 hours per report. Since the Commission is not requiring DCO reporting counterparties to report the information, the Commission is revising its estimate to .0035 hours per report. The reduction in this estimate from .004 hours in the Proposal reflects the Commission adopting a less burdensome rule than was proposed.

The aggregate burden estimate for § 45.4 required swap continuation data is as follows:

Estimated number of respondents: 1,705.

Estimated number of reports per respondent: 97,431.

Average number of hours per report: .0035.

Estimated gross annual reporting burden: 581,419.

In addition, in the Proposal, the Commission estimated SDRs and reporting counterparties would incur capital/start-up costs and ongoing operational/maintenance costs related to adopting the changes proposed in § 45.4. In reevaluating its analysis in the Proposal, the Commission recognizes the reporting costs created by the changes to § 43.4 relate to reporting swap data elements, which the Commission has included in the estimated costs for § 45.3. To avoid double-counting costs, the Commission is not estimating separate initial and ongoing costs for § 43.4 and removing the estimate that was included in the Proposal.

c. § 45.5—Unique Swap Identifier Reporting

Existing § 45.5 requires SEFs, DCMs, reporting counterparties, and SDRs to generate and transmit USIs, and include USIs in all of their § 45.3 creation data and § 45.4 continuation data reports to SDRs. As a preliminary matter, the Commission is correcting the estimated number of respondents and the estimated number of reports per each respondent. Currently, SDRs, SDs, MSPs, SEFs, and DCMs are required to generate USIs, but the Commission inadvertently had included the 1,585 non-SD/MSP/DCO reporting counterparties in the current estimated number of respondents. The Commission is updating the number of respondents to 147 SDs, MSPs, SEFs, DCMs, DCOs, and SDRs. However, these entities generate USIs on behalf of non-SD/MSP/DCO reporting counterparties for all swaps, so the estimated number of reports per each respondent will increase proportionately to 115,646 reports per 147 respondents to account for the 17,000,000 new swaps reported each year with USIs.

Existing § 45.5 requires SDRs to generate and transmit USIs for off-facility swaps with a non-SD/MSP reporting counterparty. The Commission is adopting changes that will require non-SD/MSP/DCO reporting counterparties that are financial entities to generate and transmit UTIs for off-facility swaps. The Commission estimates that approximately half of non-SD/MSP/DCO reporting counterparties are financial entities. Therefore, the Commission estimates that the number of respondents will increase from 147 SDs, MSPs, SEFs, DCMs, DCOs, and SDRs to 940 respondents with the addition of financial entities. At the same time, however, this will lower the number of UTIs generated per respondent to account for the increase in the number of respondents generating UTIs. The Commission estimates the estimated number of reports per respondent will decrease from 115,646 reports per 147 respondents to 18,085 reports per 940 respondents.

The aggregate burden estimate for § 45.5 is as follows:

Estimated number of respondents: 940.

Estimated number of reports per respondent: 18,085.

Average number of hours per report: .01.

Estimated gross annual reporting burden: 169,999.

In addition, the Commission estimates that § 45.5 will create costs for entities required to generate USIs to update their systems to generate UTIs. The Commission estimates that SDRs and reporting counterparties required to generate UTIs will incur a one-time initial burden of one hour per entity to modify their systems to adopt the changes described below, for a total estimated hours burden of 940 hours. The cost per entity is estimated to be

[386] The Commission is updating its estimates of the capital/start-up costs that SDRs, SEFs, DCMs, and reporting counterparties will incur related to adopting the changes in § 45.3 to provide a more-accurate range of expected costs. In doing so, the Commission includes the costs associated with updates to § 45.4, discussed below, as they would be captured in the costs of updating systems to adopt the updated data elements in appendix 1 to part 45.

$72.23 for a total cost across entities of $67,896. The Commission additionally estimates one hour per entity annually to perform any needed maintenance or adjustments to reporting systems, at a cost of $72.23 per entity and $67,896 across entities.

d. § 45.6—Legal Entity Identifier Reporting

Existing § 45.6 requires reporting entities to have LEIs and report them to SDRs as part of their § 45.3 creation data and § 45.4 continuation data reports. As a preliminary matter, the Commission is revising the burden estimate for § 45.6. LEIs are reported in required swap creation data and required swap continuation data reports, which are separately accounted for in the estimates for §§ 45.3 and 45.4. The current estimate for § 45.6 double-counts the estimates for §§ 45.3 and 45.4 by calculating the burden per data report. Instead, the burden for § 45.6 should be based on the requirement for each counterparty to obtain an LEI. The Commission is revising the estimate to state that there are 1,732 entities required to have one LEI per respondent, and revise the burden hours based on this change.[387]

The Commission is also adopting amendments to § 45.6 to require SDs, MSPs, SEFs, DCMs, DCOs, and SDRs to renew their LEIs annually. The change will increase the burden estimates for these entities, but will not affect the burden for the majority of entities required to have LEIs. Nonetheless, the Commission expects the burden associated with these changes to increase from .01 to .02 hours per report, and 17 hours in the aggregate.

The aggregate burden estimate for § 45.6 is as follows:

Estimated number of respondents: 1,732.

Estimated number of reports per respondent: 1.

Average number of hours per report: .02.

Estimated gross annual reporting burden: 35.

e. § 45.10—Reporting Changing SDRs

The Commission is adopting new regulations in § 45.10(d) that require reporting counterparties to send SDRs and non-reporting counterparties notifications if they change the SDR to which they report swap data and swap transaction and pricing data. This is a new reporting burden that is not covered in the current collection.

The Commission estimates that no more than 15 reporting counterparties will choose to change the SDR to which they report data. As a result, the Commission estimates these 15 reporting counterparties will each send one report annually, with an average response time of .01 hours per report and a gross annual burden of .15 hours.

The aggregate burden estimate for § 45.10 is as follows:

Estimated number of respondents: 15.

Estimated number of reports per respondent: 1.

Average number of hours per report: .01.

Estimated gross annual reporting burden: .15.

2. Revisions to Collection 3038–0086 (Swap Data Repositories: Registration and Regulatory Requirements)

a. SDR Withdrawal from Registration Amendments

Existing § 49.4 requires SDRs to follow certain requirements when withdrawing from registration with the Commission. These requirements involve filing paperwork with the Commission. The Commission does not believe any of the changes the Commission is adopting will require any one-time or ongoing system updates for SDRs. In addition, the Commission notes it had not previously provided a burden estimate for § 49.4, so the Commission provided an estimate with the Proposal.

Existing § 49.4(a)(1)(iv) requires that an SDR's request to the Commission to withdraw from SDR registration specify, among other items, a statement that the custodial SDR is authorized to make such data and records available in accordance with § 1.44. The Commission is adopting changes to remove this requirement from § 49.4(a)(1)(iv).

Existing § 49.4(a)(2) requires that before filing a request to withdraw, a registered SDR shall file an amended Form SDR to update any inaccurate information. The Commission is adopting changes that eliminate the requirement for SDRs to file an amended Form SDR prior to filing a request to withdraw.

Separately, the Commission is adopting new § 49.4(a)(2) to require SDRs to execute an agreement with the custodial SDR governing the custody of the withdrawing SDR's data and records prior to filing a request to withdraw with the Commission.

The Commission estimates that at most one SDR will request to withdraw from registration each year pursuant to amended § 49.4. The Commission estimates that the SDR will provide one notification to the CFTC, which will take an estimated 40 hours for the SDR to complete.

The aggregate burden estimate for § 49.4 is as follows:

Estimated number of respondents: 1.

Estimated number of reports per respondent: 1.

Average number of hours per report: 40.

Estimated gross annual reporting burden: 40.

b. SDR Data Validation Requirement Amendments

Existing § 49.10 provides the requirements for SDRs in accepting SDR data. As an initial matter, the Commission is correcting the estimates for § 49.10 in the Proposal. In the Proposal, the Commission misstated the current burden estimate for § 49.10 as 5,652,000 messages per SDR respondent, for a total of almost 17,000,000 messages across SDRs. The correct current estimate for § 49.10 is 2,652,000 messages per SDR, for a total of almost 8,000,000 messages. The Commission will discuss the changes to the estimate for § 49.10 resulting from this rulemaking below according to the corrected estimate for § 49.10.

Existing § 49.10(a) requires SDRs to accept and promptly record all swap data. In the 2019 Part 49 NPRM, the Commission proposed amending the requirements in § 49.10 by detailing separate § 49.10(e) requirements for correcting swap errors. The Commission is adopting those changes in a separate release. In this release, the Commission is adopting separate § 49.10(c) requirements for validating swap messages. These changes further specify that SDRs must send validation acceptance and rejection messages after validating SDR data. The Commission estimates that this will increase the number of reports SDRs will need to send reporting entities.

The Commission estimates that the new requirement to send validation messages in § 49.10(c) will add 3,000,000 messages to each SDR's current burden estimate, at .00055 hours per message, or 4,950 aggregate burden hours for all three SDRs.

When added to the current estimate for § 49.10, the aggregate burden estimate for § 49.10 is as follows:

Estimated number of respondents: 3.

[387] The Commission is similarly revising the estimate for § 45.7, which requires reporting counterparties to use UPIs. Until the Commission designates a UPI, reporting counterparties use the product fields unique to each SDR. As a result, until the Commission designates a UPI, the burden estimates for the product fields are accounted for in §§ 45.3 and 45.4. To avoid double-counting until there is a UPI, the Commission is removing the burden estimate for § 45.7 until the Commission designates a UPI.

Estimated number of reports per respondent: 5,652,000.

Average number of hours per report: .00055.

Estimated gross annual reporting burden: 9,326. [388]

In addition, the Commission estimates that SDRs will incur capital/start-up costs and ongoing operational/maintenance costs related to adopting the changes proposed in § 49.10(c). The Commission estimates that SDRs will incur a one-time initial burden of 100 hours per entity to modify their systems to adopt the changes described above, for a total estimated hours burden of 300 hours, and that SDRs will additionally spend 100 hours per entity annually to perform any needed maintenance or adjustments to reporting systems. Based on a labor cost of $72.23 per hour, the total cost of the one-time initial burden is estimated at $21,669 across all three SDRs, and the total cost to perform any additional needed maintenance or adjustments to reporting systems annually is estimated at $21,669 across all three SDRs.

3. Revisions to Collection 3038–0089 (Pre-Enactment Swaps and Transition Swaps)

Existing § 46.11 provides that for pre-enactment or transition swaps for which part 46 requires reporting of continuation data, reporting counterparties reporting state data as provided in part 45 may fulfill the requirement to report errors or omissions by making appropriate corrections in their next daily report of state data pursuant to part 45. Since the Commission is adopting changes to remove the option for state data reporting from § 45.4, the Commission is also adopting changes to remove the option for state data reporting from § 46.11.

Because reporting counterparties will no longer be able to send daily state data reports for their part 46 historical swaps, the Commission estimates the changes adopted in § 46.11 will reduce the number of continuation data reports reporting counterparties send SDRs for historical swaps by 50%. As a result, the Commission estimates that the 125 [389] SD/MSP reporting counterparties that the Commission estimates are reporting historical swaps will each spend five hours on these reports annually instead of the previous estimate of 10 hours, and the 500 non-SD/MSP reporting counterparties will spend .64 hours on these reports annually, instead of the previous estimate of 1.275 hours.

The aggregate burden estimate for reporting historical swaps to SDRs under part 46 is as follows:

Estimated number of respondents: 625.

Estimated number of reports per respondent: 151.

Average number of hours per report: .01.

Estimated gross annual reporting burden: 945. [390]

The Commission does not believe the changes to § 46.11 being adopted will require SDRs or reporting counterparties to make any one-time or ongoing updates to their systems.

C. Cost-Benefit Considerations

1. Introduction

Since issuing the first swap reporting rules in 2012, the Commission has gained a significant amount of experience with swaps markets and products based on studying and monitoring swap data.[391] As a result of this work, the Commission has identified ways to improve the existing swap data reporting rules. Limitations with the regulations have, in some cases, encouraged the reporting of swap data in a way that has made it difficult for the Commission to aggregate and analyze. As a result, the Commission is amending its rules to improve data quality and standardization to achieve the Group of Twenty (''G20'') goal for trade reporting to improve transparency, mitigate systemic risk, and prevent market abuse.[392]

While the Commission believes the amendments will meaningfully benefit market participants and the public, some costs could result as well. Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating rules under the CEA.[393] Section 15(a) specifies that the Commission evaluates costs and benefits in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) the efficiency, competitiveness, and financial integrity of markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.[394] The Commission considers the costs and benefits resulting from its discretionary determinations concerning the section 15(a) factors.

In this release, the Commission is adopting revisions to existing regulations in parts 45, 46, and 49. The Commission is also adopting new requirements in parts 45, 46, and 49. Together, these revisions and additions should further specify and streamline swap data reporting and improve the quality of swap data reporting. The Commission is making most of the changes to existing systems and processes, so nearly all costs considered are incremental additions or updates to systems already in place. The Commission believes many of the amendments, which are non-substantive or technical, will not have material cost-benefits implications.[395]

The Commission is adopting multiple changes to harmonize the Commission's reporting regulations with those of other regulators as part of the FSB and CPMI–IOSCO harmonization efforts. As these efforts have incorporated industry feedback, and the Commission has been vocal about its support and participation,[396] the Commission expects many market participants have been planning and preparing for updates to accommodate these

[388] The Commission is correcting an incorrect estimate from the Proposal of 9,750 hours, due to an error in another Supporting Statement accompanying a different rulemaking.

[389] The Commission had erroneously stated there were 500 SD, MSP, and non-SD/MSP reporting counterparties in the Proposal.

[390] In the Proposal, the Commission estimated that to comply with proposed amended § 46.11, 500 SD, MSP, and non-SD/MSP reporting counterparties that the Commission estimated are reporting historical swaps would each submit 200 reports under part 46 with an average burden of .01 hours per report, for a burden of 2 hours per respondent or 1,000 burden hours in the aggregate. The correct aggregate burden hours estimate, which was reflected in the supporting statement filed with OMB in connection with the Proposal, is 945 (consisting of 625 aggregate annual burden hours for the 125 SD/MSP reporting counterparties and 320 aggregate burden hours for the 500 non-SD/MSP reporting counterparties). The Commission is also revising the estimated number of reports filed per respondent under part 46 from 200 reports to 151.

[391] The Commission has used swap data in various rulemakings, research, and reports. *See, e.g.,* ''Introducing ENNs: A Measure of the Size of Interest Rate Swap Markets,'' Haynes R., Roberts J. Sharma R., and Tuckman B., January 2018; CFTC Weekly Swaps Report, *available at www.cftc.gov/MarketReports/SwapsReports/index.htm.*

[392] *See* G20, Leader's Statement Pittsburgh Summit September 24–25, 2009, (Sept. 2009), *available at https://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh_summit_leaders_statement_250909.pdf.*

[393] 7 U.S.C. 19(a)(1).

[394] 7 U.S.C. 19(a)(2).

[395] The Commission believes there are no cost-benefit implications for amendments to §§ 45.1, 45.2, 45.7, 45.8, 45.9, 45.11, 45.15, 46.1, 46.2, 46.4, 46.5, 46.8, 46.9, and 49.2.

[396] *See, e.g.,* Testimony of Chairman J. Christopher Giancarlo before the House Committee on Agriculture, Washington, DC, July 25, 2018, *available at https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo50* (''I believe the CFTC needs to be a leading participant in IOSCO and other international bodies. The CFTC currently chairs the following international committees and groups and serves as a member of many other ones: . . . Co-Chair, CPMI–IOSCO Data Harmonization Group[, and] Co-Chair, FSB Working Group on UTI and UPI Governance'').

important changes in efficient, cost-effective manners.

Many jurisdictions have committed to these harmonization efforts for which the Commission is adopting standards. If the Commission did not adopt these standards, but other jurisdictions—consistent with the technical guidance and implementation deadlines recommended by the FSB—did, SDRs and reporting entities could experience unnecessary costs due to unharmonized reporting infrastructures for CFTC reporting, while market participants in other jurisdictions enjoyed harmonization efficiencies.

The Commission discusses reasonably quantifiable costs and benefits in this section; the Commission discusses them qualitatively if they are not reasonably quantifiable. Throughout this release, the Commission estimates the cost-benefit impact of its changes using swap data, such as the prevalence of state data reporting and duplicative required swap creation data reports. Most of the changes affect reporting requirements for reporting counterparties, SDRs, SEFs, and DCMs. As a result, there will likely be some reasonably quantifiable costs related to either: (a) Creating new data reporting systems; (b) reprogramming existing data reporting systems to meet the new reporting requirements; or (c) canceling data streams, which might lead to archiving data and maintaining legacy systems. These estimates focus on the costs and benefits of the amended rules market participants are likely to encounter with an emphasis on technical details, implementation, and market-level impacts. Where software changes are expected, these costs reflect software developer labor costs only, not a blend of different occupations. Costs and benefits quantified at the respondent level are estimated in the PRA section in section VII.B above. Those costs are not repeated in this section, but where appropriate, quantified costs reflected in the PRA are noted below to reflect PRA costs have been taken into account in the cost-benefit analysis.

These costs are quantifiable if entities covered by the final regulations can price-out the changes to the information technology architecture to adopt the reporting requirement changes. These quantifiable costs, however, will likely vary because the sophistication of reporting entities varies. For example, some reporting entities operate their own data reporting systems and employ in-house developers and analysts to plan, design, code, test, establish, and monitor systems. Other reporting entities pay fees to third-party vendors. The quantitative costs associated with the reporting rules in this release will vary depending on the reporting entities' operations and number of swaps they execute. The Commission provides a monetary range for quantifiable costs as they relate to each change discussed below where possible.

This consideration of costs and benefits is based on the understanding that the swaps market functions internationally. Many swaps transactions involving U.S. firms occur across international borders and some Commission registrants are organized outside of the U.S., including many SDs. Many of the largest market participants often conduct operations both within and outside the U.S. Where the Commission does not always refer to location, the discussion of costs and benefits refers to the rules' effects on all swaps activity, whether by virtue of the activity's physical location in the U.S. or by virtue of the activity's connection with or effect on U.S. commerce under CEA section 2(i).[397]

2. Background

The Commission has issued several rulemakings related to swaps reporting where it has considered the benefits and costs.[398] Among others, the Commission has identified benefits such as increased transparency to both market participants and regulators; improved regulatory understanding of risk distributions and concentrations in derivatives markets; more effective monitoring of risk profiles by regulators and regulated entities through the use of unique identifiers; and improved regulatory oversight and more robust data management systems.[399] The Commission also identified two main areas where costs may be incurred: recordkeeping and reporting.[400]

Based on its experience with swap data and extensive feedback from market participants, the Commission believes improving data quality will significantly enhance the utility of the swap data while also reducing burdens on reporting entities and SDRs through harmonizing, streamlining, and clarifying data requirements. In this release, the Commission focuses on the swap data reporting workflows, the swap data elements reporting counterparties report to SDRs, and the validations SDRs apply to help ensure the swap data they receive is accurate. The Commission is also modifying several other regulations for clarity and consistency.

Three SDRs are currently provisionally registered with the Commission: CME, DTCC, and ICE. The changes the Commission is adopting should apply equally to all three SDRs. The current reporting environment also involves third-party service providers that help market participants fulfill their reporting requirements, though the reporting requirements do not apply directly to them. The Commission estimates that third-party service providers do not account for a large portion of the overall record submissions to SDRs, but provide an important service for entities that use them.

Finally, the current reporting environment depends on reporting counterparties. The Commission estimates reporting counterparties include 107 provisionally registered SDs, 24 SEFs, 3 DCMs, 13 DCOs, and approximately 1,585 non-SD/MSP/DCO reporting counterparties. Each of these reporting counterparty types varies as to size and activity. The Commission believes most SDs and nearly all SEFs, DCMs, DCOs, and SDRs have sophisticated technology dedicated to data reporting because of the frequency with which they enter into or facilitate swaps execution or accept swap data from reporting entities. The Commission also believes these entities have greater access to resources to update these systems as regulatory requirements change. Further, the Commission estimates that SDs will incur much of the costs and benefits associated with the Commission's changes, given they are the most sophisticated participants with the most experience reporting under the EU and U.S. reporting regimes. For instance, SDs accounted for

[397] *See* 7 U.S.C. 2(i). CEA section 2(i) provides that the swap provisions enacted by the Dodd-Frank Act, and Commission regulations promulgated under those provisions, shall not apply to activities outside the U.S., unless the activities have a direct and significant connection with activities in, or effect on, commerce of the U.S.; or contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of the CEA enacted by the Dodd-Frank Act.

[398] In 2012, the Commission provided a detailed cost-benefit discussion on its final swap reporting rules to ensure that market participants reported cleared and uncleared swaps to SDRs. *See* 77 FR at 2176–2193 (Jan. 13, 2012). In 2012, the Commission also issued final rules for reporting pre-enactment and transition swaps. *See generally* Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps, 77 FR 35200 (June 12, 2012). In 2016, the Commission amended its regulations to clarify the reporting obligations for DCOs and swap counterparties with respect to cleared swaps. *See generally* Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps, 81 FR 41736 (June 27, 2016).

[399] *See, e.g.,* 77 FR at 2176–2193 (Jan. 13, 2012); 77 FR at 35217–35225 (June 12, 2012); 81 FR at 41758–41770 (June 27, 2016).

[400] *See, e.g., id.*

over 70% of records submitted to SDRs in December 2019.[401]

Non-SD/MSP/DCO reporting counterparties account for a small fraction of SDR reports. The Commission believes there is a wide variation in the reporting systems maintained by these entities and the resources available to them. These reporting counterparties can be large, sophisticated financial entities, including banks, hedge funds, and asset management firms, but a significant number are smaller, less-sophisticated swap end-users entering into swaps less frequently to hedge commercial risk.

The Commission has a significant interest in ensuring these smaller, less-sophisticated entities can access the U.S. swaps market without unnecessary costs or burdens, but the Commission has difficulty accurately estimating the cost impact of the changes on them. The challenge stems from the wide range of complexity of firms in this group: A large asset manager with billions of dollars in assets under management and a large swaps portfolio could have a reporting system as complex and sophisticated as an SD while a small hedge fund with a limited swaps portfolio might rely on third-party service providers to handle its reporting obligations. Commenters did not provide information to help the Commission quantify the costs to these smaller entities, notwithstanding the Proposal's request for data and other information to assist the Commission's quantification effort.[402]

Swap data reports submitted under the existing regulations have posed data quality challenges. For example, the existing appendix 1 to part 45 provides no standards, formats, or allowable values for the swap data that reporting counterparties report to SDRs and there is no technical specification or other guidance associated with the existing rule. Since the industry has not identified a standard for all market participants to use, market participants have reported information in many different ways, often creating difficulties in data harmonization, or even identification, within and across SDRs.

It is not uncommon for Commission staff to find discrepancies between open swaps information available to the Commission and swap transaction data reported for the same swaps. In the processing of swap data to generate the CFTC's Weekly Swaps Report,[403] for example, there are instances when the notional amount differs between the Commission's open swaps information and the swap transaction data reported for the same swap. While infrequent errors can be expected, the wide variation in standards among SDRs has increased the challenge of swap data analysis and often has required significant data cleaning and data validation prior to any data analysis effort. This has meant that the Commission has, in some but not all cases, determined that certain data analyses were not feasible, harming its ability to oversee market activity.

In addition to the lack of standardization across SDRs, the Commission is concerned the current timeframes for reporting swap data may have contributed to the prevalence of errors. Common examples of errors include incorrect references to underlying currencies, such as a notional value incorrectly linked to U.S. dollars instead of Japanese Yen. Among others, these examples strongly suggest a need for standardized, validated swap data as well as additional time to review the accuracy of the data report.

Based on its experience with data reporting, the Commission is amending certain regulations, particularly in parts 45, 46, and 49, to improve swap data accuracy and completeness. This release also adopts one amendment to part 49 to improve the process for an SDR's withdrawal from registration. Many of the final regulations have costs and benefits that must be considered. The Commission discusses these below.

The Commission summarizes the amendments[404] and identifies and discusses the costs and benefits attributable to the amendments below. Where significant software development costs are expected, CFTC staff estimated the hourly wages market participants will likely pay software developers to implement each change to be between $48 and $101 per hour.[405] Relevant amendments below will list a low-to-high range of potential cost as determined by the number of developer hours estimated by technical subject matter experts (''SMEs'') in the Commission's Office of Data and Technology. The Commission did not receive any comments on its hourly wage estimates. Finally, the Commission considers the costs and benefits of all of the amendments jointly in light of the five public interest considerations in CEA section 15(a).

3. Baselines

There are multiple baselines for the costs and benefits that might arise from the regulations in this release. The Commission believes the baseline for measurement of costs and benefits attributable to the amendments to §§ 45.3, 45.4, 45.5, 45.6, 45.10, 45.12, 46.3, 46.10, 46.11, and 49.4 are the costs and benefits realized under current regulations, as discussed above in sections II, III, and IV. The baseline for § 49.10 is current practice, which is that SDRs may be performing validations according to their own specifications, as discussed above in section IV.C.

4. General Cost-Benefit Comments

The Commission received no comments on the general costs and benefits of the Proposal overall. The Commission received a few comments on the costs and benefits of the proposed amendments to individual sections, which are discussed in the relevant sections below. To the extent the Commission did not receive comments objecting to the Proposal's general cost-benefit consideration, or to its cost-benefit consideration of specific sections, the Commission views the absence of comment as affirmation that the Proposal's consideration of costs and benefits was sound, unless otherwise stated below.

The Commission also notes, with one exception discussed in section VII.C.5.a below, it did not receive specific data or information regarding costs and benefits from commenters in response to its requests for such information in the Proposal.[406] The Commission therefore did not receive additional information

[401] Analyzing SDR data from December 2019, CFTC staff found over 70% of all records submitted to the SDRs came from SDs. Between 15% and 20% came from DCOs, 4% came from SEFs, and the remaining came from non-SD reporting counterparties.

[402] 85 FR at 21628 (Apr. 17, 2020).

[403] *See* CFTC's Weekly Swaps Report, *available at https://www.cftc.gov/MarketReports/SwapsReports/index.htm.*

[404] As described throughout this release, the Commission is adopting a number of non-substantive changes, such as renumbering provisions and modifying the wording of existing provisions. The Commission may acknowledge these non-substantive amendments, but they present no costs or benefits to consider.

[405] Hourly wage rates came from the Software Developers and Programmers category of the May 2019 National Occupational Employment and Wage Estimates Report produced by the U.S. Bureau of Labor Statistics, *available at https://www.bls.gov/oes/current/oes_nat.htm.* The 25th percentile was used for the low range and the 90th percentile was used for the upper range ($36.89 and $78.06, respectively). Each number was multiplied by an adjustment factor of 1.3 for overhead and benefits (rounded to the nearest whole dollar) which is in line with adjustment factors the CFTC has used for similar purposes in other final rules adopted under the Dodd-Frank Act. *See, e.g.,* 77 FR at 2173 (using an adjustment factor of 1.3 for overhead and other benefits). These estimates are intended to capture and reflect U.S. developer hourly rates market participants are likely to pay when complying with the changes. Individual entities may, based on their circumstances, incur costs substantially greater or less than the estimated averages.

[406] *See* 85 FR at 21628 (Apr. 17, 2020).

making it reasonably feasible for the Commission to quantify overall costs and benefits, or costs and benefits for specific proposed amendments, to a degree beyond that presented in the Proposal, except as otherwise noted below.

5. Costs and Benefits of Amendments to Part 45

a. § 45.3—Swap Data Reporting: Creation Data

The Commission is changing § 45.3 to (i) remove the requirement for SEFs, DCMs, and reporting counterparties to report separate PET and confirmation data reports; (ii) extend the deadline for reporting required swap creation data and allocations to T+1 or T+2, depending on the reporting counterparty; (iii) remove the requirement for SDRs to map allocations; and (iv) remove the international swap reporting requirements.

The Commission believes: (i) Single required creation data report will reduce complexity for reporting counterparties, as well as for the Commission; (ii) extending the deadline to report required swap creation data and allocations will improve data quality without impacting the Commission's ability to perform its regulatory responsibilities; (iii) the requirements for SDRs to map allocations and the international swap requirements are unnecessary.

The Commission is also updating the swap data elements in appendix 1, which existing and amended § 45.3 require SEFs, DCMs, and reporting counterparties report to SDRs in the manner provided in § 45.13(b).[407] The Commission believes this will improve data quality at SDRs and help market participants by removing ambiguity around what data they need to report to SDRs.

i. Benefits

Requiring a single confirmation data report for SEFs, DCMs, and reporting counterparties will benefit SDRs, SEFs, DCMs, and reporting counterparties by reducing the number of swap data reports being sent to and stored by SDRs. An analysis of SDR data by Commission staff found this change is likely to significantly reduce reported messages, which benefits the reporting parties sending data, and the SDRs who ingest, validate and store the data. The analysis showed 26% of all swap messages received by the Commission from DTCC, ICE, and CME in December of 2019 (48 million records in total) were separate PET and confirm messages, which means this amendment could reduce overall messages reported to and stored by SDRs by approximately 13% overall.

Extending the deadline to report required swap creation data will benefit SDRs, SEFs, DCMs, and reporting counterparties by giving SEFs, DCMs, and reporting counterparties more time to report swap data to SDRs, likely reducing the number of errors SDRs would need to follow-up on with reporting entities. Since reporting data ASATP requires reporting systems to monitor activity and report in real-time, the new deadline will also benefit SDRs, SEFs, DCMs, and reporting counterparties by allowing them to implement a simpler data reporting workflow that assembles and submits data once per day.

Removing the requirements to map allocations and international swaps will benefit SDRs by removing the need to manage separate processes to maintain this information. SEFs, DCMs, and reporting counterparties will benefit from reporting allocations directly via swap data reporting, and no longer reporting information about international swaps that will be rendered unnecessary given the UTI standards.

Through updating and further specifying the swap data elements required to be reported to SDRs, the Commission will benefit from having swap data that is more standardized, accurate, and complete across SDRs. As discussed in section V above, the Commission's use of the data to fulfill its regulatory responsibilities has been complicated by varying degrees of compliance with swap data standards both within and across SDRs.

ii. Costs

The Commission expects the initial cost of updating systems to adopt the changes in § 45.3—outside of updating the data elements in appendix 1—to be small.[408] Most SEFs, DCMs, and reporting counterparties should have systems to report swap data to SDRs ASATP after execution, as well as systems that report separate PET and confirmation swap reports and information about international swaps. SDRs likewise have systems to accept both PET data and confirmation data reports, possibly separately or combined, as well as systems to map allocations and ingest information about international swaps.

In both cases, the changes will reduce complexity and software functionality. Reporting entities will no longer have to generate and submit multiple messages, which will require limited cost and effort to implement. SDRs will also require few, if any, updates to ingest fewer messages and will see data storage costs decline over time.

The Commission expects market participants to further mitigate costs by the fact they involve updates to current systems, rather than having to create new systems as most firms had to do when the CFTC first required swaps reporting. CFTC SMEs estimate the cost of these changes to be small, but not zero, for large reporting entities and SDRs due to the reduction in complexity and system features. However, over time, after entities implement these one-time system updates, the Commission expects SDRs, SEFs, DCMs, and reporting counterparties will recognize significant benefits through reduced costs and complexity associated with reporting streamlined data to SDRs.

The Commission received comments supporting its expectation that the changes to § 45.3 will improve data quality and reduce compliance and cost burdens. Specifically, DTCC believes these changes will improve data quality by reducing the number of corrections sent to the SDRs and streamline reporting for market participants.[409] ISDA–SIFMA believe the extended timeline for reporting swap data will improve data quality[410] and CEWG comments that these changes will reduce the compliance burden on market participants.[411] The Commission requested comments on the proposed cost-benefit analysis for § 45.3, but did not receive any providing data, significant cost-benefit alternatives, or opposing views on the costs and benefits.

Conversely, the Commission expects SEFs, DCMs, SDRs, and reporting counterparties will incur greater costs in response to the changes to the appendix 1 data elements in order to comply with § 45.3. Beyond the changes to appendix 1, the Commission expects SEFs, DCMs, SDRs, and reporting counterparties will update systems according to DMO's technical specification on website at *www.cftc.gov,* resulting in additional costs, even though the technical specifications help these entities

[407] The Commission is moving § 45.13(b) to § 45.13(a)(3) and updating the reference in § 45.3.

[408] The Commission estimates for PRA purposes that there would be a decrease in the burden incurred by reporting counterparties, as discussed in the PRA estimates.

[409] DTCC at 5.

[410] ISDA–SIFMA 5–7.

[411] CEWG at 2.

implement reporting for the data elements in appendix 1.

The three SDRs will need to update their systems to accept the updated swap data elements in appendix 1. SEFs, DCMs, and reporting counterparties will need to update systems to report the swap data elements in appendix 1 to SDRs. SDRs will also need to update systems to validate swap data pursuant to the validations requirements in § 49.10(c). The costs are likely to differ across entities but, depending on current systems, as indicated in the estimates detailed below, could be significant, before accounting for likely mitigating factors, also discussed below.

The Commission believes some factors will mitigate the costs to these entities. First, most of the swap data the Commission is further standardizing with updated appendix 1 is currently being reported to SDRs. Commission staff recognizes that data quality has improved over the past years as SDRs adopted more technical standards on their own. However, for certain assets classes, the Commission expects the changes from current practice could be more pronounced. Costs to standardize data elements that had not previously been standardized in certain asset classes like commodities, or adding new data elements would be costlier; although the reporting entity could mitigate costs if it already saves this information but either does not currently send it to an SDR or sends it in a non-standard format.

To the extent SDRs operate in multiple jurisdictions, ESMA already requires many of the swap data elements the Commission is adopting. An SDR presumably will spend fewer resources updating its systems for the changes in appendix 1 if it has already made these changes for European markets. Similarly, SEFs, DCMs, and reporting counterparties reporting to European TRs may have to spend fewer resources.

Additionally, after the updates are made, the Commission expects SDRs, SEFs, DCMs, and reporting counterparties will see an offsetting reduction in costs through reporting a more streamlined data set than what is currently being reported to SDRs. In addition, entities reporting in multiple jurisdictions will be able to report more efficiently as jurisdictions adopt the CDE Technical Guidance data elements.

Finally, the changes adopted to the swap data elements makes the part 43 swap transaction and pricing data elements a subset of the part 45 swap data elements. This means the changes to parts 43 and 45 will require technological changes that could merge two different data streams into one. For example, SDRs will have to adjust their extraction, transformation, and loading (''ETL'') process to accept feeds that comply with the new technical specification and validation conditions, but these changes will apply to data elements in both parts 43 and 45.

Because many of the changes SDRs will make to comply with part 45 will likely also help them comply with part 43, the Commission anticipates significantly lower aggregate costs for complying with both rules relative to the costs for parts 43 and 45 separately. For this reason, the costs described below may most accurately represent the full technological cost of satisfying the requirements for both final rules but for purposes of this section focus on the part 45 swap data elements.

Based on conversations with ODT SMEs experienced in designing data reporting, ingestion, and validation systems, Commission staff estimates the cost per SDR to be in a range of $144,000 to $505,000.[412] Staff based this estimate on several assumptions and covers the set of tasks required for an SDR to design, test, and implement a data system based on the list of swap data elements in appendix 1 and the technical specification.[413] These numbers assume that each SDR will spend approximately 3,000–5,000 hours to establish ETL processes into a relational database on such a data stream.[414]

For reporting entities, the Commission estimates the cost per reporting entity to be in a range of $24,000 to $73,225.[415] This cost estimate is based on several assumptions and covers a number of tasks required by the reporting entities to design, test, and implement an updated data system based on the swap data elements, technical specification, and validation conditions.[416] These tasks include defining requirements, developing an extraction query, developing an interim extraction format (*e.g.,* comma-separated values (''CSV'')), developing validations, developing formatting conversions, developing a framework to execute tasks on a repeatable basis, and finally, integration and testing. Staff estimates it would take a reporting entity 200 to 325 hours to implement the extraction. Including validations and conversions would add another 300 to 400 hours, resulting in an estimated total of 500 to 725 hours per reporting entity.[417]

The Commission received one comment, from CME, addressing these estimates.[418] CME notes it expects the costs for its organization to be 8,000 to 10,000 developer hours, which is approximately double the 3,000 to 5,000 developer-hour estimate listed above. The costs CME references are specific to its organization. The costs may not directly apply to other SDRs and do not apply to the reporting counterparties, but provide useful information on the level of effort needed to comply with these amendments. Accordingly, the

[412] To generate the included estimates, a bottom-up estimation method was used based on internal CFTC expertise. In brief, and as seen in the estimates, staff anticipates the task for the SDRs will be significantly more complex than it is for reporters. On several occasions, the CFTC has developed an ETL data stream similar to the parts 43 and 45 data streams. These data sets consist of 100–200 data elements, similar to the number of data elements in appendix 1. This past Commission experience has been used to derive the included estimates.

[413] These assumptions include: (1) At a minimum, the SDRs will be required to establish a data extraction transformation and loading (ETL) process. This implies that either the SDR is using a sophisticated ETL tool, or will be implementing a data staging process from which the transformation can be implemented. (2) The SDR would require implementation of a new database or other data storage vehicle from which their business processes can be executed. (3) While the record structure is straight forward, the implementation of a database representing the different asset classes may be complex. (4) The SDR would need to implement a data validation regime typical of data sets of this size and magnitude. (5) The cost to operate the stream would be lower due to the standardization of incoming data, and the opportunity to automatically validate the data may make it less labor intensive.

[414] The lower estimate of $144,000 represents 3,000 working hours at the $48 rate. The higher estimate of $505,000 represents 5,000 working hours at the $101 rate.

[415] To generate the included estimates, a bottom-up estimation method was used based on internal CFTC expertise. On several occasions, the CFTC has created data sets transmitted to outside organizations. These data sets consist of 100–200 data elements, similar to the number of data elements in appendix 1. This past experience has been used to derive the included estimates.

[416] These assumptions include: (1) The data that will be provided to the SDRs from this group of reporters largely exists in their environment. The back end data is currently available; (2) the data transmission connection from the firms that provide the data to the SDR currently exists. The assumption for the purposes of this estimate is that reporting firms do not need to set up infrastructure components such as FTP servers, routers, switches, or other hardware; it is already in place; (3) implementing the requirement does not cause reporting firms to create back end systems to collect their data in preparation for submission. It is assumed that firms that submit this information have the data available on a query-able environment today; (4) reporting firms are provided with clear direction and guidance regarding form and manner of submission. A lack of clear guidance will significantly increase costs for each reporter; and (5) there is no cost to disable reporting streams that will be made for obsolete by the change in part 43.

[417] The lower estimate of $24,000 represents 500 working hours at the $48 rate. The higher estimate of $73,225 represent 725 working hours at the $101 rate.

[418] CME at 22.

Commission deems it appropriate to expand the range of potential costs per SDR before mitigation upwards to between $144,000 and $1,010,000 for purposes of its cost-benefit assessment. Additionally, CME acknowledges they expect maintenance costs to decline over time due to the streamlined reporting requirements. The Commission did not receive any other comments related to the amendments to the data elements in appendix 1 that provided additional data, significant cost-benefit alternatives, or other opposing or critical views.

In sum, for reasons discussed above and taking into account relevant comments, the Commission believes the expected benefits justify the final rule amendments notwithstanding their expected mitigated costs.[419]

b. § 45.4—Swap Data Reporting: Continuation Data

The Commission is amending § 45.4 to (i) remove the option for state data reporting; (ii) extend the deadline for reporting required swap continuation data to T+1 or T+2; (iii) remove the requirement for non-SD/MSP/DCO reporting counterparties to report valuation data quarterly; and (iv) require SD/MSP reporting counterparties to report margin and collateral data daily.

The Commission believes: (i) Removing state data reporting will reduce the number of messages being sent to and stored by SDRs; (ii) extending the deadline to report required swap continuation data will improve data quality without impacting the Commission's ability to perform its regulatory responsibilities; (iii) removing the valuation data reporting for non-SD/MSP/DCO reporting counterparties will reduce burdens for these counterparties, which tend to be smaller and less active in the swaps market; and (iv) requiring SD/MSP reporting counterparties to report margin and collateral daily is reasonable given the sophistication of their trading and reporting systems, especially on a T+1 timeline, and essential for the Commission to monitor risk.

i. Benefits

Removing state data reporting will benefit reporting counterparties by reducing the number of messages they report to SDRs. This will also benefit SDRs by reducing the number of messages they need to ingest, validate, process, and store. In 2019, CFTC staff estimates the Commission received over 557 million swap messages from CME, DTCC, and ICE. Staff analysis from December 2019 shows over 50% of all records submitted were state data messages.

Extending the deadline to report required swap continuation data will benefit SDRs and reporting counterparties by reducing the number of validation errors SDRs must notify reporting counterparties about. Removing the requirement for non-SD/MSP/DCO reporting counterparties to report quarterly valuation data will reduce reporting costs for these estimated 1,585 counterparties, which tend to be smaller and less active in the swaps market. Because of their size, the Commission does not expect the lack of valuation data to inhibit the Commission's market oversight responsibilities.

ISDA–SIFMA note approximately 98% of uncleared swaps involve at least one SD. As such, this change will affect 2% of reported swaps, which they agree do not present systemic risk issues.[420] Requiring SD/MSP reporting counterparties to report margin and collateral daily will benefit the swaps market by improving the Commission's ability to monitor swap markets and systemic risk within and across markets, particularly for uncleared swaps. In contrast, because existing part 45 reports do not include collateral information, while the Commission is often able to identify the level of risk inherent to a swap (or set of swaps), it may not fully understand the amount of collateral protection a counterparty holds to mitigate this risk.

ii. Costs

The Commission expects the initial costs of updating systems to adopt the changes in § 45.4 to range from low to moderate, offset by the decreased reporting burden for all reporting entities.[421] For instance, the Commission understands many reporting counterparties have systems to report swap data, including snapshot data, to SDRs according to the current timelines. Extending the deadline reduces some of this complexity and removes a message type that accounts for over 50% of the existing message traffic, which will significantly reduce reporting burdens. Based on CFTC SME experience with similar systems, SDRs should require minimal updates to their systems that accept snapshot data and should ultimately experience reduced data storage costs.

Non-SD/MSP/DCO reporting counterparties will need to update their systems to stop sending valuation data to SDRs. In contrast, SD/MSP reporting counterparties will need to program systems to begin reporting margin and collateral data in addition to valuation data. The T+1 reporting timeline mitigates this by allowing end-of-day data integration and validation processes as opposed to near-real-time integration, which, according to CFTC SMEs and staff conversations with industry participants, provides flexibility in how and when system resources are used to produce the reports and better aligns trade and collateral and margin data reporting streams. The Commission understands SD/MSP reporting counterparties currently have access to the data they need to report collateral and margin data and the costs lie in integrating that information with the swap data reporting stream. The cost of implementing these changes is expected to be fully contained in and a subset of the costs associated with implementing the updated data elements in appendix 1 detailed in section VII.C.5.a above. As a result, the Commission expects the cost of reporting daily collateral and margin data for SD/MSP reporting counterparties on a T+1 basis to be fully encapsulated by the effort to implement the updated data elements in appendix 1.

Additionally, over time, after these one-time system updates, the Commission expects SDRs, SEFs, DCMs, and reporting counterparties will recognize the full benefits of the reduced costs associated with reporting streamlined data to SDRs in a more reasonable time frame. While the Commission understands reporting margin and collateral data to SDRs will likely involve costs for the estimated 107 SD/MSP reporting counterparties, it is unlikely to occasion significant, if any material, additional costs for the SDRs serving EU jurisdictions. This is because ESMA currently requires the reporting of much of the same information to EU-registered TRs.

The Commission expects this could also mitigate the costs for most of the 107 SD/MSP reporting counterparties given that they are likely active in European swap markets and thus already comply with similar requirements. The Commission also expects, for the smaller remaining group of reporting entities not active in European swaps markets, each entity already has access to the collateral and margin information. Accordingly, for

[419] Note the costs associated with reporting daily collateral and margin information required by § 45.4 for SD/MSP/DCO reporting counterparties as detailed in section VII.C.5.b.ii are fully reflected in the costs detailed in this section.

[420] ISDA–SIFMA at 8.

[421] The Commission estimates for PRA purposes that there would be a moderate increase in the burden incurred by market participants, as discussed in the PRA section.

them, the primary cost will be in integrating existing collateral data streams into SDR reporting workflows, which is less costly and burdensome than acquiring additional or outside data to integrate. CFTC SMEs estimate the cost of these changes to be small to moderate for large reporting entities and SDRs due to the reduction in complexity and system features, as well as the extended timeline to integrate potentially disparate data streams.

The Commission received comments supporting its expectation these amendments will benefit the market and mitigate costs incurred. FIA agrees the quarterly valuation data reported by non-SD/MSP/DCO reporting counterparties is not integral to the CFTC's systemic risk monitoring and the benefit of collecting this data do not justify the cost incurred by the impacted market participants.[422] CEWG believes the burden of collecting the quarterly valuation data is not proportional to the limited value the data provides.[423] Additionally, IECA notes many small counterparties contract with third-party reporting services to report the required quarterly valuations and the value derived from the data does not justify the cost.[424]

The Commission received 12 comments related to the daily collection of collateral and margin data from SD/MSP/DCO counterparties, with four in favor and eight opposed. Of the supportive comments, Markit addresses the expected costs by noting the daily submission of both cleared and uncleared collateral and margin data is more streamlined and efficient (and therefore cost-effective) than making reporting for cleared trades optional.[425] Other supportive commenters emphasize the need to harmonize collateral and margin data elements to the greatest extent possible across jurisdictions in order to not create unnecessary costs for market participants.[426] Several of the opposing comments note the additional regulatory costs associated with reporting collateral and margin data,[427] which as noted above is mitigated by the T+1 reporting deadline.

CME, Eurex, ICE DCOs, ISDA–SIFMA, and FIA raise concerns about duplicative reporting for DCOs regarding cleared swaps. Further, as noted in section II.D.4 above, the Commission acknowledges these concerns but believes the costs are warranted for uncleared swaps reported by SD/MSP reporting counterparties, as this information is not available elsewhere and is critical for monitoring systemic risk. For cleared swaps reported by DCOs, however, the Commission acknowledges the potential duplication with collateral and margin data reported by DCOs pursuant to part 39. While collateral and margin data is reported pursuant to part 39 using a different set of data elements than those contained in appendix 1, and collateral and margin data is reported for end-of-day positions pursuant to part 39 as opposed to a more granular transaction-by-transaction basis pursuant to part 45, the Commission believes the collateral and margin data reported by DCOs pursuant to part 39 is sufficiently similar to data reported pursuant to part 45 to meet the Commission's current needs.

In sum, for reasons discussed above and taking into account relevant comments, the Commission believes the expected benefits justify the final rule amendments notwithstanding their expected mitigated costs.

c. § 45.5—Unique Swap Identifiers

The Commission is amending § 45.5 to (i) require reporting parties use UTIs instead of USIs for new swaps; (ii) require financial entities to generate UTIs for off-facility swaps; and (iii) permit non-SD/MSP/DCO reporting counterparties that are not financial entities to generate UTIs themselves or ask their SDR to generate UTIs for off-facility swaps. In general, the Commission believes transitioning to the globally standardized UTI system will benefit SDRs, SEFs, DCMs, and reporting counterparties by reducing the complexity associated with reporting swaps to multiple jurisdictions.

i. Benefits

The Commission believes amending § 45.5 will benefit SDRs by providing one identifier for multiple regulators to adopt to reduce the burdens associated with multiple jurisdictions requiring different, and possibly conflicting, identifiers. The Commission believes requiring SD/MSP and other financial entity reporting counterparties to generate UTIs for off-facility swaps will benefit SDRs by reducing the frequency with which they would be responsible for UTI generation, as compared to the current frequency with which they generate USIs.

The Commission believes permitting non-SD/MSP/DCO reporting counterparties that are not financial entities to either generate UTIs or ask their SDR to generate UTIs for off-facility swaps will benefit smaller, less-active swaps market participants by relieving them of the burden to generate UTIs unless they choose to do so. Non-financial entities may include end-users more likely to not maintain systems that automatically generate UTIs. Therefore, this group will benefit proportionally more from this change.

Permitting these entities to ask the SDRs to generate UTIs will maintain, but lower, an ancillary cost for the three SDRs that are currently required to generate USIs for off-facility swaps with non-SD/MSP reporting counterparties. The Commission believes giving these reporting counterparties the option, rather than a mandate, strikes the appropriate balance between avoiding undue costs for SDRs and significant burdens for the least-sophisticated market participants.

ii. Costs

In general, the Commission expects the initial costs of updating systems to adopt UTIs will be small to moderate for most reporting entities and SDRs.[428] For instance, the Commission expects reporting counterparties and SDRs have systems that generate, report, accept, validate, process, and store USIs. CFTC SMEs estimate the cost of these changes to be small for large reporting entities and small to moderate for SDRs. However, over time, the Commission expects market participants will recognize the reduced costs associated with reporting a globally-standardized UTI.

In addition, the Commission understands ESMA mandates UTIs. The Commission views this as a significant mitigating factor when assessing what, if any, additional burden SDRs serving multiple jurisdictions as well as reporting counterparties active in the European markets, will experience, since they have likely already updated their systems to meet the European standards.

Commenters support the Commission's expectation implementing the global standard would streamline reporting across jurisdictions, reduce costs overall, and benefit markets by facilitating more accurate global swap data aggregation.[429] LCH notes implementing the UTI will reduce cross-border reporting complexity, further

[422] FIA at 14.

[423] CEWG at 2.

[424] IECA at 3.

[425] Markit at 6.

[426] FXPA at 4–5.

[427] *See, e.g.,* CEWG at 8 and Eurex at 3.

[428] The Commission estimates for PRA purposes that there would be a moderate increase in the burden incurred by market participants, as discussed in the PRA section.

[429] GLEIF at 3; *see also* GFXD at 22–23.

encouraging global aggregation.[430] Many commenters also support expanding the ability to generate UTIs to non-SD/MSP/DCO reporting counterparties that are not financial entities for off-facility swaps since they are in the best position to collect the required information (such as the LEI) from the non-reporting counterparty[431] and it removes a disparity between trade identifiers used by internal record-keeping systems and data reported to SDRs.[432]

Some commenters disagree with keeping SDRs as the UTI ''generator of last resort.''[433] However, other commenters recognize the need for it in some cases.[434] Further, keeping SDRs at the bottom of the UTI generation hierarchy is consistent with the UTI Technical Guidance and is currently required by the Commission's regulations.

In sum, for reasons discussed above and taking into account relevant comments, the Commission believes the expected benefits justify the final rule amendments notwithstanding their expected mitigated costs.

d. § 45.6—Legal Entity Identifiers

The Commission is amending § 45.6 to (i) require SDs, MSPs, DCOs, SEFs, DCMs, and SDRs to maintain and renew LEIs; (ii) require financial entity reporting counterparties to use best efforts to cause LEIs to be issued for swap counterparties that do not have one and if those efforts fail, to promptly provide the identity and contact information of the counterparty to the Commission; and (iii) update unnecessary and outdated regulatory text. The Commission believes accurate LEIs are essential for the Commission to use swap data to fulfill its regulatory responsibilities.

i. Benefits

Mandating LEI renewal will benefit the swaps market by improving the Commission's ability to analyze activity in the swaps market. Reference data provide valuable identification and relationship information about swap counterparties. Accurate reference data allow for robust analysis of risk concentration within and across entities, as well as a way to identify the distribution or transfer of risk across different legal entities under the same parent. The Commission believes accurate reference data is essential for it to satisfy its regulatory responsibilities because it clearly identify entities involved in the swaps market, as well as how these entities relate to one another—both key requirements for monitoring systemic risk and promoting fair and efficient markets. In addition, LEIs have already been broadly adopted in swaps markets and have reduced ambiguity for market participants previously using various unstandardized identifiers.

ii. Costs

LEI renewals will impose some costs.[435] Currently, the Commission understands registering a new LEI costs $65 and renewals cost each holder $50 per year.[436] One comment notes the mitigating fact these costs have fallen by more than 50% over the last 5 years due to increased efficiency as market adoption increased.[437] To limit burdens, the Commission is limiting the renewal requirement to the estimated 150 SDs, MSPs, SEFs, DCMs, DCOs, and SDRs, resulting in an aggregate cost of approximately $7,500 for this requirement. The Commission believes these entities have the most systemic impact on the Commission's ability to fulfill its regulatory mandates and thus warrant this small additional cost. The Commission will consider expanding the renewal requirement in future releases upon further enhancements in LEI reference data or realized reductions in cost to LEI holders.

Requiring financial entities to endeavor to cause LEIs to be issued for swap counterparties that do not have one (and, if those efforts fail, to report the identity and contact information of the counterparty to the Commission) will both further the Commission's objective of monitoring risk in the swaps market and incentivize LEI registration for counterparties that have not yet obtained LEIs. However, the Commission recognizes this requirement imposes some costs on both the entity encouraged to obtain an LEI and the financial entity in verifying that its counterparties have valid LEIs and encouraging them to obtain one (or obtaining an LEI for them) if they do not and informing the Commission if the financial entity's efforts fail. As mentioned above, the cost to an entity to obtain an LEI is minor, and has trended down over time. Further, financial entities collect the same information during the onboarding process when entering into a swap contract with a new counterparty that is needed to obtain an LEI for the counterparty, a mitigating factor for the financial entities to the extent they must be required to encourage their counterparties to obtain LEIs (or obtain an LEI for them). The cost to notify the Commission if the financial entity's efforts fail is also expected to be low. The Commission expects both cases to impose a limited burden on swaps markets as the widespread adoption of the LEI standard continues.

The number of current swap counterparties without LEIs is difficult to estimate because of the lack of standardization of non-LEI identifiers. The Commission cannot determine whether non-LEI identifiers represent an entity that has already been assigned an LEI or whether two non-LEI identifiers are two different representations of the same entity. However, the Commission expects the number of counterparties currently without LEIs to be small, given the results of an analysis from December 2019 that showed 90% of all records reported had LEIs for both counterparties. More generally, any swap data that does not identify eligible counterparties with an LEI hinders the Commission's fulfillment of its regulatory mandates, including systemic risk monitoring. Given the low cost of registering for a new LEI listed above, the small number of remaining entities engaging in swap transactions without an LEI, and the limited amount of additional effort financial entities need to exert so that every LEI-eligible counterparty has an LEI, the Commission expects the overall cost of this amendment to be minimal.

The Commission received comments supporting its expectation that requiring the most systemically important swaps market participants to maintain and renew their LEIs will facilitate better aggregation of entities and more accurate analysis of swaps market activity, market concentration, risk transfer, and systemic risk. Commenters, including DTCC, GLEIF, XBRL, LCH, Chatham, and Eurex, all support the requirement for SDs, MSPs, DCOs, SEFs, DCMs, and SDRs to maintain and renew their LEIs to ensure their accuracy noting this improves transparency and aligns with the global adoption of LEIs.[438] While the existing requirement for all LEI holders to update their LEI reference data remains, the Commission believes the confirmation of the

[430] LCH at 3.

[431] DTCC at 5.

[432] CME at 16.

[433] CME at 16–17, DTCC at 5, and ICE SDR at 5.

[434] Chatham at 3.

[435] The Commission estimates for PRA purposes that there would be a slight increase in the burden incurred by market participants, as discussed in the PRA section.

[436] LEI registration and renewal costs from Bloomberg LLP, retrieved on September 16, 2020. *https://lei.bloomberg.com/docs/faq#what-fees-are-involved.*

[437] GLEIF at 1–2.

[438] DTCC at 6, GLEIF at 1–2, XBRL at 2, LCH at 3, Chatham at 3, Eurex at 4.

accuracy of their reference data provided by LEI holders during LEI renewal serves as an additional assurance of data quality for the most systematically important entities, and therefore warrants the annual renewal requirement for SDs, MSPs, DCOs, SEFs, DCMs, and SDRs.

In sum, for reasons discussed above and taking into account relevant comments, the Commission believes the expected benefits justify the final rule amendments notwithstanding their expected mitigated costs.

e. § 45.10—Reporting to a Single SDR

The Commission is amending § 45.10 to permit reporting counterparties to transfer swap data and swap transaction and pricing data between SDRs in revised § 45.10(d). To do so, reporting counterparties will need to notify the current SDR, new SDR, and non-reporting counterparty of the UTIs for the swaps being transferred and the date of transfer at least five business days before the transfer. Reporting counterparties will then need to report the change of SDR to the current SDR and the new SDR, and then begin reporting to the new SDR. The Commission believes the ability to change SDRs will benefit reporting counterparties by permitting them to choose the SDR that best fits their business needs.

i. Benefits

The amendments to § 45.10(d) will benefit reporting counterparties by giving them the freedom to select the SDR that provides the best services, pricing, and functionality to serve their business needs instead of having to use the same SDR for the entire life of the swap. The Commission believes reporting counterparties could benefit through reduced costs if they had the ability to change to an SDR that provided services better calibrated to their business needs.

ii. Costs

The amendments will impose costs on the three SDRs. SDRs will need to update their systems to permit reporting counterparties to transfer swap data and swap transaction pricing data in the middle of a swap's life cycle, rather than at the point of swap initiation. However, the Commission believes SDRs will be able to accommodate these changes after initial system updates since they are only slightly more burdensome than current onboarding practices for new clients at SDRs.[439]

The Commission received comments supporting its expectation that market participants will benefit from the flexibility to change SDRs and the SDRs themselves will be able to accommodate the changes with minimal additional burden.[440] The Commission requested comments on the costs and benefits of the amendments to § 45.10, but did not receive any comments that provided additional data, significant cost-benefit alternatives, or other opposing or critical views on the costs and benefits.

In sum, for reasons discussed above and taking into account relevant comments, the Commission believes the expected benefits justify the rule amendments notwithstanding their expected mitigated costs.

f. § 45.12—Data Reporting for Swaps in a Swap Asset Class Not Accepted by Any SDR

The Commission is removing the § 45.12 regulations permitting voluntary supplemental reporting. Existing § 45.12 permits voluntary supplemental reporting to SDRs and specifies counterparties must report USIs, LEIs, and an indication of jurisdiction as part of the supplementary report. Existing § 45.12 also requires counterparties correct errors in voluntary supplemental reports. The Commission believes removing voluntary supplemental reports will reduce unnecessary messages at SDRs that do not provide a clear regulatory benefit to the Commission.

i. Benefits

Removing the option for voluntary supplemental reporting will benefit SDRs that will no longer need to take in, process, validate, and store the reports. This should reduce costs and any unnecessary complexities for SDRs concerning these reports that provide little benefit to the Commission.

ii. Costs

The change could impose initial costs on SDRs. SDRs may need to update their systems to stop accepting these reports. However, the Commission expects these costs will be minimal and after the initial system updates, SDRs should see reduced costs by not having to accommodate these reports. CFTC SMEs estimate the cost of these changes to be small for large reporting entities and SDRs.

The Commission received comments from Eurex, ISDA–SIFMA, and NRECA–APPA in support of this amendment.[441] The Commission did not receive any comments providing additional data, significant cost-benefit alternatives, or other opposing or critical views on the costs and benefits. In sum, for reasons discussed above and taking into account relevant comments, the Commission believes the expected benefits justify the final rule amendments notwithstanding their expected mitigated costs.

6. Costs and Benefits of Amendments to Part 46

a. § 46.3—Swap Data Reporting for Pre-Enactment Swaps and Transition Swaps

The Commission is amending § 46.3 to remove an exception for required swap continuation data reporting for pre-enactment and transition swaps. Existing § 46.3(a)(2) provides that reporting counterparties need to report only a subset of part 45 swap data elements when reporting updates to pre-enactment and transition swaps. The Commission is removing that exception to specify that reporting counterparties would report updates to pre-enactment and transition swaps according to part 45.

The Commission believes this is current practice for SDRs and reporting counterparties, and therefore should not impact costs or benefits to SDRs and reporting counterparties. The Commission did not receive any comments on the cost-benefit considerations for the proposed changes to § 46.3.

b. § 46.10—Required Data Standards

The Commission is updating § 46.10 to require reporting counterparties to use the required data standards outlined in § 45.13(a) and data elements in appendix 1 for reporting historical swaps to SDRs. The Commission believes reporting counterparties currently use the same data standards for both parts 45 and 46 reporting. This change will ensure that reporting counterparties continue to do so under the updated list of swap data elements in appendix 1 and the new technical specification.

SDRs and reporting counterparties will both incur costs in updating their part 46 reporting systems to report according to any of the changes to part 45 reporting. However, given the diminishing number of historical swaps that have not yet matured or been terminated, the Commission expects these costs will be negligible compared to the costs associated with complying with new data elements in appendix 1.

[439] The Commission estimates for PRA purposes that there would be a minimal increase in the burden incurred by reporting counterparties, as discussed in the PRA section.

[440] GFXD at 24, DTCC at 7.

[441] Eurex at 5, ISDA–SIFMA at 16, NRECA–APPA at 5.

In addition, since the data elements are the same, any costs or benefits are captured in the Commission's analysis for § 45.3. The Commission did not receive any comments on the cost-benefit considerations for the proposed changes to § 46.10.

c. § 46.11—Reporting of Errors and Omissions in Previously Omitted Data

The Commission is removing § 46.11(b) to remove the option for state data reporting. This is consistent with the Commission's elimination of state data reporting in § 45.4. While the number of historical swaps that have not yet matured or been terminated is dwindling, SD/MSP and non-SD/MSP reporting counterparties would see a reduction in costs due to no longer having to submit daily reports for any open swaps.[442] The Commission did not receive any comments on the cost-benefit considerations for the proposed removal of § 46.11(b).

7. Costs and Benefits of Amendments to Part 49

a. § 49.4—Withdrawal From Registration

The Commission is amending § 49.4 to (i) remove the erroneous requirement for SDRs to submit a statement to the Commission that the custodial SDR is authorized to make the withdrawing SDR's data and records available in accordance with § 1.44; and (ii) remove the § 49.4(a)(2) requirement that prior to filing a request to withdraw, a registered SDR file an amended Form SDR to update any inaccurate information and replace it with a new requirement for SDRs to execute an agreement with the custodial SDR governing the custody of the withdrawing SDR's data and records prior to filing a request to withdraw with the Commission. The Commission believes the amendments will simplify the regulations and help ensure that swap data is properly transferred to a different SDR when one SDR withdraws from registration.

i. Benefits

The Commission believes SDRs will benefit from the removal of the unnecessary requirement to update Form SDR prior to withdrawing from registration. The swaps market will benefit from having an explicit regulatory requirement for an SDR withdrawing from registration to have an agreement with the custodial SDR regarding the withdrawing SDR's data and records. This will also benefit market participants by ensuring the preservation of historical swap data which will improve the Commission's oversight abilities and promote the health and integrity of swaps markets.

ii. Costs

The Commission believes SDRs will not incur any material costs associated with the changes.[443] SDRs will execute a custodial agreement to transfer the data as a matter of due course. The changes concerning timing and removing the erroneous reference will not result in costs for the SDRs. The Commission did not receive any comments on the cost-benefit considerations for the proposed changes to § 49.4. In the absence of material costs, the Commission believes the expected benefits justify this amendment.

b. § 49.10—Acceptance of Data

Most of the amendments to § 49.10 are non-substantive technical amendments. However, the Commission is adding new § 49.10(c) to require SDRs to validate SDR data. New § 49.10(c) will require that SDRs establish data validations. SDRs will also be required to send SEFs, DCMs, and reporting counterparties data validation acceptance and error messages that identify the validation errors. The Commission is prohibiting SDRs from rejecting a swap transaction and pricing data message if it was submitted jointly with a swap data message that contained a validation error.

i. Benefits

SDRs, SEFs, DCMs, and reporting counterparties will benefit by having a single set of validation rules in the technical specification instead of the current environment where each SDR applies different validations they designed independently. A common set of validations specified in the technical data standards will also benefit market participants by streamlining the data reporting process for market participants and ensuring more accurate data which facilitates more effective market oversight by the Commission.

ii. Costs

SDRs, SEFs, DCMs, and reporting counterparties will incur costs in updating their reporting systems to apply these validation rules.[444] To the extent SDRs operate in multiple jurisdictions, ESMA already requires many data validations similar to those in the DMO technical specification to be published on *cftc.gov*. An SDR may have to spend fewer resources updating its systems for the changes in § 49.10(c) if it has already made these changes for European market participants. Similarly, SEFs, DCMs, and reporting counterparties reporting to European TRs may have to spend fewer resources making these updates. In both cases, the cost of implementing these changes is expected to be fully contained in the costs associated with implementing the data standards detailed in section VII.C.5.a above, since the validations are part of the data standards. As a result, the Commission expects the cost of implementing data validations to be fully encapsulated by the effort to implement the data standards.

The Commission received comments from FIA that they believe validations will improve data accuracy.[445] Markit supports validations notes they will allow third-party service providers to develop data validation solutions for reporting parties that will substantially reduce the cost of complying with them.[446] NRECA–APPA note these validations burden swap market participants and requests evidence of regulatory benefits that would offset their costs.[447] In response, the Commission maintains the critical regulatory benefits of more accurate swap data noted multiple times throughout section VII.C of this final rule and consistent with Congressional goals reflected in the Dodd-Frank Act—including more effective market oversight by the Commission and streamlined reporting processes for market participants—provide the necessary degree of justifying benefits. The Commission did not receive any comments that provided additional data, significant cost-benefit alternatives, or other opposing or critical views on the costs and benefits.

In sum, for reasons discussed above and taking into account relevant comments, the Commission believes the expected benefits justify the final rule amendments notwithstanding their expected mitigated costs.

8. Consideration of CEA Section 15(a) Factors

The Dodd-Frank Act sought to promote the financial stability of the U.S., in part, by improving financial system accountability and transparency.

[442] For instance, in reviewing credit default swap data, the Commission found that there were 153,563 open pre-enactment swaps and transition swaps in 2013. In 2019, that number had decreased to 2,048.

[443] The Commission estimates for PRA purposes that there would be a minimal change in the burden incurred by reporting counterparties, as discussed in the PRA section.

[444] The Commission estimates for PRA purposes that there would be an increase in the burden incurred by reporting counterparties and SDRs, as discussed in the PRA section.

[445] FIA at 7.

[446] Markit at 3.

[447] NRECA–APPA at 5.

More specifically, Title VII of the Dodd-Frank Act directs the Commission to promulgate regulations to increase swaps markets' transparency and thereby reduce the potential for counterparty and systemic risk.[448] Transaction-based reporting is a fundamental component of the legislation's objectives to increase transparency, reduce risk, and promote market integrity within the financial system generally, and the swaps market in particular. SDRs and SEFs, DCMs, and other reporting entities that submit data to SDRs are central to achieving the legislation's objectives related to swap reporting.

CEA section 15(a) requires the Commission to consider the costs and benefits of the proposed amendments to parts 45, 46, and 49 with respect to the following factors:

- Protection of market participants and the public;
- Efficiency, competitiveness, and financial integrity of markets;
- Price discovery;
- Sound risk management practices; and
- Other public interest considerations.

The Commission discusses the CEA section 15(a) factors below.

a. Protection of Market Participants and the Public

The Commission believes the reporting changes under parts 45, 46, and 49 will enhance protections already in place for market participants and the public. By lengthening reporting timeframes and standardizing data formats, the Commission believes it will receive more cohesive, more standardized, and, ultimately, more accurate data without sacrificing the ability to oversee the markets robustly. Higher-quality swap data will improve the Commission's oversight and enforcement capabilities, and, in turn, will aid it in protecting markets, participants, and the public in general.

b. Efficiency, Competitiveness, and Financial Integrity

The Commission believes the final rules will streamline reporting and improve efficiencies given the improved data standardization. By identifying reporting entities and more sharply defining reporting responsibilities by making DCO reporting duties clearer, the final rules strive to improve the reliability and consistency of swap data. This enhanced reliability, in turn, is an added support that might further lead to bolstering the financial integrity of swaps markets. Finally, the validation of swap data will improve the accuracy and completeness of swap data available to the Commission and will assist the Commission with, among other things, improved monitoring of risk exposures of individual counterparties, monitoring concentrations of risk exposure, and evaluating systemic risk.

c. Price Discovery

The Commission does not believe the final rules will have a significant impact on price discovery.

d. Risk Management Practices

The Commission believes the final rules will improve the quality of swap data reported to SDRs and, hence, improve the Commission's ability to monitor the swaps market, react to changes in market conditions, and fulfill its regulatory responsibilities generally. The Commission believes regulator access to high-quality swap data is essential for regulators to monitor the swaps market for systemic risk or unusually large concentrations of risk in individual swaps markets or asset classes.

e. Other Public Interest Considerations

The Commission believes the improved accuracy resulting from improvements to data entry by market participants and validation efforts by SDRs via the final rules has other public interest impacts including:

- Increased understanding for the public, market participants, and the Commission of the interaction between the swaps market, other financial markets, and the overall economy;
- Improved regulatory oversight and enforcement capabilities; and
- Enhanced information for the Commission and other regulators so that they may establish more effective public policies to monitor and, where necessary, reduce overall systemic risk.

D. Antitrust Considerations

CEA section 15(b) requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of the CEA, in issuing any order or adopting any Commission rule or regulation.

The Commission does not believe the changes to part 45 would result in anti-competitive behavior. The Commission believes the amendments to § 45.10(d) that would permit reporting counterparties to change SDRs would promote competition by encouraging SDRs to offer competitive pricing and services to encourage reporting counterparties to either stay customers or come to their SDR. The Commission did not receive any comments on the antitrust considerations in the Proposal.

List of Subjects

17 CFR Part 45

Data recordkeeping requirements, Data reporting requirements, Swaps.

17 CFR Part 46

Data recordkeeping requirements, Data reporting requirements, Swaps.

17 CFR Part 49

Registration and regulatory requirements, Swap data repositories.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR chapter I as follows:

PART 45—SWAP DATA RECORDKEEPING AND REPORTING REQUIREMENTS

■ 1. The authority citation for part 45 continues to read as follows:

Authority: 7 U.S.C. 6r, 7, 7a–1, 7b–3, 12a, and 24a, as amended by Title VII of the Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111–203, 124 Stat. 1376 (2010), unless otherwise noted.

■ 2. Revise § 45.1 to read as follows:

§ 45.1 Definitions.

(a) As used in this part:

Allocation means the process by which an agent, having facilitated a single swap transaction on behalf of several clients, allocates a portion of the executed swap to the clients.

As soon as technologically practicable means as soon as possible, taking into consideration the prevalence, implementation, and use of technology by comparable market participants.

Asset class means a broad category of commodities, including, without limitation, any ''excluded commodity'' as defined in section 1a(19) of the Act, with common characteristics underlying a swap. The asset classes include interest rate, foreign exchange, credit, equity, other commodity, and such other asset classes as may be determined by the Commission.

Business day means the twenty-four-hour day, on all days except Saturdays, Sundays, and legal holidays, in the location of the swap execution facility, designated contract market, or reporting

[448] *See* Congressional Research Service Report for Congress, The Dodd-Frank Wall Street Reform and Consumer Protection Act: Title VII, Derivatives, by Mark Jickling and Kathleen Ann Ruane (August 30, 2010); Department of the Treasury, Financial Regulatory Reform: A New Foundation: Rebuilding Financial Supervision and Regulation (June 17, 2009) at 47–48.

counterparty reporting data for the swap.

Business hours means consecutive hours during one or more consecutive business days.

Clearing swap means a swap created pursuant to the rules of a derivatives clearing organization that has a derivatives clearing organization as a counterparty, including any swap that replaces an original swap that was extinguished upon acceptance of such original swap by the derivatives clearing organization for clearing.

Collateral data means the data elements necessary to report information about the money, securities, or other property posted or received by a swap counterparty to margin, guarantee, or secure a swap, as specified in appendix 1 to this part.

Derivatives clearing organization means a derivatives clearing organization, as defined by § 1.3 of this chapter, that is registered with the Commission.

Electronic reporting (''report electronically'') means the reporting of data normalized in data elements as required by the data standard or standards used by the swap data repository to which the data is reported. Except where specifically otherwise provided in this chapter, electronic reporting does not include submission of an image of a document or text file.

Execution means an agreement by the parties, by any method, to the terms of a swap that legally binds the parties to such swap terms under applicable law.

Execution date means the date of execution of a particular swap. The execution date for a clearing swap that replaces an original swap is the date on which the original swap has been accepted for clearing.

Financial entity has the meaning set forth in CEA section 2(h)(7)(C).

Global Legal Entity Identifier System means the system established and overseen by the Legal Entity Identifier Regulatory Oversight Committee for the unique identification of legal entities and individuals.

Legal entity identifier or *LEI* means a unique code assigned to swap counterparties and entities in accordance with the standards set by the Global Legal Entity Identifier System.

Legal Entity Identifier Regulatory Oversight Committee means the group charged with the oversight of the Global Legal Entity Identifier System that was established by the Finance Ministers and the Central Bank Governors of the Group of Twenty nations and the Financial Stability Board, under the Charter of the Regulatory Oversight Committee for the Global Legal Entity Identifier System dated November 5, 2012, or any successor thereof.

Life-cycle event means any event that would result in a change to required swap creation data previously reported to a swap data repository in connection with a swap. Examples of such events include, without limitation, a counterparty change resulting from an assignment or novation; a partial or full termination of the swap; a change to the end date for the swap; a change in the cash flows or rates originally reported; availability of a legal entity identifier for a swap counterparty previously identified by some other identifier; or a corporate action affecting a security or securities on which the swap is based (*e.g.,* a merger, dividend, stock split, or bankruptcy).

Life-cycle-event data means all of the data elements necessary to fully report any life cycle event.

Mixed swap has the meaning set forth in CEA section 1a(47)(D), and refers to an instrument that is in part a swap subject to the jurisdiction of the Commission, and in part a security-based swap subject to the jurisdiction of the Securities and Exchange Commission.

Multi-asset swap means a swap that does not have one easily identifiable primary underlying notional item, but instead involves multiple underlying notional items within the Commission's jurisdiction that belong to different asset classes.

Non-SD/MSP/DCO counterparty means a swap counterparty that is not a swap dealer, major swap participant, or derivatives clearing organization.

Non-SD/MSP/DCO reporting counterparty means a reporting counterparty that is not a swap dealer, major swap participant, or derivatives clearing organization.

Novation means the process by which a party to a swap legally transfers all or part of its rights, liabilities, duties, and obligations under the swap to a new legal party other than the counterparty to the swap under applicable law.

Off-facility swap means any swap transaction that is not executed on or pursuant to the rules of a swap execution facility or designated contract market.

Original swap means a swap that has been accepted for clearing by a derivatives clearing organization.

Reporting counterparty means the counterparty required to report swap data pursuant to this part, selected as provided in § 45.8.

Required swap continuation data means all of the data elements that must be reported during the existence of a swap to ensure that all swap data concerning the swap in the swap data repository remains current and accurate, and includes all changes to the required swap creation data occurring during the existence of the swap. For this purpose, required swap continuation data includes:

(i) All life-cycle-event data for the swap; and

(ii) All swap valuation, margin, and collateral data for the swap.

Required swap creation data means all data for a swap required to be reported pursuant to § 45.3 for the swap data elements in appendix 1 to this part.

Swap means any swap, as defined by § 1.3 of this chapter, as well as any foreign exchange forward, as defined by section 1a(24) of the Act, or foreign exchange swap, as defined by section 1a(25) of the Act.

Swap data means the specific data elements in appendix 1 to this part required to be reported to a swap data repository pursuant to this part or made available to the Commission pursuant to part 49 of this chapter, as applicable.

Swap data validation procedures means procedures established by a swap data repository pursuant to § 49.10 of this chapter to accept, validate, and process swap data reported to the swap data repository pursuant to part 45 of this chapter.

Swap execution facility means a trading system or platform that is a swap execution facility as defined in CEA section 1a(50) and in § 1.3 of this chapter and that is registered with the Commission pursuant to CEA section 5h and part 37 of this chapter.

Swap transaction and pricing data means all data elements for a swap in appendix A to part 43 of this chapter that are required to be reported or publicly disseminated pursuant to part 43 of this chapter.

Unique transaction identifier means a unique alphanumeric identifier with a maximum length of 52 characters constructed solely from the upper-case alphabetic characters A to Z or the digits 0 to 9, inclusive in both cases, generated for each swap pursuant to § 45.5.

Valuation data means the data elements necessary to report information about the daily mark of the transaction, pursuant to section 4s(h)(3)(B)(iii) of the Act, and to § 23.431 of this chapter, if applicable, as specified in appendix 1 to this part.

(b) *Other defined terms.* Terms not defined in this part have the meanings assigned to the terms in § 1.3 of this chapter.

§ 45.2 [Amended]

■ 3. In § 45.2:

■ a. Remove all instances of ''non-SD/MSP'' and add in its place ''non-SD/MSP/DCO''; and

■ b. For each paragraph indicated in the left column of the table below, remove the text indicated in the middle column from wherever it appears, and add in its place the text indicated in the right column:

Paragraph	Remove	Add
(a) introductory text	major swap participant subject to the jurisdiction of the Commission.	major swap participant.
(b)	counterparties subject to the jurisdiction of the Commission.	counterparties.
(b)	the clearing requirement exception in CEA section 2(h)(7).	any clearing requirement exception or exemption pursuant to section 2(h)(7) of the Act or part 50 of this chapter.
(h)	counterparty subject to the jurisdiction of the Commission.	counterparty.

■ 4. Revise § 45.3 to read as follows:

§ 45.3 Swap data reporting: Creation data.

(a) *Swaps executed on or pursuant to the rules of a swap execution facility or designated contract market.* For each swap executed on or pursuant to the rules of a swap execution facility or designated contract market, the swap execution facility or designated contract market shall report required swap creation data electronically to a swap data repository in the manner provided in § 45.13(a) not later than the end of the next business day following the execution date.

(b) *Off-facility swaps.* For each off-facility swap, the reporting counterparty shall report required swap creation data electronically to a swap data repository as provided by paragraph (b)(1) or (2) of this section, as applicable.

(1) If the reporting counterparty is a swap dealer, major swap participant, or derivatives clearing organization, the reporting counterparty shall report required swap creation data electronically to a swap data repository in the manner provided in § 45.13(a) not later than the end of the next business day following the execution date.

(2) If the reporting counterparty is a non-SD/MSP/DCO counterparty, the reporting counterparty shall report required swap creation data electronically to a swap data repository in the manner provided in § 45.13(a) not later than the end of the second business day following the execution date.

(c) *Allocations.* For swaps involving allocation, required swap creation data shall be reported electronically to a single swap data repository as follows.

(1) *Initial swap between reporting counterparty and agent.* The initial swap transaction between the reporting counterparty and the agent shall be reported as required by paragraph (a) or (b) of this section, as applicable. A unique transaction identifier for the initial swap transaction shall be created as provided in § 45.5.

(2) *Post-allocation swaps*—(i) *Duties of the agent.* In accordance with this section, the agent shall inform the reporting counterparty of the identities of the reporting counterparty's actual counterparties resulting from allocation, as soon as technologically practicable after execution, but no later than eight business hours after execution.

(ii) *Duties of the reporting counterparty.* The reporting counterparty shall report required swap creation data, as required by paragraph (b) of this section, for each swap resulting from allocation to the same swap data repository to which the initial swap transaction is reported. The reporting counterparty shall create a unique transaction identifier for each such swap as required in § 45.5.

(d) *Multi-asset swaps.* For each multi-asset swap, required swap creation data and required swap continuation data shall be reported to a single swap data repository that accepts swaps in the asset class treated as the primary asset class involved in the swap by the swap execution facility, designated contract market, or reporting counterparty reporting required swap creation data pursuant to this section.

(e) *Mixed swaps.* (1) For each mixed swap, required swap creation data and required swap continuation data shall be reported to a swap data repository and to a security-based swap data repository registered with the Securities and Exchange Commission. This requirement may be satisfied by reporting the mixed swap to a swap data repository or security-based swap data repository registered with both Commissions.

(2) The registered entity or reporting counterparty reporting required swap creation data pursuant to this section shall ensure that the same unique transaction identifier is recorded for the swap in both the swap data repository and the security-based swap data repository.

(f) *Choice of swap data repository.* The entity with the obligation to choose the swap data repository to which all required swap creation data for the swap is reported shall be the entity that is required to make the first report of all data pursuant to this section, as follows:

(1) For swaps executed on or pursuant to the rules of a swap execution facility or designated contract market, the swap execution facility or designated contract market shall choose the swap data repository;

(2) For all other swaps, the reporting counterparty, as determined in § 45.8, shall choose the swap data repository.

■ 5. Revise § 45.4 to read as follows:

§ 45.4 Swap data reporting: Continuation data.

(a) *Continuation data reporting method generally.* For each swap, regardless of asset class, reporting counterparties and derivatives clearing organizations required to report required swap continuation data shall report life-cycle-event data for the swap electronically to a swap data repository in the manner provided in § 45.13(a) within the applicable deadlines set forth in this section.

(b) *Continuation data reporting for original swaps.* For each original swap, the derivatives clearing organization shall report required swap continuation data, including terminations, electronically to the swap data repository to which the swap that was accepted for clearing was reported pursuant to § 45.3 in the manner provided in § 45.13(a) and in this section, and such required swap continuation data shall be accepted and recorded by such swap data repository as provided in § 49.10 of this chapter.

(1) The derivatives clearing organization that accepted the swap for clearing shall report all life-cycle-event data electronically to a swap data repository in the manner provided in § 45.13(a) not later than the end of the next business day following the day that

any life cycle event occurs with respect to the swap.

(2) In addition to all other required swap continuation data, life-cycle-event data shall include all of the following:

(i) The legal entity identifier of the swap data repository to which all required swap creation data for each clearing swap was reported by the derivatives clearing organization pursuant to § 45.3(b);

(ii) The unique transaction identifier of the original swap that was replaced by the clearing swaps; and

(iii) The unique transaction identifier of each clearing swap that replaces a particular original swap.

(c) *Continuation data reporting for swaps other than original swaps.* For each swap that is not an original swap, including clearing swaps and swaps not cleared by a derivatives clearing organization, the reporting counterparty shall report all required swap continuation data electronically to a swap data repository in the manner provided in § 45.13(a) as provided in this paragraph (c).

(1) *Life-cycle-event data reporting.* (i) If the reporting counterparty is a swap dealer, major swap participant, or derivatives clearing organization, the reporting counterparty shall report life-cycle-event data electronically to a swap data repository in the manner provided in § 45.13(a) not later than the end of the next business day following the day that any life cycle event occurred, with the sole exception that life-cycle-event data relating to a corporate event of the non-reporting counterparty shall be reported in the manner provided in § 45.13(a) not later than the end of the second business day following the day that such corporate event occurred.

(ii) If the reporting counterparty is a non-SD/MSP/DCO counterparty, the reporting counterparty shall report life-cycle-event data electronically to a swap data repository in the manner provided in § 45.13(a) not later than the end of the second business day following the day that any life cycle event occurred.

(2) *Valuation, margin, and collateral data reporting.* (i) If the reporting counterparty is a swap dealer, major swap participant, or derivatives clearing organization, swap valuation data shall be reported electronically to a swap data repository in the manner provided in § 45.13(b) each business day.

(ii) If the reporting counterparty is a swap dealer or major swap participant, collateral data shall be reported electronically to a swap data repository in the manner provided in § 45.13(b) each business day.

■ 6. Amend § 45.5 by:

■ a. Revising the section heading and paragraphs (a)(1)(i); (b)(1)(i); (b)(2)(ii); (c) introductory text; (c)(1) introductory text; (c)(1)(i); (d) introductory text; (d)(1)(i);

■ b. In the table below, for each paragraph indicated in the left column, remove the text indicated in the middle column from wherever it appears, and add in its place the text indicated in the right column:

Paragraph	Remove	Add
introductory text	swap subject to the jurisdiction of the Commission	swap.
introductory text	(a) through (f)	(a) through (h).
(a)(1) introductory text	single data field	single data element with a maximum length of 52 characters.
(b) paragraph heading and introductory text.	swap dealer or major swap participant	financial entity.
(b)(1) introductory text	transmission of data	transmission of swap data.
(b)(1) introductory text	single data field	single data element with a maximum length of 52 characters.
(b)(1)(ii)	swap dealer or major swap participant	reporting counterparty.
(d)(1) introductory text	single data field	single data element with a maximum length of 52 characters.
(e)(1) introductory text	(a) through (c) of this section	(a) through (d) of this section, as applicable.
(e)(2)(i)	question	question.
(e)(2)(ii)	agent	agent; and.

■ c. Revising paragraph (f) and adding paragraphs (g) and (h); and

■ d. Removing all instances of ''unique swap identifier'' and ''unique swap identifiers'' and adding in their place ''unique transaction identifier'' and ''unique transaction identifiers'', respectively.

The revisions and additions read as follows:

§ 45.5 Unique transaction identifiers.

* * * * *

(a) * * *

(1) * * *

(i) The legal entity identifier of the swap execution facility or designated contract market; and

* * * * *

(b) * * *

(1) * * *

(i) The legal entity identifier of the reporting counterparty; and

* * * * *

(2) * * *

(ii) To the non-reporting counterparty to the swap, no later than the applicable deadline in § 45.3(b) for reporting required swap creation data; and

* * * * *

(c) *Off-facility swaps with a non-SD/MSP/DCO reporting counterparty that is not a financial entity.* For each off-facility swap for which the reporting counterparty is a non-SD/MSP/DCO counterparty that is not a financial entity, the reporting counterparty shall either: Create and transmit a unique transaction identifier as provided in paragraphs (b)(1) and (2) of this section; or request that the swap data repository to which required swap creation data will be reported create and transmit a unique transaction identifier as provided in paragraphs (c)(1) and (2) of this section.

(1) *Creation.* The swap data repository shall generate and assign a unique transaction identifier as soon as technologically practicable following receipt of the request from the reporting counterparty. The unique transaction identifier shall consist of a single data element with a maximum length of 52 characters that contains two components:

(i) The legal entity identifier of the swap data repository; and

* * * * *

(d) *Off-facility swaps with a derivatives clearing organization reporting counterparty.* For each off-facility swap where the reporting counterparty is a derivatives clearing organization, the reporting counterparty shall create and transmit a unique

transaction identifier as provided in paragraphs (d)(1) and (2) of this section.

(1) * * *

(i) The legal entity identifier of the derivatives clearing organization; and

* * * * *

(f) *Use.* Each registered entity and swap counterparty shall include the unique transaction identifier for a swap in all of its records and all of its swap data reporting concerning that swap, from the time it creates or receives the unique transaction identifier as provided in this section, throughout the existence of the swap and for as long as any records are required by the Act or Commission regulations to be kept concerning the swap, regardless of any life cycle events concerning the swap, including, without limitation, any changes with respect to the counterparties to the swap.

(g) *Third-party service provider.* If a registered entity or reporting counterparty required by this part to report required swap creation data or required swap continuation data contracts with a third-party service provider to facilitate reporting pursuant to § 45.9, the registered entity or reporting counterparty shall ensure that such third-party service provider creates and transmits the unique transaction identifier as otherwise required for such category of swap by paragraphs (a) through (e) of this section. The unique transaction identifier shall consist of a single data element with a maximum length of 52 characters that contains two components:

(1) The legal entity identifier of the third-party service provider; and

(2) An alphanumeric code generated and assigned to that swap by the automated systems of the third-party service provider, which shall be unique with respect to all such codes generated and assigned by that third-party service provider.

(h) *Cross-jurisdictional swaps.* Notwithstanding the provisions of paragraphs (a) through (g) of this section, if a swap is also reportable to one or more other jurisdictions with a regulatory reporting deadline earlier than the deadline set forth in § 45.3 or in part 43 of this chapter, the same unique transaction identifier generated according to the rules of the jurisdiction with the earliest regulatory reporting deadline shall be transmitted pursuant to paragraphs (a) through (g) of this section and used in all recordkeeping and all swap data reporting pursuant to this part.

■ 7. Revise § 45.6 to read as follows:

§ 45.6 Legal entity identifiers.

Each swap execution facility, designated contract market, derivatives clearing organization, swap data repository, entity reporting pursuant to § 45.9, and counterparty to any swap that is eligible to receive a legal entity identifier shall obtain, maintain, and be identified in all recordkeeping and all swap data reporting pursuant to this part by a single legal entity identifier as specified in this section.

(a) *Definitions.* As used in this section:

Local operating unit means an entity authorized under the standards of the Global Legal Entity Identifier System to issue legal entity identifiers.

Reference data means all identification and relationship information, as set forth in the standards of the Global Legal Entity Identifier System, of the legal entity or individual to which a legal entity identifier is assigned.

Self-registration means submission by a legal entity or individual of its own reference data.

Third-party registration means submission of reference data for a legal entity or individual that is or may become a swap counterparty, made by an entity or organization other than the legal entity or individual identified by the submitted reference data. Examples of third-party registration include, without limitation, submission by a swap dealer or major swap participant of reference data for its swap counterparties, and submission by a national numbering agency, national registration agency, or data service provider of reference data concerning legal entities or individuals with respect to which the agency or service provider maintains information.

(b) *International standard for the legal entity identifier.* The legal entity identifier used in all recordkeeping and all swap data reporting required by this part shall be issued under, and shall conform to, ISO Standard 17442, Legal Entity Identifier (LEI), issued by the International Organization for Standardization.

(c) *Reference data reporting.* Reference data for each swap execution facility, designated contract market, derivatives clearing organization, swap data repository, entity reporting pursuant to § 45.9, and counterparty to any swap shall be reported, by self-registration, third-party registration, or both, to a local operating unit in accordance with the standards set by the Global Legal Entity Identifier System. All subsequent changes and corrections to reference data previously reported shall be reported, by self-registration, third-party registration, or both, to a local operating unit as soon as technologically practicable following occurrence of any such change or discovery of the need for a correction.

(d) *Use of the legal entity identifier.* (1) Each swap execution facility, designated contract market, derivatives clearing organization, swap data repository, entity reporting pursuant to § 45.9, and swap counterparty shall use legal entity identifiers to identify itself and swap counterparties in all recordkeeping and all swap data reporting pursuant to this part. If a swap counterparty is not eligible to receive a legal entity identifier as determined by the Global Legal Entity Identifier System, such counterparty shall be identified in all recordkeeping and all swap data reporting pursuant to this part with an alternate identifier as prescribed by the Commission pursuant to § 45.13(a) of this chapter.

(2) Each swap dealer, major swap participant, swap execution facility, designated contract market, derivatives clearing organization, and swap data repository shall maintain and renew its legal identity identifier in accordance with the standards set by the Global Legal Entity Identifier System.

(3) Each financial entity reporting counterparty executing a swap with a counterparty that is eligible to receive a legal entity identifier, but has not been assigned a legal entity identifier, shall, prior to reporting any required swap creation data for such swap, use best efforts to cause a legal entity identifier to be assigned to the counterparty. If these efforts do not result in a legal entity identifier being assigned to the counterparty prior to the reporting of required swap creation data, the financial entity reporting counterparty shall promptly provide the identity and contact information of the counterparty to the Commission.

(4) For swaps previously reported pursuant to this part using substitute counterparty identifiers assigned by a swap data repository prior to Commission designation of a legal entity identifier system, each swap data repository shall map the legal entity identifiers for the counterparties to the substitute counterparty identifiers in the record for each such swap.

§ 45.7 [Amended]

■ 8. Amend § 45.7 introductory text by removing ''subject to the jurisdiction of the Commission''.

■ 9. In § 45.8:

■ a. Revise the section heading and the introductory text;

■ b. Remove ''non-SD/MSP'' wherever it appears and add in its place ''non-SD/MSP/DCO''; and

■ c. In the table below, for each paragraph indicated in the left column, remove the text indicated in the middle column from wherever it appears, and add in its place the text indicated in the right column:

Paragraph	Remove	Add
(h) introductory text	swap creation data	required swap creation data.
(h)(1) introductory text	achieve this	comply with paragraph (h) of this section.
(h)(1)(vii)(D)	unique swap identifier	unique transaction identifier.
(h)(2)	achieve this	comply with paragraph (h) of this section.

The revisions read as follows:

§ 45.8 Determination of which counterparty shall report.

The determination of which counterparty is the reporting counterparty for each swap shall be made as provided in this section.

* * * * *

§ 45.9 [Amended]

■ 10. Amend § 45.9 by removing ''swap counterparties'' and adding in its place ''reporting counterparties''.

■ 11. Revise § 45.10 to read as follows:

§ 45.10 Reporting to a single swap data repository.

All swap transaction and pricing data and swap data for a given swap shall be reported to a single swap data repository, which shall be the swap data repository to which the first report of such data is made, unless the reporting counterparty changes the swap data repository to which such data is reported pursuant to paragraph (d) of this section.

(a) *Swaps executed on or pursuant to the rules of a swap execution facility or designated contract market.* To ensure that all swap transaction and pricing data and swap data for a swap executed on or pursuant to the rules of a swap execution facility or designated contract market is reported to a single swap data repository:

(1) The swap execution facility or designated contract market shall report all swap transaction and pricing data and required swap creation data for a swap to a single swap data repository. As soon as technologically practicable after execution of the swap, the swap execution facility or designated contract market shall transmit to both counterparties to the swap, and to the derivatives clearing organization, if any, that will clear the swap, the identity of the swap data repository to which such data is reported.

(2) Thereafter, all swap transaction and pricing data, required swap creation data, and required swap continuation data for the swap shall be reported to that same swap data repository, unless the reporting counterparty changes the swap data repository to which such data is reported pursuant to paragraph (d) of this section.

(b) *Off-facility swaps that are not clearing swaps.* To ensure that all swap transaction and pricing data and swap data for an off-facility swap that is not a clearing swap is reported to a single swap data repository:

(1) The reporting counterparty shall report all swap transaction and pricing data and required swap creation data to a single swap data repository. As soon as technologically practicable after execution, the reporting counterparty shall transmit to the other counterparty to the swap, and to the derivatives clearing organization, if any, that will clear the swap, the identity of the swap data repository to which such data is reported.

(2) Thereafter, all swap transaction and pricing data, required swap creation data, and required swap continuation data for the swap shall be reported to the same swap data repository, unless the reporting counterparty changes the swap data repository to which such data is reported pursuant to paragraph (d) of this section.

(c) *Clearing swaps.* To ensure that all swap transaction and pricing data and swap data for a given clearing swap, including clearing swaps that replace a particular original swap or that are created upon execution of the same transaction and that do not replace an original swap, is reported to a single swap data repository:

(1) The derivatives clearing organization that is a counterparty to such clearing swap shall report all swap transaction and pricing data and required swap creation data for that clearing swap to a single swap data repository. As soon as technologically practicable after acceptance of an original swap for clearing, or execution of a clearing swap that does not replace an original swap, the derivatives clearing organization shall transmit to the counterparty to each clearing swap the identity of the swap data repository to which such data is reported.

(2) Thereafter, all swap transaction and pricing data, required swap creation data and required swap continuation data for that clearing swap shall be reported by the derivatives clearing organization to the same swap data repository to which swap data has been reported pursuant to paragraph (c)(1) of this section, unless the reporting counterparty changes the swap data repository to which such data is reported pursuant to paragraph (d) of this section.

(3) For clearing swaps that replace a particular original swap, and for equal and opposite clearing swaps that are created upon execution of the same transaction and that do not replace an original swap, the derivatives clearing organization shall report all swap transaction and pricing data, required swap creation data, and required swap continuation data for such clearing swaps to a single swap data repository.

(d) *Change of swap data repository for swap transaction and pricing data and swap data reporting.* A reporting counterparty may change the swap data repository to which swap transaction and pricing data and swap data is reported as set forth in this paragraph.

(1) *Notifications.* At least five business days prior to changing the swap data repository to which the reporting counterparty reports swap transaction and pricing data and swap data for a swap, the reporting counterparty shall provide notice of such change to the other counterparty to the swap, the swap data repository to which swap transaction and pricing data and swap data is currently reported, and the swap data repository to which swap transaction and pricing data and swap data will be reported going forward. Such notification shall include the unique transaction identifier of the swap and the date on which the reporting counterparty will begin reporting such swap transaction and pricing data and swap data to a different swap data repository.

(2) *Procedure.* After providing the notifications required in paragraph (d)(1) of this section, the reporting counterparty shall follow paragraphs (d)(2)(i) through (iii) of this section to complete the change of swap data repository.

(i) The reporting counterparty shall report the change of swap data repository to the swap data repository to which the reporting counterparty is currently reporting swap transaction and pricing data and swap data as a life cycle event for such swap pursuant to § 45.4.

(ii) On the same day that the reporting counterparty reports required swap continuation data as required by paragraph (d)(2)(i) of this section, the reporting counterparty shall also report the change of swap data repository to the swap data repository to which swap transaction and pricing data and swap data will be reported going forward as a life cycle event for such swap pursuant to § 45.4. The required swap continuation data report shall identify the swap using the same unique transaction identifier used to identify the swap at the previous swap data repository.

(iii) Thereafter, all swap transaction and pricing data, required swap creation data, and required swap continuation data for the swap shall be reported to the same swap data repository, unless the reporting counterparty for the swap makes another change to the swap data repository to which such data is reported pursuant to paragraph (d) of this section.

■ 12. Revise § 45.11 to read as follows:

§ 45.11 Data reporting for swaps in a swap asset class not accepted by any swap data repository.

(a) Should there be a swap asset class for which no swap data repository currently accepts swap data, each swap execution facility, designated contract market, derivatives clearing organization, or reporting counterparty required by this part to report any required swap creation data or required swap continuation data with respect to a swap in that asset class must report that same data to the Commission.

(b) Data subject to this section shall be reported at times announced by the Commission and in an electronic file in a format acceptable to the Commission.

§ 45.12 [Removed and reserved]

■ 13. Remove and reserve § 45.12.

■ 14. Revise § 45.13 to read as follows:

§ 45.13 Required data standards.

(a) *Data reported to swap data repositories.* (1) In reporting required swap creation data and required swap continuation data to a swap data repository, each reporting counterparty, swap execution facility, designated contract market, and derivatives clearing organization shall report the swap data elements in appendix 1 to this part in the form and manner provided in the technical specifications published by the Commission pursuant to § 45.15.

(2) In reporting required swap creation data and required swap continuation data to a swap data repository, each reporting counterparty, swap execution facility, designated contract market, and derivatives clearing organization making such report shall satisfy the swap data validation procedures of the swap data repository.

(3) In reporting swap data to a swap data repository as required by this part, each reporting counterparty, swap execution facility, designated contract market, and derivatives clearing organization shall use the facilities, methods, or data standards provided or required by the swap data repository to which the entity or counterparty reports the data.

(b) *Data validation acceptance message.* (1) For each required swap creation data or required swap continuation data report submitted to a swap data repository, a swap data repository shall notify the reporting counterparty, swap execution facility, designated contract market, derivatives clearing organization, or third-party service provider submitting the report whether the report satisfied the swap data validation procedures of the swap data repository. The swap data repository shall provide such notification as soon as technologically practicable after accepting the required swap creation data or required swap continuation data report. A swap data repository may satisfy the requirements of this paragraph by transmitting data validation acceptance messages as required by § 49.10 of this chapter.

(2) If a required swap creation data or required swap continuation data report to a swap data repository does not satisfy the data validation procedures of the swap data repository, the reporting counterparty, swap execution facility, designated contract market, or derivatives clearing organization required to submit the report has not yet satisfied its obligation to report required swap creation or continuation data in the manner provided by paragraph (a) of this section within the timelines set forth in §§ 45.3 and 45.4. The reporting counterparty, swap execution facility, designated contract market, or derivatives clearing organization has not satisfied its obligation until it submits the required swap data report in the manner provided by paragraph (a) of this section, which includes the requirement to satisfy the data validation procedures of the swap data repository, within the applicable time deadline set forth in §§ 45.3 and 45.4.

■ 15. Add § 45.15 to read as follows:

§ 45.15 Delegation of authority.

(a) *Delegation of authority to the chief information officer.* The Commission hereby delegates to its chief information officer, until the Commission orders otherwise, the authority set forth in paragraph (a) of this section, to be exercised by the chief information officer or by such other employee or employees of the Commission as may be designated from time to time by the chief information officer. The chief information officer may submit to the Commission for its consideration any matter which has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph. The authority delegated to the chief information officer by this paragraph (a) shall include:

(1) The authority to determine the manner, format, coding structure, and electronic data transmission standards and procedures acceptable to the Commission for the purposes of § 45.11;

(2) The authority to determine whether the Commission may permit or require use by swap execution facilities, designated contract markets, derivatives clearing organizations, or reporting counterparties in reporting pursuant to § 45.11 of one or more particular data standards (such as FIX, FpML, ISO 20022, or some other standard), to accommodate the needs of different communities of users;

(3) The dates and times at which required swap creation data or required swap continuation data shall be reported pursuant to § 45.11; and

(4) The chief information officer shall publish from time to time in the **Federal Register** and on the website of the Commission the format, data schema, electronic data transmission methods and procedures, and dates and times for reporting acceptable to the Commission with respect to swap data reporting pursuant to § 45.11.

(b) *Delegation of authority to the Director of the Division of Market Oversight.* The Commission hereby delegates to the Director of the Division of Market Oversight, until the Commission orders otherwise, the authority set forth in § 45.13(a)(1), to be exercised by the Director of the Division of Market Oversight or by such other employee or employees of the Commission as may be designated from time to time by the Director of the Division of Market Oversight. The Director of the Division of Market

Oversight may submit to the Commission for its consideration any matter which has been delegated pursuant to this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph. The authority delegated to the Director of the Division of Market Oversight by this paragraph (b) shall include:

(1) The authority to publish the technical specifications providing the form and manner for reporting the swap data elements in appendix 1 to this part to swap data repositories as provided in § 45.13(a)(1);

(2) The authority to determine whether the Commission may permit or require use by swap execution facilities, designated contract markets, derivatives clearing organizations, or reporting counterparties in reporting pursuant to § 45.13(a)(1) of one or more particular data standards (such as FIX, FpML, ISO 20022, or some other standard), to accommodate the needs of different communities of users;

(3) The dates and times at which required swap creation data or required swap continuation data shall be reported pursuant to § 45.13(a)(1); and

(4) The Director of the Division of Market Oversight shall publish from time to time in the **Federal Register** and on the website of the Commission the technical specifications for swap data reporting pursuant to § 45.13(a)(1).

■ 16. Revise appendix 1 to part 45 to read as follows:

Appendix 1 to Part 45—Swap Data Elements

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	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
	Category: Clearing						
1	Cleared	Indicator of whether the transaction has been cleared, or is intended to be cleared, by a central counterparty.	✓	✓	✓	✓	✓
2	Central counterparty	Identifier of the central counterparty (CCP) that cleared the transaction. This data element is not applicable if the value of the data element "Cleared" is "N" ("No, not centrally cleared") or "I" ("Intent to clear").	✓	✓	✓	✓	✓
3	Clearing account origin	Indicator of whether the clearing member acted as principal for a house trade or an agent for a customer trade.	✓	✓	✓	✓	✓
4	Clearing member	Identifier of the clearing member through which a derivative transaction was cleared at a central counterparty. This data element applies to cleared transactions under both the agency clearing model and the principal clearing model. • In the case of the principal clearing model, the clearing member is identified as clearing member and also as a counterparty in both transactions resulting from clearing: (i) in the transaction between the central counterparty and the clearing member; and (ii) in the transaction between the clearing member and the counterparty to the original alpha transaction. • In the case of the agency-clearing model, the clearing member is identified as clearing member but not as the counterparty to transactions resulting from clearing. Under this model, the counterparties are the central counterparty and the client. This data element is not applicable if the value of the data element "Cleared" is "N" ("No, not centrally cleared") or "I" ("Intent to clear").	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
5	Clearing swap USIs	The unique swap identifiers (USI) of each clearing swap that replaces the original swap that was submitted for clearing to the derivatives clearing organization, other than the USI for the swap currently being reported (as "USI" data element below).	✓	✓	✓	✓	✓
6	Clearing swap UTIs	The unique transaction identifiers (UTI) of each clearing swap that replaces the original swap that was submitted for clearing to the derivatives clearing organization, other than the UTI for the swap currently being reported (as "UTI" data element below).	✓	✓	✓	✓	✓
7	Original swap USI	The unique swap identifier (USI) of the original swap submitted for clearing to the derivatives clearing organization that is replaced by clearing swaps.	✓	✓	✓	✓	✓
8	Original swap UTI	The unique transaction identifier (UTI) of the original swap submitted for clearing to the derivatives clearing organization that is replaced by clearing swaps.	✓	✓	✓	✓	✓
9	Original swap SDR identifier	Identifier of the swap data repository (SDR) to which the original swap was reported.	✓	✓	✓	✓	✓
10	Clearing receipt timestamp	The date and time, expressed in UTC, the original swap was received by the derivatives clearing organization (DCO) for clearing and recorded by the DCO's system.	✓	✓	✓	✓	✓
11	Clearing exceptions and exemptions – Counterparty 1	Identifies the type of clearing exception or exemption that the Counterparty 1 has elected. All applicable exceptions and exemptions must be selected. The values may be repeated as applicable.	✓	✓	✓	✓	✓
12	Clearing exceptions and exemptions – Counterparty 2	Identifies the type of the clearing exception or exemption that the Counterparty 2 has elected. All applicable exceptions and exemptions must be selected. The values may be repeated as applicable.	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
	Category: Counterparty						
13	Counterparty 1 (reporting counterparty)	Identifier of the counterparty to an OTC derivative transaction who is fulfilling its reporting obligation via the report in question. In jurisdictions where both parties must report the transaction, the identifier of Counterparty 1 always identifies the reporting counterparty. In the case of an allocated derivative transaction executed by a fund manager on behalf of a fund, the fund, and not the fund manager is reported as the counterparty.	✓	✓	✓	✓	✓
14	Counterparty 2	Identifier of the second counterparty to an OTC derivative transaction. In the case of an allocated derivative transaction executed by a fund manager on behalf of a fund, the fund, and not the fund manager is reported as the counterparty.	✓	✓	✓	✓	✓
15	Counterparty 2 identifier source	Source used to identify the Counterparty 2.	✓	✓	✓	✓	✓
16	Counterparty 1 financial entity indicator	Indicator of whether Counterparty 1 is a financial entity as defined in CEA § 2(h)(7)(C).	✓	✓	✓	✓	✓
17	Counterparty 2 financial entity indicator	Indicator of whether Counterparty 2 is a financial entity as defined in CEA § 2(h)(7)(C).	✓	✓	✓	✓	✓
18	Buyer identifier	Identifier of the counterparty that is the buyer, as determined at the time of the transaction. A non-exhaustive list of examples of instruments for which this data element could apply are: • most forwards and forward-like contracts (except for foreign exchange forwards and foreign exchange non-deliverable forwards) • most options and option-like contracts including swaptions, caps, and floors • credit default swaps (buyer/seller of protection) • variance, volatility and correlation swaps	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		• contracts for difference and spreadbets This data element does not apply to instrument types covered by data elements Payer identifier and Receiver identifier.					
19	Seller identifier	Identifier of the counterparty that is the seller as determined at the time of the transaction. A non-exhaustive list of examples of instruments for which this data element could apply are: • most forwards and forward-like contracts (except for foreign exchange forwards and foreign exchange non-deliverable forwards) • most options and option-like contracts including swaptions, caps, and floors • credit default swaps (buyer/seller of protection) • variance, volatility and correlation swaps • contracts for difference and spreadbets This data element does not apply to instrument types covered by data elements Payer identifier and Receiver identifier.	✓	✓	✓	✓	✓
20	Payer identifier	Identifier of the counterparty of the payer leg as determined at the time of the transaction. A non-exhaustive list of examples of instruments for which this data element could apply are: • most swaps and swap-like contracts including interest rate swaps, credit total return swaps, and equity swaps (except for credit default swaps, variance, volatility, and correlation swaps) • foreign exchange swaps, forwards, non-deliverable forwards This data element does not apply to instrument types covered by data elements Buyer identifier and Seller identifier.	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
21	Receiver identifier	Identifier of the counterparty of the receiver leg as determined at the time of the transaction. A non-exhaustive list of examples of instruments for which this data element could apply are: • most swaps and swap-like contracts including interest rate swaps, credit total return swaps, and equity swaps (except for credit default swaps, variance, volatility, and correlation swaps) • foreign exchange swaps, forwards, non-deliverable forwards This data element does not apply to instrument types covered by data elements Buyer identifier and Seller identifier.	✓	✓	✓	✓	✓
22	Submitter identifier	Identifier of the entity submitting the data to the swap data repository (SDR). The Submitter identifier will be the same as the reporting counterparty or swap execution facility (SEF), unless they use a third-party service provider to submit the data to SDR in which case, report the identifier of the third-party service provider.	✓	✓	✓	✓	✓
23	Counterparty 1 federal entity indicator	Indicator of whether Counterparty 1 is: (1) One of the following entities: a) An entity established pursuant to federal law, including, but not limited to, the following: i. An "agency" as defined in 5 U.S.C. 551(1), a federal instrumentality, or a federal authority; ii. A government corporation (examples: as such term is defined in 5 U.S.C. 103(1) or in 31 U.S.C. 9101); iii. A government-sponsored enterprise (example: as such term is defined in 2 U.S.C. 622(8));	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		iv. A federally funded research and development center on the master list referenced in 48 CFR 35.017-6; and v. An executive department listed in 5 U.S.C. 101; or b) An entity chartered pursuant to federal law after formation (example: an organization listed in title 36 of the U.S. Code); or (2) An entity that was established by, or at the direction of, one or more of the entities listed in clause (1), or has an ultimate parent listed in its LEI reference data that is an entity listed in clause (1) or in the first part of this clause (2). Notwithstanding the foregoing, the Counterparty 1 federal entity indicator data element does not include federally chartered depository institutions.					
24	Counterparty 2 federal entity indicator	Indicator of whether Counterparty 2 is: (1) One of the following entities: a) An entity established pursuant to federal law, including, but not limited to, the following: i. An "agency" as defined in 5 U.S.C. 551(1), a federal instrumentality, or a federal authority; ii. A government corporation (examples: as such term is defined in 5 U.S.C. 103(1) or in 31 U.S.C. 9101); iii. A government-sponsored enterprise (example: as such term is defined in 2 U.S.C. 622(8)); iv. A federally funded research and development center on the master list referenced in 48 CFR 35.017-6; and v. An executive department listed in 5 U.S.C. 101; or b) An entity chartered pursuant to federal law after formation (example: an	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		organization listed in title 36 of the U.S. Code); or (2) An entity that was established by, or at the direction of, one or more of the entities listed in clause (1), or has an ultimate parent listed in its LEI reference data that is an entity listed in clause (1) or in the first part of this clause (2). Notwithstanding the foregoing, the Counterparty 2 federal entity indicator data element does not include federally chartered depository institutions.					
	Category: Custom baskets						
25	Custom basket indicator	Indicator of whether the swap transaction is based on a custom basket.	✓	✓	✓	✓	✓
	Category: Events						
26	Action type	Type of action taken on the swap transaction or type of end-of-day reporting. Actions may include, but are not limited to, new, modify, correct, error, terminate, revive, transfer out, valuation, and collateral.	✓	✓	✓	✓	✓
27	Event type	Explanation or reason for the action being taken on the swap transaction. Events may include, but are not limited to, trade, novation, compression or risk reduction exercise, early termination, clearing, exercise, allocation, clearing and allocation, credit event, transfer.	✓	✓	✓	✓	✓
28	Amendment indicator	Indicator of whether the modification of the swap transaction reflects newly agreed upon term(s) from the previously negotiated terms.	✓	✓	✓	✓	✓
29	Event identifier	Unique identifier to link swap transactions resulting when an event may be, but is not limited to, compression or credit event. The unique identifier may be assigned by the reporting counterparty or a service provider.	✓	✓	✓	✓	✓
30	Event timestamp	Date and time of occurrence of the event as determined by the reporting counterparty or a service provider.	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		In the case of a clearing event, date and time when the original swap is accepted by the derivatives clearing organization (DCO) for clearing and recorded by the DCO's system should be reported in this data element. The time element is as specific as technologically practicable.					
	Category: Notional amounts and quantities						
31	Notional amount	For each leg of the transaction, where applicable: - for OTC derivative transactions negotiated in monetary amounts, amount specified in the contract. - for OTC derivative transactions negotiated in non-monetary amounts, refer to appendix in the swap data technical specification for converting notional amounts for non-monetary amounts. In addition: • For OTC derivative transactions with a notional amount schedule, the initial notional amount, agreed by the counterparties at the inception of the transaction, is reported in this data element. • For OTC foreign exchange options, in addition to this data element, the amounts are reported using the data elements Call amount and Put amount. • For amendments or lifecycle events, the resulting outstanding notional amount is reported; (steps in notional amount schedules are not considered to be amendments or lifecycle events); • Where the notional amount is not known when a new transaction is reported, the notional amount is updated as it becomes available.	✓	✓	✓	✓	✓
32	Notional currency	For each leg of the transaction, where applicable: currency in which the notional amount is denominated.	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
33	Notional amount schedule - notional amount in effect on associated effective date	For each leg of the transaction, where applicable: for swap transactions negotiated in monetary amounts with a notional amount schedule: • Notional amount which becomes effective on the associated unadjusted effective date. The initial notional amount and associated unadjusted effective and end date are reported as the first values of the schedule. This data element is not applicable to OTC derivative transactions with notional amounts that are condition- or event-dependent. The currency of the varying notional amounts in the schedule is reported in Notional currency.	✓	✓	✓	✓	✓
34	Notional amount schedule - unadjusted effective date of the notional amount	For each leg of the transaction, where applicable: for OTC derivative transactions negotiated in monetary amounts with a notional amount schedule: • Unadjusted date on which the associated notional amount becomes effective This data element is not applicable to OTC derivative transactions with notional amounts that are condition- or event-dependent. The currency of the varying notional amounts in the schedule is reported in Notional currency.	✓	✓	✓	✓	✓
35	Notional amount schedule - unadjusted end date of the notional amount	For each leg of the transaction, where applicable: for swap transactions negotiated in monetary amounts with a notional amount schedule: •Unadjusted end date of the notional amount (not applicable if the unadjusted end date of a given schedule's period is back-to-back with the unadjusted effective date of the subsequent period). This data element is not applicable to OTC derivative transactions with notional amounts that are condition- or event-dependent. The	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		currency of the varying notional amounts in the schedule is reported in Notional currency.					
36	Call amount	For foreign exchange options, the monetary amount that the option gives the right to buy.			✓		
37	Call currency	For foreign exchange options, the currency in which the Call amount is denominated.			✓		
38	Put amount	For foreign exchange options, the monetary amount that the option gives the right to sell.			✓		
39	Put currency	For foreign exchange options, the currency in which the Put amount is denominated.			✓		
40	Notional quantity	For each leg of the swap transaction, where applicable, for swap transactions negotiated in non-monetary amounts with fixed notional quantity for each schedule period (i.e., 50 barrels per month). The frequency is reported in Quantity frequency and the unit of measure is reported in Quantity unit of measure.					✓
41	Quantity frequency	The rate at which the quantity is quoted on the swap transaction. e.g., hourly, daily, weekly, monthly.					✓
42	Quantity frequency multiplier	The number of time units for the Quantity frequency					✓
43	Quantity unit of measure	For each leg of the transaction, where applicable: unit of measure in which the Total notional quantity and Notional quantity are expressed.				✓	✓
44	Total notional quantity	For each leg of the transaction, where applicable: aggregate Notional quantity of the underlying asset for the term of the transaction. Where the Total notional quantity is not known when a new transaction is reported, the Total notional quantity is updated as it becomes available.				✓	✓
	Category: Packages						
45	Package indicator	Indicator of whether the swap transaction is part of a package transaction.	✓	✓	✓	✓	✓
46	Package identifier	Identifier (determined by the reporting counterparty) to connect • two or more transactions that are reported	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		separately by the reporting counterparty, but that are negotiated together as the product of a single economic agreement. • two or more reports pertaining to the same transaction whenever jurisdictional reporting requirement does not allow the transaction to be reported with a single report to TRs. A package may include reportable and non-reportable transactions. This data element is not applicable • if no package is involved, or • to allocations Where the Package identifier is not known when a new transaction is reported, the Package identifier is updated as it becomes available.					
47	Package transaction price	Traded price of the entire package in which the reported derivative transaction is a component. This data element is not applicable if • no package is involved, or • Package transaction spread is used Prices and related data elements of the transactions (Price currency, Price notation, Price unit of measure) that represent individual components of the package are reported when available. The Package transaction price may not be known when a new transaction is reported but may be updated later.	✓	✓	✓	✓	✓
48	Package transaction price currency	Currency in which the Package transaction price is denominated. This data element is not applicable if: • no package is involved, or • Package transaction spread is used, or • Package transaction price notation = 3	✓	✓	✓	✓	✓
49	Package transaction price notation	Manner in which the Package transaction price is expressed. This data element is not applicable if: • no package is involved, or • Package transaction spread is used	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
50	Package transaction spread	Traded price of the entire package in which the reported derivative transaction is a component of a package transaction. Package transaction price when the price of the package is expressed as a spread, difference between two reference prices. This data element is not applicable if • no package is involved, or • Package transaction price is used Spread and related data elements of the transactions (spread currency, Spread notation) that represent individual components of the package are reported when available. Package transaction spread may not be known when a new transaction is reported but may be updated later.	✓	✓	✓	✓	✓
51	Package transaction spread currency	Currency in which the Package transaction spread is denominated. This data element is not applicable if • no package is involved, or • Package transaction price is used, or • Package transaction spread notation = 3, or = 4	✓	✓	✓	✓	✓
52	Package transaction spread notation	Manner in which the Package transaction spread is expressed. This data element is not applicable if • no package is involved, or • Package transaction price is used.	✓	✓	✓	✓	✓
	Category: Payments						
53	Day count convention	For each leg of the transaction, where applicable: day count convention (often also referred to as day count fraction or day count basis or day count method) that determines how interest payments are calculated. It is used to compute the year fraction of the calculation period and indicates the number of days in the calculation period divided by the number of days in the year.	✓	✓	✓	✓	✓
54	Fixing date	Describes the specific date when a non-deliverable forward as well as various types of FX OTC options such as cash-settled options that will "fix" against a particular			✓		

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		exchange rate, which will be used to compute the ultimate cash settlement.					
55	Floating rate reset frequency period	For each floating leg of the swap transaction, where applicable, time unit associated with the frequency of resets, e.g., day, week, month, year, or term of the stream.	✓	✓	✓	✓	✓
56	Floating rate reset frequency period multiplier	For each floating leg of the swap transaction, where applicable, number of time units (as expressed by the Floating rate reset frequency period) that determines the frequency at which periodic payment dates for reset occur. For example, a transaction with reset payments occurring every two months is represented with a Floating rate reset frequency period of "MNTH" (monthly) and a Floating rate reset frequency period multiplier of 2. This data element is not applicable if the Floating rate reset frequency period is "ADHO." If Floating rate reset frequency period is "TERM," then the Floating rate reset frequency period multiplier is 1. If the reset frequency period is intraday, then the Floating rate reset frequency period is "DAIL" and the Floating rate reset frequency period multiplier is 0.	✓	✓	✓	✓	✓
57	Other payment type	Type of Other payment amount. Option premium payment is not included as a payment type as premiums for option are reported using the option premium dedicated data element.	✓	✓	✓	✓	✓
58	Other payment amount	Payment amounts with corresponding payment types to accommodate requirements of transaction descriptions from different asset classes.	✓	✓	✓	✓	✓
59	Other payment currency	Currency in which Other payment amount is denominated.	✓	✓	✓	✓	✓
60	Other payment date	Unadjusted date on which the Other payment amount is paid.	✓	✓	✓	✓	✓
61	Other payment payer	Identifier of the payer of Other payment amount.	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
62	Other payment receiver	Identifier of the receiver of Other payment amount.	✓	✓	✓	✓	✓
63	Payment frequency period	For each leg of the transaction, where applicable: time unit associated with the frequency of payments, e.g., day, week, month, year, or term of the stream.	✓	✓		✓	✓
64	Payment frequency period multiplier	For each leg of the transaction, where applicable: number of time units (as expressed by the Payment frequency period) that determines the frequency at which periodic payment dates occur. For example, a transaction with payments occurring every two months is represented with a Payment frequency period of "MNTH" (monthly) and a Payment frequency period multiplier of 2. This data element is not applicable if the Payment frequency period is "ADHO." If Payment frequency period is "TERM," then the Payment frequency period multiplier is 1. If the Payment frequency is intraday, then the Payment frequency period is "DAIL" and the Payment frequency multiplier is 0.	✓	✓		✓	✓
	Category: Prices						
65	Exchange rate	Exchange rate between the two different currencies specified in the OTC derivative transaction agreed by the counterparties at the inception of the transaction, expressed as the rate of exchange from converting the unit currency into the quoted currency. In the example 0.9426 USD/EUR, USD is the unit currency and EUR is the quoted currency; USD 1 = EUR 0.9426.			✓		
66	Exchange rate basis	Currency pair and order in which the exchange rate is denominated, expressed as unit currency/quoted currency. In the example 0.9426 USD/EUR, USD is the unit currency and EUR is the quoted currency, USD 1 = EUR 0.9426.			✓		
67	Fixed rate	For each leg of the transaction, where applicable: for OTC derivative transactions with periodic payments, per annum rate of the fixed leg(s).	✓	✓			✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
68	Post-priced swap indicator	Indicator of whether the swap transaction satisfies the definition of "post-priced swap" in § 43.2(a) of the Commission's regulations.	✓	✓	✓	✓	✓
69	Price	Price specified in the OTC derivative transaction. It does not include fees, taxes, or commissions. For commodity fixed/float swaps and similar products with periodic payments, this data element refers to the fixed price of the fixed leg(s). For commodity and equity forwards and similar products, this data element refers to the forward price of the underlying or reference asset. For equity swaps, portfolios swaps, and similar products, this data element refers to the initial price of the underlying or reference asset. For contracts for difference and similar products, this data element refers to the initial price of the underlier. This data element does not apply to: • Interest rate swaps and forward rate agreements, as it is understood that the information included in the data elements Fixed rate and Spread may be interpreted as the price of the transaction. • Interest rate options and interest rate swaptions as it is understood that the information included in the data elements Strike price and Option premium may be interpreted as the price of the transaction. • Commodity basis swaps and the floating leg of commodity fixed/float swaps as it is understood that the information included in the data element Spread may be interpreted as the price of the transaction. • Foreign exchange swaps, forwards, and options, as it is understood that the information included in the data elements Exchange rate, Strike price, and Option premium may be interpreted as the price of				✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		the transaction. • Equity options as it is understood that the information included in the data elements Strike price and Option premium may be interpreted as the price of the transaction. • Credit default swaps and credit total return swaps, as it is understood that the information included in the data elements Fixed rate, Spread and Upfront payment (Other payment type: Upfront payment) may be interpreted as the price of the transaction. • Commodity options, as it is understood that the information included in the data elements Strike price and Option premium may be interpreted as the price of the transaction. Where the price is not known when a new transaction is reported, the price is updated as it becomes available. For transactions that are part of a package, this data element contains the price of the component transaction where applicable.					
70	Price currency	Currency in which the price is denominated. Price currency is only applicable if Price notation = 1.				✓	✓
71	Price notation	Manner in which the price is expressed.				✓	✓
72	Price unit of measure	Unit of measure in which the price is expressed.				✓	✓
73	Spread	For each leg of the transaction, where applicable: for OTC derivative transactions with periodic payments (e.g., interest rate fixed/float swaps, interest rate basis swaps, commodity swaps), • spread on the individual floating leg(s) index reference price, in the case where there is a spread on a floating leg(s). For example, USD-LIBOR-BBA plus .03 or WTI minus USD 14.65; or • difference between the reference prices of the two floating leg indexes. For example, the 9.00 USD "Spread" for a WCS vs. WTI basis swap where WCS is priced at 43 USD and WTI is priced at 52 USD.	✓	✓		✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
74	Spread currency	For each leg of the transaction, where applicable: currency in which the spread is denominated. This data element is only applicable if Spread notation = 1.	✓	✓		✓	✓
75	Spread notation	For each leg of the transaction, where applicable: manner in which the spread is expressed.	✓	✓		✓	✓
76	Strike price	• For options other than FX options, swaptions and similar products, price at which the owner of an option can buy or sell the underlying asset of the option. • For foreign exchange options, exchange rate at which the option can be exercised, expressed as the rate of exchange from converting the unit currency into the quoted currency. In the example 0.9426 USD/EUR, USD is the unit currency and EUR is the quoted currency; USD 1 = EUR 0.9426. Where the strike price is not known when a new transaction is reported, the strike price is updated as it becomes available. • For volatility and variance swaps and similar products, the volatility strike price is reported in this data element.	✓	✓	✓	✓	✓
77	Strike price currency/currency pair	For equity options, commodity options, and similar products, currency in which the strike price is denominated. For foreign exchange options: Currency pair and order in which the strike price is expressed. It is expressed as unit currency/quoted currency. In the example 0.9426 USD/EUR, USD is the unit currency and EUR is the quoted currency, USD 1 = EUR 0.9426 Strike price currency/currency pair is only applicable if Strike price notation = 1.	✓	✓	✓	✓	✓
78	Strike price notation	Manner in which the strike price is expressed.	✓	✓	✓	✓	✓
79	Option premium amount	For options and swaptions of all asset classes, monetary amount paid by the option buyer. This data element is not applicable if the	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		instrument is not an option or does not embed any optionality.					
80	Option premium currency	For options and swaptions of all asset classes, currency in which the option premium amount is denominated. This data element is not applicable if the instrument is not an option or does not embed any optionality.	✓	✓	✓	✓	✓
81	Option premium payment date	Unadjusted date on which the option premium is paid.	✓	✓	✓	✓	✓
82	First exercise date	First unadjusted date during the exercise period in which an option can be exercised. For European-style options, this date is the same as the Expiration date. For American-style options, the first possible exercise date is the unadjusted date included in the Execution timestamp. For knock-in options, where the first exercise date is not known when a new transaction is reported, the first exercise date is updated as it becomes available. This data element is not applicable if the instrument is not an option or does not embed any optionality.	✓	✓	✓	✓	✓
	Category: Product						
83	CDS index attachment point	Defined lower point at which the level of losses in the underlying portfolio reduces the notional of a tranche. For example, the notional in a tranche with an attachment point of 3% will be reduced after 3% of losses in the portfolio have occurred. This data element is not applicable if the transaction is not a CDS tranche transaction (index or custom basket).	✓				
84	CDS index detachment point	Defined point beyond which losses in the underlying portfolio no longer reduce the notional of a tranche. For example, the notional in a tranche with an attachment point of 3% and a detachment point of 6% will be reduced after there have been 3% of losses in the portfolio. 6% losses in the portfolio deplete the notional of the tranche. This data element is not applicable if the transaction is	✓				

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		not a CDS tranche transaction (index or custom basket).					
85	Index factor	The index version factor or percent, expressed as a decimal value, that multiplied by the Notional amount yields the notional amount covered by the seller of protection for credit default swap.	✓				
86	Embedded option type	Type of option or optional provision embedded in a contract.	✓	✓	✓	✓	✓
87	Unique product identifier	A unique set of characters that represents a particular OTC derivative. The Commission will designate a UPI pursuant to § 45.7.	✓	✓	✓	✓	✓
	Category: Settlement						
88	Final contractual settlement date	Unadjusted date as per the contract, by which all transfer of cash or assets should take place and the counterparties should no longer have any outstanding obligations to each other under that contract. For products that may not have a final contractual settlement date (e.g., American options), this data element reflects the date by which the transfer of cash or asset would take place if termination were to occur on the expiration date.	✓	✓	✓	✓	✓
89	Settlement currency	Currency for the cash settlement of the transaction when applicable. For multi-currency products that do not net, the settlement currency of each leg. This data element is not applicable for physically settled products (e.g., physically settled swaptions).	✓	✓	✓	✓	✓
90	Settlement location	Place of settlement of the transaction as stipulated in the contract. This data element is only applicable for transactions that involve an offshore currency (i.e., a currency which is not included in the ISO 4217 currency list, for example CNH).	✓	✓	✓	✓	✓
	Category: Transaction related						
91	Allocation indicator	Indicator of whether the swap transaction is intended to be allocated, will not be allocated, or is a post-allocation transaction.	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
92	Non-standardized term indicator	Indicator of whether the swap transaction has one or more additional term(s) or provision(s), other than those disseminated to the public pursuant to part 43, that materially affect(s) the price of the swap transaction.	✓	✓	✓	✓	✓
93	Block trade election indicator	Indicator of whether an election has been made to report the swap transaction as a block transaction by the reporting counterparty or as calculated either by the swap data repository acting on behalf of the reporting counterparty or by using a third party.	✓	✓	✓	✓	✓
94	Effective date	Unadjusted date at which obligations under the OTC derivative transaction come into effect, as included in the confirmation.	✓	✓	✓	✓	✓
95	Expiration date	Unadjusted date at which obligations under the swap transaction stop being effective, as included in the confirmation. Early termination does not affect this data element.	✓	✓	✓	✓	✓
96	Execution timestamp	Date and time a transaction was originally executed, resulting in the generation of a new UTI. This data element remains unchanged throughout the life of the UTI.	✓	✓	✓	✓	✓
97	Reporting timestamp	Date and time of the submission of the report to the trade repository.	✓	✓	✓	✓	✓
98	Platform identifier	Identifier of the trading facility (e.g., exchange, multilateral trading facility, swap execution facility) on which the transaction was executed.	✓	✓	✓	✓	✓
99	Prime brokerage transaction indicator	Indicator of whether the swap transaction satisfies the definition of “mirror swap” or “trigger swap” in § 43.2(a) of the Commission’s regulations.	✓	✓	✓	✓	✓
100	Prior USI (for one-to-one and one-to-many relations between transactions)	Unique swap identifier (USI) assigned to the predecessor transaction that has given rise to the reported transaction due to a lifecycle event, in a one-to-one relation between transactions (e.g., in the case of a novation, when a transaction is terminated, and a new transaction is generated) or in a one-to-many relation between transactions (e.g., in clearing or if a transaction is split into several different transactions). This data element is not applicable when	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		reporting many-to-one and many-to-many relations between transactions (e.g., in the case of a compression).					
101	Prior UTI (for one-to-one and one-to-many relations between transactions)	UTI assigned to the predecessor transaction that has given rise to the reported transaction due to a lifecycle event, in a one-to-one relation between transactions (e.g., in the case of a novation, when a transaction is terminated, and a new transaction is generated) or in a one-to-many relation between transactions (e.g., in clearing or if a transaction is split into several different transactions). This data element is not applicable when reporting many-to-one and many-to-many relations between transactions (e.g., in the case of a compression).	✓	✓	✓	✓	✓
102	Unique swap identifier (USI)	The USI is a unique identifier assigned to all swap transactions which identifies the transaction (the swap and its counterparties) uniquely throughout its duration. It consists of a namespace and a transaction identifier.	✓	✓	✓	✓	✓
103	Unique transaction identifier (UTI)	A unique identifier assigned to all swap transactions which identifies the swap uniquely throughout its lifecycle and used for all recordkeeping and all swap data reporting pursuant to §45.5. A UTI is comprised of the LEI of the generating entity and a unique alphanumeric code.	✓	✓	✓	✓	✓
104	Jurisdiction	The jurisdiction(s) that is requiring the reporting of the swap transaction.	✓	✓	✓	✓	✓
	Category: Transfer						
105	New SDR identifier	Identifier of the new swap data repository where the swap transaction is transferred to.	✓	✓	✓	✓	✓
	Category: Valuation						
106	Next floating reference reset date	The nearest date in the future that the floating reference resets on.	✓	✓	✓	✓	✓
107	Last floating reference value	The most recent sampling of the value of the floating reference to determine cashflow. Ties to Last floating reference reset date data element.	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
108	Last floating reference reset date	The date of the most recent sampling of the floating reference to determine cashflow. Ties to Last floating reference value data element.	✓	✓	✓	✓	✓
109	Delta	The ratio of the absolute change in price of an OTC derivative transaction to the change in price of the underlier, at the time a new transaction is reported or when a change in the notional amount is reported.	✓	✓	✓	✓	✓
110	Valuation amount	Current value of the outstanding contract. Valuation amount is expressed as the exit cost of the contract or components of the contract, i.e., the price that would be received to sell the contract (in the market in an orderly transaction at the valuation date).	✓	✓	✓	✓	✓
111	Valuation currency	Currency in which the valuation amount is denominated.	✓	✓	✓	✓	✓
112	Valuation method	Source and method used for the valuation of the transaction by the reporting counterparty. If at least one valuation input is used that is classified as mark-to-model in appendix in the swap data technical specification, then the whole valuation is classified as mark-to-model. If only inputs are used that are classified as mark-to-market in appendix the swap data technical specification, then the whole valuation is classified as mark-to-market.	✓	✓	✓	✓	✓
113	Valuation timestamp	Date and time of the last valuation marked to market, provided by the central counterparty (CCP) or calculated using the current or last available market price of the inputs. If, for example, a currency exchange rate is the basis for a transaction's valuation, then the valuation timestamp reflects the moment in time that exchange rate was current.	✓	✓	✓	✓	✓
	Category: Collateral and margins						
114	Affiliated counterparty for margin and capital indicator	Indicator of whether the current counterparty is deemed an affiliate for U.S. margin and capital rules (as per § 23.159).	✓	✓	✓	✓	✓
115	Collateralisation category	Indicator of whether a collateral agreement (or collateral agreements) between the	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		counterparties exists (uncollateralised/partially collateralised/one-way collateralised/fully collateralised). This data element is provided for each transaction or each portfolio, depending on whether the collateralisation is performed at the transaction or portfolio level, and applies to both cleared and uncleared transactions.					
116	Initial margin collateral portfolio code	If collateral is reported on a portfolio basis, a unique code assigned by the reporting counterparty to the portfolio that tracks the aggregate initial margin of a set of open swap transactions. This data element is not applicable if the collateralisation was performed on a transaction level basis, or if there is no collateral agreement or if no collateral is posted or received. The portfolio code is required for both collateral reporting and valuation reporting in order to link the 2 data sets.	✓	✓	✓	✓	✓
117	Portfolio containing non-reportable component indicator	If collateral is reported on a portfolio basis, indicator of whether the collateral portfolio includes swap transactions exempt from reporting.	✓	✓	✓	✓	✓
118	Initial margin posted by the reporting counterparty (post-haircut)	Monetary value of initial margin that has been posted by the reporting counterparty, including any margin that is in transit and pending settlement unless inclusion of such margin is not allowed under the jurisdictional requirements. If the collateralisation is performed at portfolio level, the initial margin posted relates to the whole portfolio; if the collateralisation is performed for single transactions, the initial margin posted relates to such single transaction. This refers to the total current value of the initial margin after application of the haircut (if applicable), rather than to its daily change. The data element refers both to uncleared and centrally cleared transactions. For centrally	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		cleared transactions, the data element does not include default fund contributions, nor collateral posted against liquidity provisions to the central counterparty, i.e., committed credit lines. If the initial margin posted is denominated in more than one currency, those amounts are converted into a single currency chosen by the reporting counterparty and reported as one total value.					
119	Initial margin posted by the reporting counterparty (pre-haircut)	Monetary value of initial margin that has been posted by the reporting counterparty, including any margin that is in transit and pending settlement unless inclusion of such margin is not allowed under the jurisdictional requirements. If the collateralisation is performed at portfolio level, the initial margin posted relates to the whole portfolio; if the collateralisation is performed for single transactions, the initial margin posted relates to such single transaction. This refers to the total current value of the initial margin, rather than to its daily change. The data element refers both to uncleared and centrally cleared transactions. For centrally cleared transactions, the data element does not include default fund contributions, nor collateral posted against liquidity provisions to the central counterparty, i.e., committed credit lines. If the initial margin posted is denominated in more than one currency, those amounts are converted into a single currency chosen by the reporting counterparty and reported as one total value.	✓	✓	✓	✓	✓
120	Currency of initial margin posted	Currency in which the initial margin posted is denominated. If the initial margin posted is denominated in more than one currency, this data element reflects one of those currencies into which the reporting counterparty has chosen to convert all the values of posted initial margins.	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
121	Initial margin collected by the reporting counterparty (post-haircut)	Monetary value of initial margin that has been collected by the reporting counterparty, including any margin that is in transit and pending settlement unless inclusion of such margin is not allowed under the jurisdictional requirements. If the collateralisation is performed at portfolio level, the initial margin collected relates to the whole portfolio; if the collateralisation is performed for single transactions, the initial margin collected relates to such single transaction. This refers to the total current value of the initial margin after application of the haircut (if applicable), rather than to its daily change. The data element refers both to uncleared and centrally cleared transactions. For centrally cleared transactions, the data element does not include collateral collected by the central counterparty as part of its investment activity. If the initial margin collected is denominated in more than one currency, those amounts are converted into a single currency chosen by the reporting counterparty and reported as one total value.	✓	✓	✓	✓	✓
122	Initial margin collected by the reporting counterparty (pre-haircut)	Monetary value of initial margin that has been collected by the reporting counterparty, including any margin that is in transit and pending settlement unless inclusion of such margin is not allowed under the jurisdictional requirements. If the collateralisation is performed at the portfolio level, the initial margin collected relates to the whole portfolio; if the collateralisation is performed for single transactions, the initial margin collected relates to such single transaction. This refers to the total current value of the initial margin, rather than to its daily change. The data element refers both to uncleared and centrally cleared transactions. For centrally cleared transactions, the data element does not include collateral collected by the central	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		counterparty as part of its investment activity. If the initial margin collected is denominated in more than one currency, those amounts are converted into a single currency chosen by the reporting counterparty and reported as one total value.					
123	Currency of initial margin collected	Currency in which the initial margin collected is denominated. If the initial margin collected is denominated in more than one currency, this data element reflects one of those currencies into which the reporting counterparty has chosen to convert all the values of collected initial margins.	✓	✓	✓	✓	✓
124	Variation margin collateral portfolio code	If collateral is reported on a portfolio basis, a unique code assigned by the reporting counterparty to the portfolio that tracks the aggregate variation margin related to a set of open swap transactions. This data element is not applicable if the collateralisation was performed on a transaction level basis, or if there is no collateral agreement or if no collateral is posted or received. The portfolio code is required for both collateral reporting and valuation reporting in order to link the 2 data sets.	✓	✓	✓	✓	✓
125	Variation margin posted by the reporting counterparty (pre-haircut)	Monetary value of the variation margin posted by the reporting counterparty (including the cash-settled one), and including any margin that is in transit and pending settlement unless inclusion of such margin is not allowed under the jurisdictional requirements. Contingent variation margin is not included. If the collateralisation is performed at the portfolio level, the variation margin posted relates to the whole portfolio; if the collateralisation is performed for single transactions, the variation margin posted relates to such single transaction. This data element refers to the total current value of the variation margin, cumulated since the first reporting of variation margins posted for the portfolio/transaction	✓	✓	✓	✓	✓

	Data Element Name	Definition for Data Element	Asset Class				
			CR	IR	FX	EQ	CO
		If the variation margin posted is denominated in more than one currency, those amounts are converted into a single currency chosen by the reporting counterparty and reported as one total value.					
126	Currency of variation margin posted	Currency in which the variation margin posted is denominated. If the variation margin posted is denominated in more than one currency, this data element reflects one of those currencies into which the reporting counterparty has chosen to convert all the values of posted variation margins.	✓	✓	✓	✓	✓
127	Variation margin collected by the reporting counterparty (pre-haircut)	Monetary value of the variation margin collected by the reporting counterparty (including the cash-settled one), and including any margin that is in transit and pending settlement unless inclusion of such margin is not allowed under the jurisdictional requirements. Contingent variation margin is not included. If the collateralisation is performed at portfolio level, the variation margin collected relates to the whole portfolio; if the collateralisation is performed for single transactions, the variation margin collected relates to such single transaction. This refers to the total current value of the variation margin, cumulated since the first reporting of collected variation margins for the portfolio/ transaction. If the variation margin collected is denominated in more than one currency, those amounts are converted into a single currency chosen by the reporting counterparty and reported as one total value.	✓	✓	✓	✓	✓
128	Currency of variation margin collected	Currency in which the variation margin collected is denominated. If the variation margin collected is denominated in more than one currency, this data element reflects one of those currencies into which the reporting counterparty has chosen to convert all the values of collected variation margins.	✓	✓	✓	✓	✓

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PART 46-SWAP DATA RECORDKEEPING AND REPORTING REQUIREMENTS: PRE–ENACTMENT AND TRANSITION SWAPS

■ 17. The authority citation for part 46 continues to read as follows:

Authority: Title VII, sections 723 and 729, Pub. L. 111–203, 124 Stat. 1738.

■ 18. Amend § 46.1 by:

■ a. Revising the introductory text and designating it as paragraph (a) introductory text;

■ b. Revising the definition of ''Asset class'';

■ c. Removing the definitions of ''Credit swap'', ''Foreign exchange forward'', ''Foreign exchange instrument'', and ''Foreign exchange swap'';

■ d. Adding, in alphabetical order, a definition for ''Historical swap''

■ e. Removing the definitions of ''Interest rate swap'', ''International swap'', and ''Major swap participant'';

■ f. Removing the definition of ''Non-SD/MSP counterparty'' and adding a definition for ''Non-SD/MSP/DCO counterparty'';

■ g. Removing the definition of ''Other commodity swap'';

■ h. Revising the definitions of ''Reporting counterparty'' and ''Required swap continuation data'';

■ i. Adding, in alphabetical order, a definition for ''Substitute counterparty identifier'';

■ j. Removing the definitions of ''Swap data repository'' and ''Swap dealer''; and

■ k. Adding paragraph (b).

The revisions and additions read as follows:

§ 46.1 Definitions.

(a) As used in this part:

Asset class means a broad category of commodities, including, without limitation, any ''excluded commodity'' as defined in section 1a(19) of the Act, with common characteristics underlying a swap. The asset classes include interest rate, foreign exchange, credit, equity, other commodity, and such other asset classes as may be determined by the Commission.

* * * * *

Historical swap means pre-enactment swaps and transition swaps.

* * * * *

Non-SD/MSP/DCO counterparty means a swap counterparty that is not a swap dealer, major swap participant, or derivatives clearing organization.

* * * * *

Reporting counterparty means the counterparty required to report data for a pre-enactment swap or a transition swap pursuant to this part, selected as provided in § 46.5.

Required swap continuation data means all of the data elements that shall be reported during the existence of a swap as required by part 45 of this chapter.

Substitute counterparty identifier means a unique alphanumeric code assigned by a swap data repository to a swap counterparty prior to the Commission designation of a legal entity identifier system on July 23, 2012.

* * * * *

(b) *Other defined terms.* Terms not defined in this part have the meanings assigned to the terms in § 1.3 of this chapter.

§ 46.2 [Amended]

■ 19. Remove from § 46.2 the text ''non-SD/MSP'' and add in its place ''non-SD/MSP/DCO'' wherever it appears.

■ 20. In § 46.3:

■ a. Revise the section heading;

■ b. Remove from the end of paragraph (a)(1)(iii)(A) ''; and'' and add in its place a period;

■ c. Revise paragraph (a)(2)(i); and

■ d. Remove from paragraph (a)(3)(i) the text ''first report of required swap creation data'' and add in its place ''first report of such data''.

The revisions read as follows:

§ 46.3 Data reporting for pre-enactment swaps and transition swaps.

(a) * * *

(2) * * *

(i) For each uncleared pre-enactment or transition swap in existence on or after April 25, 2011, throughout the existence of the swap following the compliance date, the reporting counterparty must report all required swap continuation data as required by part 45 of this chapter.

* * * * *

§§ 46.4, 46.5, 46.6, 46.8, 46.9 [Amended]

■ 21. In the table below, for each section and paragraph indicated in the left column, remove the text indicated in the middle column from wherever it appears, and add in its place the text indicated in the right column:

Section/paragraph	Remove	Add
46.4 introductory text	swap data reporting	data reporting.
46.4(a)	substitute counterparty identifier as provided in § 45.6(f) of this chapter.	substitute counterparty identifier.
46.4(d)	unique swap identifier and unique product identifier	unique swap identifier, unique transaction identifier, and unique product identifier.
46.5(a) introductory text	swap data	data.
46.5(a)(3), (4), and (5)	non-SD/MSP	non-SD/MSP/DCO.
46.5(d)(3)	non-SD/MSP	non-SD/MSP/DCO.
46.6	report swap data	report data.
46.8(a)	accepts swap data	accepts data for pre-enactment and transition swaps.
46.8(a)	required swap creation data or required swap continuation data.	such data.
46.8(c)(2)(ii)	reporting entities	registered entities.
46.8(d)	swap data reporting	reporting data for pre-enactment and transition swaps.
46.9(a)	any report of swap data	any report of data.
46.9(f)	errors in the swap data	errors in the data for a pre-enactment or a transition swap.

■ 22. In § 46.10:

■ a. Remove the text ''reporting swap data'' and add in its place ''reporting data for a pre-enactment or a transition swap''; and

■ b. Add a second sentence to read as follows:

§ 46.10 Required data standards.

* * * In reporting required swap continuation data as required by this part, each reporting counterparty shall comply with the required data standards set forth in part 45 of this chapter, including those set forth in § 45.13(a) of this chapter.

■ 23. Amend § 46.11 by:
■ a. Removing from paragraph (a) the text ''report swap data'' and adding in its place ''report data for a pre-enactment or a transition swap'';
■ b. Removing paragraph (b);
■ c. Redesignating paragraph (c) as new paragraph (b) and revising it; and
■ d. Redesignating paragraph (d) as new paragraph (c).

The revision reads as follows:

§ 46.11 Reporting of errors and omissions in previously reported data.

* * * * *

(b) Each counterparty to a pre-enactment or transition swap that is not the reporting counterparty as determined pursuant to § 46.5, and that discovers any error or omission with respect to any data for a pre-enactment or transition swap reported to a swap data repository for that swap, shall promptly notify the reporting counterparty of each such error or omission. As soon as technologically practicable after receiving such notice, the reporting counterparty shall report a correction of each such error or omission to the swap data repository.

* * * * *

PART 49—SWAP DATA REPOSITORIES

■ 24. The authority citation for part 49 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2(a), 6r, 12a, and 24a, as amended by Title VII of the Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (Jul. 21, 2010), unless otherwise noted.

■ 25. In § 49.2(a),
■ a. Remove the paragraph designations of the definitions and arrange the definitions in alphabetical order;
■ b. Add, in alphabetical order, definitions for the terms ''Data validation acceptance message''; ''Data validation error''; ''Data validation error message''; and ''Data validation procedures''
■ c. Redesignate paragraphs (i) through (iii) under the definition for ''Non-affiliated third party'' as paragraphs (1) through (3);
■ d. Redesignate paragraphs (i) through (iii) under the definition for ''Person associated with a swap data repository'' as paragraphs (1) through (3); and
■ e. Redesignate paragraphs (i) through (vi) under the definition for ''Position'' as paragraphs (1) through (6);

The additions read as follows:

§ 49.2 Definitions.

(a) * * *

Data validation acceptance message means a notification that SDR data satisfied the data validation procedures applied by a swap data repository.

Data validation error means that a specific data element of SDR data did not satisfy the data validation procedures applied by a swap data repository.

Data validation error message means a notification that SDR data contained one or more data validation error(s).

Data validation procedures procedures established by a swap data repository pursuant to § 49.10 to validate SDR data reported to the swap data repository.

* * * * *

■ 26. In § 49.4:
■ a. For each paragraph indicated in the left column of the table below, remove the text indicated in the middle column from wherever it appears, and add in its place the text indicated in the right column:

Section/paragraph	Remove	Add
(a)(1) introductory text	registered swap data repository	swap data repository.
(a)(1) introductory text	withdrawn, which	withdrawn. Such.
(a)(1) introductory text	sixty	60.
(a)(1) introductory text and (a)(1)(i).	registrant	swap data repository.
(a)(1)(ii)	registrant;	swap data repository; and.
(a)(1)(iii)	located; and	located.
(c)	registered swap data repository	swap data repository.

■ b. Remove paragraph (a)(1)(iv) and revise paragraph (a)(2).

The revision reads as follows:

§ 49.4 Withdrawal from registration.

(a) * * *

(2) Prior to filing a request to withdraw, a swap data repository shall execute an agreement with the custodial swap data repository governing the custody of the withdrawing swap data repository's data and records. The custodial swap data repository shall retain such records for at least as long as the remaining period of time the swap data repository withdrawing from registration would have been required to retain such records pursuant to this part.

* * * * *

■ 27. Revise § 49.10 to read as follows:

§ 49.10 Acceptance and validation of data.

(a) *General requirements*—(1) *Generally.* A swap data repository shall establish, maintain, and enforce policies and procedures reasonably designed to facilitate the complete and accurate reporting of SDR data. A swap data repository shall promptly accept, validate, and record SDR data.

(2) *Electronic connectivity.* For the purpose of accepting SDR data, the swap data repository shall adopt policies and procedures, including technological protocols, which provide for electronic connectivity between the swap data repository and designated contract markets, derivatives clearing organizations, swap execution facilities, swap dealers, major swap participants and non-SD/MSP/DCO reporting counterparties who report such data. The technological protocols established by a swap data repository shall provide for the receipt of SDR data. The swap data repository shall ensure that its mechanisms for SDR data acceptance are reliable and secure.

(b) *Duty to accept SDR data.* A swap data repository shall set forth in its application for registration as described in § 49.3 the specific asset class or classes for which it will accept SDR data. If a swap data repository accepts SDR data of a particular asset class, then it shall accept SDR data from all swaps of that asset class, unless otherwise prescribed by the Commission.

(c) *Duty to validate SDR data.* A swap data repository shall validate SDR data as soon as technologically practicable after such data is accepted according to the validation conditions approved in writing by the Commission. A swap data repository shall validate SDR data by providing data validation acceptance messages and data validation error messages, as provided in this paragraph (c).

(1) *Data validation acceptance message.* A swap data repository shall validate each SDR data report submitted to the swap data repository and notify

the reporting counterparty, swap execution facility, designated contract market, or third-party service provider submitting the report whether the report satisfied the data validation procedures of the swap data repository as soon as technologically practicable after accepting the SDR data report.

(2) *Data validation error message.* If SDR data contains one or more data validation errors, the swap data repository shall distribute a data validation error message to the designated contract market, swap execution facility, reporting counterparty, or third-party service provider that submitted such SDR data as soon as technologically practicable after acceptance of such data. Each data validation error message shall indicate which specific data validation error(s) was identified in the SDR data.

(3) *Swap transaction and pricing data submitted with swap data.* If a swap data repository allows for the joint submission of swap transaction and pricing data and swap data, the swap data repository shall validate the swap transaction and pricing data and swap data separately. Swap transaction and pricing data that satisfies the data validation procedures applied by a swap data repository shall not be deemed to contain a data validation error because it was submitted to the swap data repository jointly with swap data that contained a data validation error.

(d) *Policies and procedures to prevent invalidation or modification.* A swap data repository shall establish policies and procedures reasonably designed to prevent any provision in a valid swap from being invalidated or modified through the verification or recording process of the swap data repository. The policies and procedures shall ensure that the swap data repository's user agreements are designed to prevent any such invalidation or modification.

(e) [Reserved]

(f) *Policies and procedures for resolving disputes regarding data accuracy.* A swap data repository shall establish procedures and provide facilities for effectively resolving disputes over the accuracy of the SDR data and positions that are recorded in the swap data repository.

Issued in Washington, DC, on September 24, 2020, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

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

Appendices to Swap Data Recordkeeping and Reporting Requirements—Commission Voting Summary, Chairman's Statement, and Commissioners' Statements

Appendix 1—Commission Voting Summary

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

Appendix 2—Statement of Chairman Heath P. Tarbert

I am pleased to support today's final swap data reporting rules under Parts 43, 45, and 49 of the CFTC's regulations, which are foundational to effective oversight of the derivatives markets. As I noted when these rules were proposed in February, ''[d]ata is the lifeblood of our markets.'' [1] Little did I know just how timely that statement would prove to be.

COVID–19 Crisis and Beyond

In the month following our data rule proposals, historic volatility caused by the coronavirus pandemic rocketed through our derivatives markets, affecting nearly every asset class.[2] I said at the time that while our margin rules acted as ''shock absorbers'' to cushion the impact of volatility, the Commission was also considering data rules that would expand our insight into potential systemic risk. In particular, the data rules ''would for the first time require the reporting of margin and collateral data for uncleared swaps . . . significantly strengthen[ing] the CFTC's ability to monitor for systemic risk'' in those markets.[3] Today we complete those rules, shoring up the data-based reporting systems that can help us identify—and quickly respond to—emerging systemic threats.

But data reporting is not just about mitigating systemic risk. Vibrant derivatives markets must be open and free, meaning transparency is a critical component of any reporting system. Price discovery requires robust public reporting that supplies market participants with the information they need to price trades, hedge risk, and supply liquidity. Today we double down on transparency, ensuring that public reporting of swap transactions is even more accurate and timely. In particular, our final rules adjust certain aspects of the Part 43 proposal's block-trade [4] reporting rules to improve transparency in our markets. These changes have been carefully considered to enhance clarity, one of the CFTC's core values.[5]

Promoting clarity in our markets also demands that we, as an agency, have clear goals in mind. Today's final swap data reporting rules reflect a hard look at the data we need and the data we collect, building on insights gleaned from our own analysis as well as feedback from market participants. The key point is that more data does not necessarily mean better information. Instead, the core of an effective data reporting system is focus.

As Aesop reminds us, ''Beware lest you lose the substance by grasping at the shadow.'' [6] Today's final swap data reporting rules place substance first, carefully tailoring our requirements to reach the data that really matters, while removing unnecessary burdens on our market participants. As Bill Gates once remarked, ''My success, part of it certainly, is that I have focused in on a few things.'' [7] So too are the final swap data reporting rules limited in number. The Part 45 Technical Specification, for example, streamlines hundreds of different data fields currently required by swap data repositories into 128 that truly advance the CFTC's regulatory goals. This focus will simplify the data reporting process without undermining its effectiveness, thus fulfilling the CFTC's strategic goal of enhancing the regulatory experience for market participants at home and abroad.[8]

That last point is worth highlighting: Our final swap data reporting rules account for market participants both within and outside the United States. A diversity of market participants, some of whom reside beyond our borders and are accountable to foreign regulatory regimes, contribute to vibrant derivatives markets. But before today, inconsistent international rules meant some swap dealers were left to navigate what I have called ''a byzantine maze of disparate data fields and reporting timetables'' for the very same swap.[9] While perfect alignment may not be possible or even desirable, the final rules significantly harmonize reportable data fields, compliance timetables, and implementation requirements to advance our global markets. Doing so brings us closer to realizing the CFTC's vision of being the global standard for sound derivatives regulation.[10]

Overview of the Swap Data Reporting Rules

It is important to understand the specific function of each of the three swap data

[1] Statement of Chairman Heath P. Tarbert in Support of Proposed Rules on Swap Data Reporting (Feb. 20, 2020), *https://www.cftc.gov/PressRoom/SpeechesTestimony/tabertstatement022020* (hereinafter, Tarbert, Proposal Statement).

[2] See Heath P. Tarbert, Volatility Ain't What it Used to Be, Wall Street Journal (Mar. 23, 2020), *https://www.wsj.com/articles/volatility-aint-what-it-used-to-be-11585004897?mod=searchresults&page=1&pos=1* (hereinafter Tarbert, Volatility).

[3] *Id.*

[4] The final rule's definition of ''block trade'' is provided in regulation 43.2.

[5] See CFTC Core Values, *https://www.cftc.gov/About/Mission/index.htm.*

[6] Aesop, ''The Dog and the Shadow,'' The Harvard Classics, *https://www.bartleby.com/17/1/3.html.*

[7] ABC News, One-on-One with Bills Gates (Feb. 21, 2008), *https://abcnews.go.com/WNT/CEOProfiles/story?id=506354&page=1.*

[8] See CFTC Strategic Plan 2020–2024, at 4 (discussing Strategic Goal 3), *https://www.cftc.gov/media/3871/CFTC2020_2024StrategicPlan/download.*

[9] Tarbert, Proposal Statement, *supra* note 1.

[10] See CFTC Vision Statement, available at *https://www.cftc.gov/About/AboutTheCommission#:~:text=CFTC%20Vision%20Statement,standard%20for%20sound%20derivatives%20regulation.*

reporting rules, which together form the CFTC's reporting system. First, Part 43 relates to the *real-time public reporting* of swap pricing and transaction data, which appears on the ''public tape.'' Swap dealers and other reporting parties supply Part 43 data to swap data repositories (SDRs), which then make the data public. Part 43 includes provisions relating to the treatment and public reporting of large notional trades (blocks), as well as the ''capping'' of swap trades that reach a certain notional amount.

Second, Part 45 relates to the *regulatory reporting* of swap data to the CFTC by swap dealers and other covered entities. Part 45 data provides the CFTC with insight into the swaps markets to assist with regulatory oversight. A Technical Specification available on the CFTC's website [11] includes data elements that are unique to CFTC reporting, as well as certain ''Critical Data Elements,'' which reflect longstanding efforts by the CFTC and other regulators to develop global guidance for swap data reporting.[12]

Finally, Part 49 requires *data verification* to help ensure that the data reported to SDRs and the CFTC in Parts 43 and 45 is accurate. The final Part 49 rule will provide enhanced and streamlined oversight of SDRs and data reporting generally. In particular, Part 49 will now require SDRs to have a mechanism by which reporting counterparties can access and verify the data for their open swaps held at the SDR. A reporting counterparty must compare the SDR data with the counterparty's own books and records, correcting any data errors with the SDR.

Systemic Risk Mitigation

Today's final swap data reporting rules are designed to fulfill our agency's first Strategic Goal: to strengthen the resilience and integrity of our derivatives markets while fostering the vibrancy.[13] The Part 45 rule requires swap dealers to report uncleared margin data for the first time, enhancing the CFTC's ability to ''to monitor systemic risk accurately and to act quickly if cracks begin to appear in the system.'' [14] As Justice Brandeis famously wrote in advocating for transparency in organizations, ''sunlight is the best disinfectant.'' [15] So too it is for financial markets: the better visibility the CFTC has into the uncleared swaps markets, the more effectively it can address what until now has been ''a black box of potential systemic risk.'' [16]

Doubling Down on Transparency

Justice Brandeis's words also resonate across other areas of the final swap data reporting rules. The final swap data reporting rules enhance transparency to the public of pricing and trade data.

1. Blocks and Caps

A critical aspect of the final Part 43 rule is the issue of block trades and dissemination delays. When the Part 43 proposal was issued, I noted that ''[o]ne of the issues we are looking at closely is whether a 48-hour delay for block trade reporting is appropriate.'' [17] I encouraged market participants to ''provide comment letters and feedback concerning the treatment of block delays.'' [18] Market participants responded with extensive feedback, much of which advocated for shorter delays in making block trade data publicly available. I agree with this view, and support a key change in the final Part 43 rule. Rather than apply the proposal's uniform 48-hour dissemination delay on block trade reporting, the final rule returns to bespoke public reporting timeframes that consider liquidity, market depth, and other factors unique to specific categories of swaps. The result is shorter reporting delays for most block trades.

The final Part 43 rule also changes the threshold for block trade treatment, raising the amount needed from a 50% to 67% notional calculation. It also increases the threshold for capping large notional trades from 67% to 75%. These changes will enhance market transparency by applying a stricter standard for blocks and caps, thereby enhancing public access to swap trading data. At the same time, the rule reflects serious consideration of how these thresholds are calculated, particularly for block trades. In excluding certain option trades and CDS trades around the roll months from the 67% notional threshold for blocks, the final rule helps ensure that dissemination delays have their desired effect of preventing front-running and similar disruptive activity.

2. Post-Priced and Prime-Broker Swaps

The swaps market is highly complex, reflecting a nearly endless array of transaction structures. Part 43 takes these differences into account in setting forth the public reporting requirements for price and transaction data. For example, post-priced swaps are valued after an event occurs, such as the ringing of the daily closing bell in an equity market. As it stands today, post-priced swaps often appear on the public tape with no corresponding pricing data—rendering the data largely unusable. The final Part 43 rule addresses this data quality issue and improves price discovery by requiring post-priced swaps to appear on the public tape after pricing occurs.

The final Part 43 rule also resolves an issue involving the reporting of prime-brokerage swaps. The current rule requires that offsetting swaps executed with prime brokers—in addition to the initial swap reflecting the actual terms of trade—be reported on the public tape. This duplicative reporting obfuscates public pricing data by including prime-broker costs and fees that are unrelated to the terms of the swap. As I explained when the rule was proposed, cluttering the public tape with duplicative or confusing data can impair price discovery.[19] The final Part 43 rule addresses this issue by requiring that only the initial ''trigger'' swap be reported, thereby improving public price information.

3. Verification and Error Correction

Data is only as useful as it is accurate. The final Part 49 rule establishes an efficient framework for verifying SDR data accuracy and correcting errors, which serves both regulatory oversight and public price discovery purposes.

Improving the Regulatory Experience

Today's final swap data reporting rules improve the regulatory experience for market participants at home and abroad in several key ways, advancing the CFTC's third Strategic Goal.[20] Key examples are set forth below.

1. Streamlined Data Fields

As I stated at the proposal stage, ''[s]implicity should be a central goal of our swap data reporting rules.'' [21] This sentiment still holds true, and a key improvement to our final Part 45 Technical Specification is the streamlining of reportable data fields. The current system has proven unworkable, leaving swap dealers and other market participants to wander alone in the digital wilderness, with little guidance about the data elements that the CFTC actually needs. This uncertainty has led to ''a proliferation of reportable data fields'' required by SDRs that ''exceed what market participants can readily provide and what the [CFTC] can realistically use.'' [22]

We resolve this situation today by replacing the sprawling mass of disparate SDR fields—sometimes running into the hundreds or thousands—with 128 that are important to the CFTC's oversight of the swaps markets. These fields reflect an honest look at the data we are collecting and the data we can use, ensuring that our market participants are not burdened with swap reporting obligations that do not advance our statutory mandates.

2. Regulatory Harmonization

The swaps markets are integrated and global; our data rules must follow suit.[23] To that end, the final Part 45 rule takes a sensible approach to aligning the CFTC's data reporting fields with the standards set by international efforts. Swap data reporting is an area where harmonization simply makes sense. The costs of failing to harmonize are high, as swap dealers and other reporting parties must provide entirely different data sets to multiple regulators for the very same

[11] See CFTC, Technical Specification Document, *https://www.cftc.gov/media/3496/DMO_Part43_45TechnicalSpecification022020/download.*

[12] Since November 2014, the CFTC and regulators in other jurisdictions have collaborated through the Committee on Payments and Market Infrastructures (''CPMI'') and the International Organization of Securities Commissions (''IOSCO'') working group for the harmonization of key over-the-counter (''OTC'') derivatives data elements (''Harmonisation Group''). The Harmonisation Group developed global guidance for key OTC derivatives data elements, including the Unique Transaction Identifier, the Unique Product Identifier, and critical data elements other than UTI and UPI.

[13] See CFTC Strategic Plan, *supra* note 7, at 5.

[14] Tarbert, Proposal Statement, *supra* note 1, note 2.

[15] Hon. Louis D. Brandeis, Other People's Money 62 (National Home Library Foundation ed. 1933).

[16] Tarbert, Proposal Statement, *supra* note 1.

[17] Tarbert, Proposal Statement, *supra* note 1, note 14.

[18] *Id.*

[19] Tarbert, Proposal Statement, *supra* note 1.

[20] CFTC Strategic Plan, *supra* note 7, at 7.

[21] Tarbert, Proposal Statement, supra note 1.

[22] *Id.*

[23] *See* Tarbert, Proposal Statement, *supra* note 1.

swap.[24] A better approach is to conform swap data reporting requirements where possible.

Data harmonization is not just good for market participants: it also advances the CFTC's vision of being the global standard for sound derivatives regulation.[25] The CFTC has a long history of leading international harmonization efforts in data reporting, including by serving as a co-chair of the Committee on Payments and Infrastructures and the International Organization of Securities Commissioners (CPMI–IOSCO) working group on critical data elements (CDE) in swap reporting.[26] I am pleased to support a final Part 45 rule that advances these efforts by incorporating CDE fields that serve our regulatory goals.

In addition to certain CDE fields, the final Part 45 rule also adopts other important features of the CPMI–IOSCO Technical Guidance, such as the use of a Unique Transaction Identifier (UTI) system in place of today's Unique Swap Identifier (USI) system. This change will bring the CFTC's swap data reporting system in closer alignment with those of other regulators, leading to better data sharing and lower burdens on market participants.

Last, the costs of altering data reporting systems makes implementation timeframes especially important. To that effect, the CFTC has worked with ESMA to bring our jurisdictions' swap data reporting compliance timetables into closer harmony, easing transitions to new reporting systems.

3. Verification and Error Correction

The final Part 49 rule has changed since the proposal stage to facilitate easier verification of SDR data by swap dealers. Based on feedback we received, the final rule now requires SDRs to provide a mechanism for swap dealers and other reporting counterparties to access the SDR's data for their open swaps to verify accuracy and address errors. This approach replaces a message-based system for error identification and correction, which would have produced significant implementation costs without improving error remediation. The final rule achieves the goal—data accuracy—with fewer costs and burdens.[27]

4. Relief for End Users

I have long said that if our derivatives markets are not working for agriculture, then they are not working at all.[28] While swaps are often the purview of large financial institutions, they also provide critical risk-management functions for end users like farmers, ranchers, and manufacturers. Our final Part 45 rule removes the requirement that end users report swap valuation data, and it provides them with a longer ''T+2'' timeframe to report the data that is required. I am pleased to support these changes to end-user reporting, which will help ensure that our derivatives markets work for all Americans, advancing another CFTC strategic goal.[29]

Conclusion

The derivatives markets run on data. They will be even more reliant on it in the future, as digitization continues to sweep through society and industry. I am pleased to support the final rules under Parts 43, 45, and 49, which will help ensure that the CFTC's swap data reporting systems are effective, efficient, and built to last.

Appendix 3—Supporting Statement of Commissioner Brian Quintenz

I am pleased to support these amendments to part 45 regulatory reporting, which hopefully represent the beginning of the end of this agency's longstanding efforts to collect and utilize accurate, reliable swap data to further its regulatory mandates.

There is frequently a trade-off between being first and being right. That is especially true when it comes to regulation and specifically true when it comes to the CFTC's historical approach to data reporting. Although the CFTC was the first regulator in the world to implement swap data reporting requirements, it did so only in a partial, non-descriptive, and non-technical fashion, which has led to the fact that, even today—more than 10 years after Dodd Frank—the Commission has great difficulty aggregating and analyzing data for uncleared swaps across swap data repositories (SDRs).

Since the CFTC first implemented its swap data reporting requirements, the CFTC has continued to lead global efforts to reach international consensus on those reporting requirements so that derivatives regulators can finally get a clear picture of the uncleared swaps landscape. I would like to recognize the diligent efforts of DMO staff to finally get us over the finish line.

Today's amendments to part 45 regulatory reporting will provide the Commission with the homogeneous data it needs to readily analyze swap data for both cleared and uncleared swaps across jurisdictions. The final rule eliminates unnecessary reporting fields and implements internationally agreed to ''critical data elements'' (CDE fields) consistently with the detailed technical standards put forth by CPMI–IOSCO.[1]

The final rule also provides reporting counterparties with a longer time to report trades accurately to an SDR by moving to a ''T+1'' reporting timeframe for swap dealer (SD), derivatives clearing organization (DCO), and swap execution facility (SEF) reporting parties, and a ''T+2'' reporting timeframe for non-SD/DCO/SEF reporting counterparties. I have long supported providing additional time for market participants to meet their regulatory reporting obligations given it is a matter of being right, not first. A later regulatory reporting deadline will help counterparties report the trade correctly the first time, instead of reporting an erroneous trade that then needs to be corrected later. This change also more closely harmonizes the CFTC's and ESMA's reporting deadlines.

For the first time, the final rule also requires SD reporting counterparties to report daily margin and collateral information for uncleared swaps to the Commission. However, the final rule would not require DCO reporting parties to report margin and collateral information with respect to cleared swaps. Instead, the Commission will continue to rely on the comprehensive margin and collateral data reported by DCOs pursuant to part 39. Importantly, in order to alleviate burdens on small reporting counterparties, non-SD/MSP reporting counterparties are not required to report valuation, margin, or collateral information to the Commission.

Although this final rule implements the lion's share of regulatory reporting requirements, it is not quite the capstone of the Commission's reporting efforts. The CDE technical guidance did not harmonize many data elements that are relevant to the physical commodity and equity swap asset classes. More work remains to be done with respect to how certain data elements should be reported, including how the prices and quantities of physical commodity swaps should be reported and how swaps on customized equity baskets should be represented. I know DMO will continue to play an active role through CPMI–IOSCO's CDE governance process to ensure that additional guidance and specificity are provided regarding the data elements for these asset classes.

I support the CFTC's efforts to adopt the CDE fields—the most basic data elements that are critical to the analysis and supervision of swaps activities—in a manner identical to other jurisdictions' reporting fields. Over time and through cooperative arrangements with other jurisdictions, global aggregation and measurement of risk, including counterparty credit risk, can become a reality. However, as the Commission moves closer to achieving its goal of global data harmonization, in my opinion, it should keep in mind that the benefits of harmonization should always be balanced against the burdens and practical realities facing reporting counterparties. I think the final rule before us today strikes an appropriate balance on this point.

Appendix 4—Concurring Statement of Commissioner Rostin Behnam

I respectfully concur in the Commission's amendments to its regulations regarding real-time public reporting, recordkeeping, and swap data repositories. The three rules being

[24] *See id.*

[25] *See* CFTC Vision Statement, *https://www.cftc.gov/About/AboutTheCommission#:~:text=CFTC%20Vision%20Statement,standard%20for%20sound%20derivatives%20regulation.*

[26] The CFTC also co-chaired the Financial Stability Board's working group on UTI and UPI governance.

[27] Limiting error correction to open swaps—versus all swaps that a reporting counterparty may have entered into at any point in time—is also a sensible approach to addressing risk in the markets. The final Part 49 rule limits error correction to errors discovered prior to the expiration of the five-year recordkeeping period in regulation 45.2, ensuring that market participants are not tasked with addressing old or closed transactions that pose no active risk.

[28] Opening Statement of Chairman Heath P. Tarbert Before the April 22 Agricultural Advisory Committee Meeting (April 22, 2020), *https://www.cftc.gov/PressRoom/SpeechesTestimony/tarbertstatement042220.*

[29] CFTC Strategic Plan, *supra* note 7, at 6.

[1] *See* CPMI–IOSCO, Technical Guidance, Harmonization of Critical OTC Derivatives Data Elements (other than UTI and UPI) (Apr. 2018), *available at https://www.bis.org/cpmi/publ/d175.pdf.*

finalized together today are the culmination of a multi-year effort to streamline, simplify, and internationally harmonize the requirements associated with reporting swaps. Today's actions represent the end of a long procedural road at the Commission, one that started with the Commission's 2017 Roadmap to Achieve High Quality Swap Data.[1]

But the road really goes back much further than that, to the time prior to the 2008 financial crisis, when swaps were largely exempt from regulation and traded exclusively over-the-counter.[2] Lack of transparency in the over-the-counter swaps market contributed to the financial crisis because both regulators and market participants lacked the visibility necessary to identify and assess swaps market exposures, counterparty relationships, and counterparty credit risk.[3]

In the aftermath of the financial crisis, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010 (Dodd-Frank Act).[4] The Dodd-Frank Act largely incorporated the international financial reform initiatives for over-the-counter derivatives laid out at the 2009 G20 Pittsburgh Summit, which sought to improve transparency, mitigate systemic risk, and protect against market abuse.[5] With respect to data reporting, the policy initiative developed by the G20 focused on establishing a consistent and standardized global data set across jurisdictions in order to support regulatory efforts to timely identify systemic risk. The critical need and importance of this policy goal given the consequences of the financial crisis cannot be overstated.

Among many critically important statutory changes, which have shed light on the over-the-counter derivatives markets, Title VII of the Dodd-Frank Act amended the Commodity Exchange Act (''CEA'' or ''Act'') and added a new term to the Act: ''real-time public reporting.''[6] The Act defines that term to mean reporting ''data relating to swap transaction, including price and volume, *as soon as technologically practicable* after the time at which the swap transaction has been executed.''[7]

As we amend these rules, I think it is important that we keep in mind the Dodd-Frank Act's emphasis on transparency, and what transpired to necessitate that emphasis. However, the Act is also clear that its purpose, in regard to transparency and real time public reporting, is to authorize the Commission to make swap transaction and pricing data available to the public ''as the Commission determines appropriate to enhance price discovery.''[8] The Act expressly directs the Commission to specify the criteria for what constitutes a block trade, establish appropriate time delays for disseminating block trade information to the public, and ''take into account whether the public disclosure will materially reduce market liquidity.''[9] So, as we keep Congress's directive regarding public transparency (and the events that necessitated that directive) in mind as we promulgate rules, we also need to be cognizant of instances where public disclosure of the details of large transactions in real time will materially reduce market liquidity. This is a complex endeavor, and the answers vary across markets and products. I believe that these final rules strike an appropriate balance.

Today's final rules amending the swap data and recordkeeping and reporting requirements also culminate a multi-year undertaking by dedicated Commission staff and our international counterparts working through the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions working group for the harmonization of key over-the-counter derivatives data elements. The amendments benefit from substantial public consultation as well as internal data and regulatory analyses aimed at determining, among other things, how the Commission can meet its current data needs in support of its duties under the CEA. These include ensuring the financial integrity of swap transactions, monitoring of substantial and systemic risks, formulating bases for and granting substituted compliance and trade repository access, and entering information sharing agreements with fellow regulators.

I wish to thank the responsible staff in the Division of Market Oversight, as well as in the Offices of International Affairs, Chief Economist, and General Counsel for their efforts and engagement over the last several years as well as their constructive dialogues with my office over the last several months. Their timely and fulsome responsiveness amid the flurry of activity at the Commission as we continue to work remotely is greatly appreciated.

The final rules should improve data quality by eliminating duplication, removing alternative or adjunct reporting options, utilizing universal data elements and identifiers, and focusing on critical data elements. To the extent the Commission is moving forward with mandating a specific data standard for reporting swap data to swap data repositories (''SDRs''), and that the standard will be ISO 20022, I appreciate the Commission's thorough discussion of its rationale in support of that decision. I also commend Commission staff for its demonstrated expertise in incorporating the mandate into the regulatory text in a manner that provides certainty while acknowledging that the chosen standard remains in development.

The rules provide clear, reasonable and universally acceptable reporting deadlines that not only account for the minutiae of local holidays, but address the practicalities of common market practices such as allocation and compression exercises.

I am especially pleased that the final rules require consistent application of rules across SDRs for the validation of both Part 43 and Part 45 data submitted by reporting counterparties. I believe the amendments to part 49 set forth a practical approach to ensuring SDRs can meet the statutory requirement to confirm the accuracy of swap data set forth in CEA section 21(c)[10] without incurring unreasonable burdens.

I appreciate that the Commission considered and received comments regarding whether to require reporting counterparties to indicate whether a specific swap: (1) Was entered into for dealing purposes (as opposed to hedging, investing, or proprietary trading); and/or (2) needs not be considered in determining whether a person is a swap dealer or need not be counted towards a person's *de minimis* threshold for purposes of determining swap dealer status under Commission regulations.[11] While today's rules may not be the appropriate means to acquire such information, I continue to believe that that the Commission's ongoing surveillance for compliance with the swap dealer registration requirements could be enhanced through data collection and analysis.

Thank you again to the staff who worked on these rules. I support the overall vision articulated in these several rules and am committed to supporting the acquisition and development of information technology and human resources needed for execution of that vision. As data forms the basis for much of what we do here at the Commission, especially in terms of identifying, assessing, and monitoring risk, I look forward to future discussions with staff regarding how the CFTC's Market Risk Advisory Committee which I sponsor may be of assistance.

Appendix 5—Statement of Commissioner Dan M. Berkovitz

Introduction

I support today's final rules amending the swap data reporting requirements in parts 43,

[1] Roadmap to Achieve High Quality Swap Data, *available at http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/dmo_swapdataplan071017.pdf.*

[2] *See* Commodity Futures Modernization Act of 2000, Public Law 106–554, 114 Stat. 2763 (2000).

[3] *See* The Financial Crisis Inquiry Commission, The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States (Official Government Edition), at 299, 352, 363–364, 386, 621 n. 56 (2011), *available at https://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf.*

[4] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[5] G20, *Leaders' Statement, The Pittsburgh Summit* (Sept. 24–25, 2009) at 9, *available at https://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh_summit_leaders_statement_250909.pdf.*

[6] 7 U.S.C. 2(a)(13)(A).

[7] *Id.*

[8] 7 U.S.C. 2(a)(13)(B).

[9] 7 U.S.C. 2(a)(13)(C)(ii–iv).

[10] 7 U.S.C. 24a(c)(2).

[11] Commission staff has identified the lack of these fields as limiting constraints on the usefulness of SDR data to identify which swaps should be counted towards a person's *de minimis* threshold, and the ability to precisely assess the current *de minimis* threshold or the impact of potential changes to current exclusions. *See* De Minimis Exception to the Swap Dealer Definition, 83 FR 27444, 27449 (proposed June 12, 2018); Swap Dealer De Minimis Exception Final Staff Report at 19 (Aug. 15, 2016); (Nov. 18, 2015), available at *https://www.cftc.gov/sites/default/files/idc/groups/public/@swaps/documents/file/dfreport_sddeminis081516.pdf;* Swap Dealer De Minimis Exception Preliminary Report at 15 (Nov. 18, 2015), available at *https://www.cftc.gov/sites/default/files/idc/groups/public/@swaps/documents/file/dfreport_sddeminis_1115.pdf.*

45, 46, and 49 of the Commission's rules (the ''Reporting Rules''). The amended rules provide major improvements to the Commission's swap data reporting requirements. They will increase the transparency of the swap markets, enhance the usability of the data, streamline the data collection process, and better align the Commission's reporting requirements with international standards.

The Commission must have accurate, timely, and standardized data to fulfill its customer protection, market integrity, and risk monitoring mandates in the Commodity Exchange Act (''CEA'').[1] The 2008 financial crisis highlighted the systemic importance of global swap markets, and drew attention to the opacity of a market valued notionally in the trillions of dollars. Regulators such as the CFTC were unable to quickly ascertain the exposures of even the largest financial institutions in the United States. The absence of real-time public swap reporting contributed to uncertainty as to market liquidity and pricing. One of the primary goals of the Dodd-Frank Act is to improve swap market transparency through both real-time public reporting of swap transactions and ''regulatory reporting'' of complete swap data to registered swap data repositories (''SDRs'').[2]

As enacted by the Dodd-Frank Act, CEA section 2(a)(13)(G) directs the CFTC to establish real-time and comprehensive swap data reporting requirements, on a swap-by-swap basis. CEA section 21 establishes SDRs as the statutory entities responsible for receiving, storing, and facilitating regulators' access to swap data. The Commission began implementing these statutory directives in 2011 and 2012 in several final rules that addressed regulatory and real-time public reporting of swaps; established SDRs to receive data and make it available to regulators and the public; and defined certain swap dealer (''SD'') and major swap participant (''MSP'') reporting obligations.[3]

The Commission was the first major regulator to adopt data repository and swap data reporting rules. Today's final rules are informed by the Commission's and the market's experience with these initial rules. Today's revisions also reflect recent international work to harmonize and standardize data elements.

Part 43 Amendments (Real-Time Public Reporting)

Benefits of Real Time Public Reporting

Price transparency fosters price competition and reduces the cost of hedging. In directing the Commission to adopt real-time public reporting regulations, the Congress stated ''[t]he purpose of this section is to authorize the Commission to make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate *to enhance price discovery.*''[4] For real-time data to be useful for price discovery, SDRs must be able to report standardized, valid, and timely data. The reported data should also reflect the large majority of swaps executed within a particular swap category. The final Reporting Rules for part 43 address a number of infirmities in the current rules affecting the aggregation, validation, and timeliness of the data. They also provide pragmatic solutions to several specific reporting issues, such as the treatment of prime broker trades and post-priced swaps.

Block Trade Reporting

The Commission's proposed rule for block trades included two significant amendments to part 43: (1) Refined swap categories for calculating blocks; and (2) a single 48-hour time-delay for reporting all blocks. In addition, the proposed rule would give effect to increased block trade size thresholds from 50% to 67% of a trimmed (excluding outliers) trade data set as provided for in the original part 43. The increases in the block sizing thresholds and the refinement of swap categories were geared toward better meeting the statutory directives to the Commission to enhance price discovery through real-time reporting while also providing appropriate time delays for the reporting of swaps with very large notional amounts, *i.e.,* block trades.

Although I supported the issuance of the proposed rule, I outlined a number of concerns with the proposed blanket 48-hour delay. As described in the preamble to the part 43 final rule, a number of commenters supported the longer delay as necessary to facilitate the laying off of risk resulting from entering into swaps in illiquid markets or with large notional amounts. Other commenters raised concerns that such a broad, extended delay was unwarranted and could impede, rather than foster, price discovery. The delay also would provide counterparties to large swaps with an information advantage during the 48-hour delay.

The CEA directs the Commission to provide for both real-time reporting and appropriate block sizes. In developing the final rule the Commission has sought to achieve these objectives.

As described in the preamble, upon analysis of market data and consideration of the public comments, the Commission has concluded that the categorization of swap transactions and associated block sizes and time delay periods set forth in the final rule strikes an appropriate balance to achieve the statutory objectives of enhancing price discovery, not disclosing ''the business transactions and market positions of any person,'' preserving market liquidity, and providing appropriate time delays for block transactions. The final part 43 includes a mechanism for regularly reviewing swap transaction data to refine the block trade sizing and reporting delays as appropriate to maintain that balance.

Consideration of Additional Information Going Forward

I have consistently supported the use of the best available data to inform Commission rulemakings, and the periodic evaluation and updating of those rules, as new data becomes available. The preamble to the final rules for part 43 describes how available data, analytical studies, and public comments informed the Commission's rulemaking. Following press reports about the contents of the final rule, the Commission recently has received comments from a number of market participants raising issues with the reported provisions in the final rule. These commenters have expressed concern that the reported reversion of the time delays for block trades to the provisions in the current regulations, together with the 67% threshold for block trades, will impair market liquidity, increase costs to market participants, and not achieve the Commission's objectives of increasing price transparency and competitive trading of swaps. Many of these commenters have asked the Commission to delay the issuance of the final rule or to re-propose the part 43 amendments for additional public comments.

I do not believe it would be appropriate for the Commission to withhold the issuance of the final rule based on these latest comments and at this late stage in the process. The Commission has expended significant time and resources in analyzing data and responding to the public comments received during the public comment period. As explained in the preamble, the Commission is already years behind its original schedule for revising the block thresholds. I therefore do not support further delay in moving forward on these rules.

Nonetheless, I also support evaluation and refinement of the block reporting rules, if appropriate, based upon market data and analysis. The 30-month implementation schedule for the revised block sizes provides market participants with sufficient time to review the final rule and analyze any new data. Market participants can then provide their views to the Commission on whether further, specific adjustments to the block sizes and/or reporting delay periods may be appropriate for certain instrument classes. This implementation period is also sufficient for the Commission to consider those comments and make any adjustments as may be warranted. The Commission should consider any such new information in a transparent, inclusive, and deliberative manner. Amended part 43 also provides a process for the Commission to regularly review new data as it becomes available and amend the block size thresholds and caps as appropriate.

Cross Border Regulatory Arbitrage Risk

The International Swaps and Derivatives Association, Inc. (''ISDA'') and the Securities Industry and Financial Markets Association (''SIFMA'') commented that higher block size thresholds may put swap execution facilities (''SEFs'') organized in the United States at a competitive disadvantage as compared to European trading platforms that provide different trading protocols and allow longer delays in swap trade reporting. SIFMA and

[1] *See* CEA section 3b.

[2] Dodd-Frank Wall Street Reform and Consumer Protection Act, section 727, Public Law 111–203, 124 Stat. 1376 (2010) (the ''Dodd-Frank Act''), available at *https://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf.*

[3] Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (Jan. 13, 2012); and Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 FR 54538 (Sept. 1, 2011).

[4] CEA section 2(13)(B) (emphasis added).

ISDA commented that the higher block size thresholds might incentivize swap dealers to move at least a portion of their swap trading from United States SEFs to European trading platforms. They also noted that this regulatory arbitrage activity could apply to swaps that are subject to mandatory exchange trading. Importantly, European platforms allow a non-competitive single-quote trading mechanism for these swaps while U.S. SEFs are required to maintain more competitive request-for-quotes mechanisms from at least three parties. The three-quote requirement serves to fulfill important purposes delineated in the CEA to facilitate price discovery and promote fair competition.

The migration of swap trading from SEFs to non-U.S. trading platforms to avoid U.S. trade execution and/or swap reporting requirements would diminish the liquidity in and transparency of U.S. markets, to the detriment of many U.S. swap market participants. Additionally, as the ISDA/SIFMA comment letter notes, it would provide an unfair competitive advantage to non-U.S. trading platforms over SEFs registered with the CFTC, who are required to abide by CFTC regulations. Such migration would fragment the global swaps market and undermine U.S. swap markets.[5]

I have supported the Commission's substituted compliance determinations for foreign swap trading platforms in non-U.S. markets where the foreign laws and regulations provide for comparable and comprehensive regulation. Substituted compliance recognizes the interests of non-U.S. jurisdictions in regulating non-U.S. markets and allows U.S. firms to compete in those non-U.S. markets. However, substituted compliance is *not* intended to encourage—or permit—regulatory arbitrage or circumvention of U.S. swap market regulations. If swap dealers were to move trading activity away from U.S. SEFs to a foreign trading platform for regulatory arbitrage purposes, such as, for example, to avoid the CFTC's transparency and trade execution requirements, it would undermine the goals of U.S. swap market regulation, and constitute the type of fragmentation of the swaps markets that our cross-border regime was meant to mitigate. It also would undermine findings by the Commission that the non-U.S. platform is subject to regulation that is as comparable and comprehensive as U.S. regulation, or that the non-U.S. regime achieves a comparable outcome.

The Commission should be vigilant to protect U.S. markets and market participants. The Commission should monitor swap data to identify whether any such migration from U.S. markets to overseas markets is occurring and respond, if necessary, to protect the U.S. swap markets.

[5] In my dissenting statement on the Commission's recent revisions to it cross-border regulations, I detailed a number of concerns with how those revisions could provide legal avenues for U.S. swap dealers to migrate swap trading activity currently subject to CFTC trade execution requirements to non-U.S. markets that would not be subject to those CFTC requirements.

Part 45 (Swap Data Reporting), Part 46 (Pre-enactment and Transition Swaps), and Part 49 (Swap Data Repositories) Amendments

I also support today's final rules amending the swap data reporting, verification, and SDR registration requirements in parts 45, 46, and 49 of the Commission's rules. These regulatory reporting rules will help ensure that reporting counterparties, including SDs, MSPs, designated contract markets (''DCMs''), SEFs, derivatives clearing organizations (''DCOs''), and others report accurate and timely swap data to SDRs. Swap data will also be subject to a periodic verification program requiring the cooperation of both SDRs and reporting counterparties. Collectively, the final rules create a comprehensive framework of swap data standards, reporting deadlines, and data validation and verification procedures for all reporting counterparties.

The final rules simplify the swap data reports required in part 45, and organize them into two report types: (1) ''Swap creation data'' for new swaps; and (2) ''swap continuation data'' for changes to existing swaps.[6] The final rules also extend the deadline for SDs, MSPs, SEFs, DCMs, and DCOs to submit these data sets to an SDR, from ''as soon as technologically practicable'' to the end of the next business day following the execution date (T+1). Off-facility swaps where the reporting counterparty is not an SD, MSP, or DCO must be reported no later than T+2 following the execution date.

The amended reporting deadlines will result in a moderate time window where swap data may not be available to the Commission or other regulators with access to an SDR. However, it is likely that they will also improve the accuracy and reliability of data. Reporting parties will have more time to ensure that their data reports are complete and accurate before being transmitted to an SDR.[7]

The final rules in part 49 will also promote data accuracy through validation procedures to help identify errors when data is first sent to an SDR, and periodic reconciliation exercises to identify any discrepancies between an SDR's records and those of the reporting party that submitted the swaps. The final rules provide for less frequent reconciliation than the proposed rules, and depart from the proposal's approach to reconciliation in other ways that may merit future scrutiny to ensure that reconciliation is working as intended. Nonetheless, the validation and periodic reconciliation required by the final rule is an important step in ensuring that the Commission has access to complete and accurate swap data to monitor risk and fulfill its regulatory mandate.

[6] Swap creation data reports replace primary economic terms (''PET'') and confirmation data previously required in part 45. The final rules also eliminate optional ''state data'' reporting, which resulted in extensive duplicative reports crowding SDR databases, and often included no new information.

[7] The amended reporting deadlines are also consistent with comparable swap data reporting obligations under the Securities and Exchange Commission's and European Securities and Markets Authority's rules.

The final rules also better harmonize with international technical standards, the development of which included significant Commission participation and leadership. These harmonization efforts will reduce complexity for reporting parties without significantly reducing the specific data elements needed by the Commission for its purposes. For example, the final rules adopt the Unique Transaction Identifier and related rules, consistent with CPMI–IOSCO technical standards, in lieu of the Commission's previous Unique Swap Identifier. They also adopt over 120 distinct data elements and definitions that specify information to be reported to SDRs. Clear and well-defined data standards are critical for the efficient analysis of swap data across many hundreds of reporting parties and multiple SDRs. Although data elements may not be the most riveting aspect of Commission policy making, I support the Commission's determination to focus on these important, technical elements as a necessary component of any effective swap data regime.

Conclusion

Today's Reporting Rules are built upon nearly eight years of experience with the current reporting rules and benefitted from extensive international coordination. The amendments make important strides toward fulfilling Congress's mandate to bring transparency and effective oversight to the swap markets. I commend CFTC staff, particularly in Division of Market Oversight and the Office of Data and Technology, who have worked on the Reporting Rules over many years. Swaps are highly variable and can be difficult to represent in standardized data formats. Establishing accurate, timely, and complete swap reporting requirements is a difficult, but important function for the Commission and regulators around the globe. This proposal offers a number of pragmatic solutions to known issues with the current swap data rules. For these reasons, I am voting for the final Reporting Rules.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 43, 45, and 49

RIN 3038–AE32

Certain Swap Data Repository and Data Reporting Requirements

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is amending its regulations to improve the accuracy of data reported to, and maintained by, swap data repositories (''SDRs''), and to provide enhanced and streamlined oversight over SDRs and data reporting generally. Among other changes, the amendments

modify existing requirements for SDRs to establish policies and procedures to confirm the accuracy of swap data with both counterparties to a swap and require reporting counterparties to verify the accuracy of swap data pursuant to those SDR procedures. The amendments also update existing requirements related to corrections for data errors and certain provisions related to SDR governance.

DATES: *Effective date:* The effective date for this final rule is January 25, 2021.

Compliance date: The compliance date for all amendments and additions under this final rule is May 25, 2022.

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SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Amendments to Part 49
A. § 49.2—Definitions
B. § 49.3—Procedures for Registration
C. § 49.5—Equity Interest Transfers
D. § 49.6—Request for Transfer of Registration
E. § 49.9—Open Swaps Reports Provided to the Commission
F. § 49.10—Acceptance of Data
G. § 49.11—Verification of Swap Data Accuracy
H. § 49.12—Swap Data Repository Recordkeeping Requirements
I. § 49.13—Monitoring, Screening, and Analyzing Data
J. § 49.15—Real-Time Public Reporting by Swap Data Repositories
K. § 49.16—Privacy and Confidentiality Requirements of Swap Data Repositories
L. § 49.17—Access to SDR Data
M. § 49.18—Confidentiality Arrangement
N. § 49.20—Governance Arrangements (Core Principle 2)
O. § 49.22—Chief Compliance Officer
P. § 49.24—System Safeguards
Q. § 49.25—Financial Resources
R. § 49.26—Disclosure Requirements of Swap Data Repositories
S. § 49.28—Operating Hours of Swap Data Repositories
T. § 49.29—Information Relating to Swap Data Repository Compliance
U. § 49.30—Form and Manner of Reporting and Submitting Information to the Commission
V. § 49.31—Delegation of Authority to the Director of the Division of Market Oversight Relating to Certain Part 49 Matters
III. Amendments to Part 45
A. § 45.1—Definitions
B. § 45.2—Swap Recordkeeping
C. § 45.14—Correcting Errors in Swap Data and Verification of Swap Data Accuracy
IV. Amendments to Part 43
§ 43.3—Method and Timing for Real-Time Public Reporting
A. § 43.3(e)—Correction of Errors
B. Removal of § 43.3(f) and (g)
V. Amendments to Part 23
§ 23.204—Reports to Swap Data Repositories, and § 23.205—Real-Time Public Reporting
VI. Compliance Date
VII. Related Matters
A. Regulatory Flexibility Act
B. Paperwork Reduction Act
C. Cost-Benefit Considerations
D. Antitrust Considerations

I. Background

Section 727 of the Dodd-Frank Act added section 2(a)(13)(G) to the Commodity Exchange Act (''CEA'' or ''Act''), which requires each swap—whether cleared or uncleared—to be reported to an SDR,[1] a type of registered entity created by section 728 of the Dodd-Frank Act.[2] CEA section 21[3] requires each SDR to register with the Commission and directs the Commission to adopt rules governing SDRs.

To register and maintain registration with the Commission, an SDR must comply with specific duties and core principles enumerated in CEA section 21 as well as other requirements that the Commission may prescribe by rule. In particular, CEA section 21(c) mandates that an SDR: (1) Accept data; (2) confirm with both counterparties the accuracy of submitted data; (3) maintain data according to standards prescribed by the Commission; (4) provide direct electronic access to the Commission or any designee of the Commission (including another registered entity); (5) provide public reporting of data in the form and frequency required by the Commission; (6) establish automated systems for monitoring, screening, and analyzing data (including the use of end-user clearing exemptions) at the direction of the Commission; (7) maintain data privacy; (8) make data available to other specified regulators, on a confidential basis, pursuant to CEA section 8,[4] upon request and after notifying the Commission; and (9) establish and maintain emergency and business continuity-disaster recovery (''BC–DR'') procedures. CEA section 21(f)(4)(C) further requires the Commission to establish additional duties for SDRs to minimize conflicts of interest, protect data, ensure compliance, and guarantee the safety and security of the SDR.[5] CEA section 21(b) also directs the Commission to prescribe standards for data recordkeeping and reporting that apply to both registered entities and reporting counterparties.[6]

Part 49 of the Commission's regulations implements the requirements of CEA section 21.[7] Part 49 sets forth the specific duties an SDR must comply with to be registered and maintain registration as an SDR, including requirements under § 49.11 for an SDR to confirm the accuracy of data reported to the SDR.

Since the Commission adopted its part 49 regulations in 2011, Commission staff has led many efforts to evaluate and improve the reporting of swap data and its accuracy. Commission staff leads or participates in several international regulatory working groups concentrating on harmonization of data reporting. Commission staff's efforts have also included the formation of an interdivisional staff working group to identify, and make recommendations to resolve, reporting challenges associated with certain swap data recordkeeping and reporting provisions.[8] The Commission has also requested comments from the public on reporting issues.[9]

[1] Section 721 of the Dodd-Frank Act amended section 1a of the CEA to add the definition of SDR. *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010), *available at https://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf.* Pursuant to CEA section 1a(48), the term SDR means any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps. 7 U.S.C. 1a(48).

[2] The Commission notes that there are currently three SDRs provisionally registered with the Commission: CME Inc., DTCC Data Repository (U.S.) LLC (''DDR''), and ICE Trade Vault, LLC (''ICE'').

[3] 7 U.S.C. 24a.

[4] 7 U.S.C. 12(e).

[5] Pursuant to this provision, the Commission may develop one or more additional duties applicable to SDRs. 7 U.S.C. 24a(f)(4).

[6] *See* 7 U.S.C. 24a(b)(1)(B).

[7] Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 FR 54538 (Sept. 1, 2011) (''Part 49 Adopting Release'').

[8] *See* Press Release, CFTC to Form an Interdivisional Working Group to Review Regulatory Reporting (Jan. 21, 2014), *available at http://www.cftc.gov/PressRoom/PressReleases/pr6837-14.*

[9] *See, e.g.,* Review of Swap Data Recordkeeping and Reporting Requirements, Request for Comment, 79 FR 16689 (Mar. 26, 2014).

Based on its efforts, the Commission determined that three conditions work in concert to achieve a higher degree of data accuracy: (i) SDR processes confirming the accuracy of data submitted; (ii) data reconciliation exercises by entities that reported data; and (iii) the prompt reporting of errors and omissions when discovered.[10] With the goal of advancing in these three areas to improve data accuracy, Commission staff conducted a comprehensive review of swap reporting regulations and released the Roadmap to Achieve High Quality Swap Data (''Roadmap'').[11] The Roadmap's overall goals were to improve the quality, accuracy, and completeness of swap data reported to the Commission, streamline swap data reporting, and clarify obligations for market participants.[12] Within these overall goals, the Roadmap's SDR Operations Review aimed to assure a high degree of accuracy of swap data and swap transaction and pricing data,[13] improve the clarity and consistency of regulations governing SDRs, and bolster the Commission's oversight of SDRs.

The Roadmap solicited public comment on how to improve data reporting and achieve the Commission's regulatory goals without imposing unnecessary burdens on market participants. Commission staff received numerous comments in response to the Roadmap that addressed data accuracy and confirmation of data reported to SDRs, among other subjects.[14]

Based in part on these public comments and the Commission staff's review of these issues, the Commission issued a notice of proposed rulemaking (''Proposal'') on May 13, 2019 to address the Roadmap's SDR Operations Review goals.[15] The Proposal was the first of three Roadmap rulemakings that together aim to achieve the Roadmap's overall goals.[16]

In the Proposal, the Commission set forth a new swap data verification regime to replace existing requirements for swap data confirmation and proposed amendments to error correction requirements in parts 43, 45, and 49 of the Commission's regulations. The primary components of the proposed verification regime included: A requirement for an SDR to regularly distribute to reporting counterparties an open swaps report containing the data maintained by the SDR for a relevant reporting counterparty's open swaps; a requirement that a reporting counterparty reconcile the data in the open swaps reports with the reporting counterparty's own data; a requirement that a reporting counterparty provide the SDR with a verification of the data's accuracy or a notice of discrepancy; and a requirement that, in the event of a discrepancy, a reporting counterparty submit corrected data to the SDR within a specified time frame or, if it is unable to do so, inform Commission staff of the error, its scope, and the reporting counterparty's initial remediation plan.

In this final rulemaking, the Commission has determined to adopt the amendments as proposed, with certain exceptions. The Commission has determined, based, in part, on public comments,[17] not to adopt, or to adopt with modifications, certain elements of the Proposal relating to data verification and error correction. More specifically, the final rule eliminates the proposed requirement for an SDR to distribute open swaps reports to a reporting counterparty, and the requirement for a counterparty to submit notices of verification or discrepancy in response.

Instead, under the final rules, an SDR must provide a mechanism for a reporting counterparty to access swap data maintained by the SDR for the reporting counterparty's open swaps. Further, the final rules require a reporting counterparty to verify the SDR's data by using the mechanism provided by the SDR to compare the swap data for open swaps maintained by the SDR with the reporting counterparty's own books and records for the swap data, and to submit corrected swap data, if necessary, to the SDR. The reporting counterparty must perform the verification at specified intervals and maintain a verification log that sets forth any errors discovered and corrections made by the reporting counterparty. The final rule also extends the time frame within which a reporting counterparty must correct an error or notify the Commission.

The Proposal also included various amendments and new regulations aimed at eliminating unduly burdensome requirements, streamlining and consolidating the provisions of part 49 and other Commission regulations applicable to SDRs, and enhancing the Commission's ability to fulfill its oversight obligations with respect to SDRs. The Commission is generally adopting those rules as proposed, with limited modifications in some cases to address public comments. Additionally, for the reasons discussed below, the Commission has determined not to finalize at this time its proposed amendments to § 49.13 and § 49.22 and its proposed additions to part 23.

Where possible, in developing the Proposal and in adopting final rules as set forth herein, the Commission has taken into consideration certain pertinent rules adopted by other regulators, including the European Securities and Markets Authority and the U.S. Securities and Exchange Commission (''SEC''). This is particularly the case for the SEC's regulations relating to the registration requirements, duties, and core principles applicable to security-based swap data repositories (''SBSDRs'')[18] and reporting requirements for security-based swaps (''SBSs'') set forth in Regulation SBSR (''Regulation

[10] *See id.* at 16695.

[11] *See* CFTC Letter 17–33, Division of Market Oversight Announces Review of Swap Reporting Rules in Parts 43, 45, and 49 of Commission Regulations (July 10, 2017), *available at https://www.cftc.gov/csl/17-33/download;* Roadmap to Achieve High Quality Swap Data, *available at http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/dmo_swapdataplan071017.pdf.*

[12] *See id.* at 3 (describing the Commission's goals for the review of reporting regulations).

[13] *See* Roadmap at 6 (stating the Commission's intent to ''Identify the most efficient and effective solution for swap counterparty(ies) to confirm the accuracy and completeness of data held in an SDR.'').

[14] These comment letters are available at *https://comments.cftc.gov/PublicComments/CommentList.aspx?id=1824.*

[15] Certain Swap Data Repository and Data Reporting Requirements, 84 FR 21044 (May 13, 2019).

[16] The other two notices of proposed rulemakings are Amendments to the Real-Time Public Reporting Requirements, 85 FR 21516 (April 17, 2020) and Swap Data Recordkeeping and Reporting Requirements, 85 FR 21578 (April 17, 2020).

[17] The Commission received 25 responsive comment letters addressing the Proposal from the following entities: American Public Power Association/Edison Electric Institute/National Rural Electric Cooperative Association (''Joint Associations''), Chatham Financial (''Chatham''), Chris Barnard, CME Group Inc. (''CME''), CME Group Inc./DTCC Data Repository (U.S.) LLC/ICE Trade Vault LLC (''Joint SDR''), Coalition of Physical Energy Companies (''COPE''), Commercial Energy Working Group (''CEWG''), Credit Suisse (''CS''), Data Coalition, DTCC Data Repository (U.S.) LLC (''DDR''), Eurex Clearing AG (''Eurex''), Federal Home Loan Mortgage Corporation (''Freddie Mac''), Futures Industry Association August 2019 letter (''FIA August''), Futures Industry Association May 2020 letter (''FIA May''), Global Financial Markets Association (''GFMA''), Global Legal Entity Identifier Foundation (''GLEIF''), ICE Clear Credit LLC/ICE Clear Europe Limited (''ICE Clear''), ICE Trade Vault (''ICE TV''), IHS Markit (''Markit''), Institute for Agriculture and Trade Policy (''IATP''), International Swaps and Derivatives Association, Inc./Securities Industry and Financial Markets Association (''ISDA/SIFMA''), Investment Company Institute (''ICI''), LCH Ltd/LCH SA (''LCH''), Natural Gas Supply Association (''NGSA''), and Prudential Global Funding LLC (''Prudential'').

[18] *See generally* Security-Based Swap Data Repository Registration, Duties and Core Principles, 80 FR 11438 (Mar. 19, 2015). The SEC adopted Rules 13n–1 through 13n–12 (17 CFR 240.13n–1 through 240.13n–12) under the Securities Exchange Act of 1934 (''Exchange Act'') relating to the registration and operation of SBSDRs.

SBSR'').[19] The Commission notes that there are similarities between the regulatory framework for SBSDRs and the SDR regulations that are the subject of this final rulemaking. Finally, the Commission notes that this final rulemaking incorporates lessons learned from the undertakings described above and the best practices of the international regulatory community.

II. Amendments to Part 49

A. § 49.2—Definitions

1. General Formatting Changes

The Commission proposed a general formatting change to the definitions in § 49.2(a). The defined terms in § 49.2(a) currently are numbered and arranged in alphabetical order. The Commission proposed to remove the numbering while still arranging the terms in § 49.2(a) in alphabetical order. Eliminating the numbering of defined terms in § 49.2(a) will reduce the need for the Commission to make conforming amendments to § 49.2(a) and other regulations when it amends § 49.2(a) in future rulemaking by adding or removing defined terms.[20]

The Commission did not receive any comments on the proposed formatting changes to § 49.2(a). The Commission is adopting the formatting amendments to § 49.2(a) as proposed, with non-substantive editorial changes to conform the format to the current style conventions.

2. Non-Substantive Amendments to Definitions

The Commission proposed non-substantive editorial and conforming amendments to certain definitions to provide clarity and for consistency with other Commission regulations.[21] The Commission believes the proposed amendments are non-substantive and will increase clarity and consistency across the Commission's regulations. The comments were generally supportive of the Commission's efforts to streamline definitions and increase consistency.[22] The Commission did not receive comments opposed to the proposed amendments described above. The Commission accordingly adopts these amended definitions as proposed.

Specifically, the Commission adopts the following amendments to definitions in § 49.2(a):

- Asset class: Modify the definition to conform the wording to the definition of ''asset class'' used in part 43.[23]
- Commercial use: Modify the definition to use active instead of passive voice, and to change ''use of swap data for regulatory purposes and/or responsibilities'' to ''use of SDR data for regulatory purposes and/or to perform its regulatory responsibilities.''
- Market participant: Change the term ''swaps execution facilities'' to ''swap execution facilities,'' to conform to CEA section 5h and other Commission regulations, and make the word ''counterparties'' singular.
- Non-affiliated third party: Clarify paragraph (3) to identify ''a person jointly employed'' by an SDR and any affiliate.
- Person associated with a swap data repository: Clarify that paragraph (3) includes a ''jointly employed person.''
- Swap data: Modify the definition to more closely match the related definitions of ''SDR data'' and ''swap transaction and pricing data'' that are being added to § 49.2(a) and to incorporate the requirements to provide swap data to the Commission pursuant to part 49.

The Commission also is removing the word ''capitalized'' from § 49.2(b), to reflect that most defined terms used in part 49 are not capitalized in the text of part 49.

The Commission is also removing the term ''registered swap data repository'' from the definitions in § 49.2. In the Proposal, the Commission explained that the term ''registered swap data repository'' is not needed in part 49 because the defined term ''swap data repository'' already exists in § 1.3.[24] The definition of ''swap data repository'' in § 1.3 is identical to the definition contained in CEA section 1a(48).[25] This definition of ''swap data repository'' therefore already applies, and would continue to apply, to part 49 and all other Commission regulations and, when combined with § 49.1,[26] removes the need for a separate defined term for ''registered swap data repository.''

The Commission further explained that the inclusion of the word ''registered'' in ''registered swap data repository'' and the definition of the term[27] also may create doubt whether the requirements of part 49 apply to entities that are in the process of registering as SDRs or are provisionally registered as SDRs under the requirements of § 49.3(b).[28] The requirements of part 49 apply to provisionally-registered SDRs and any entity seeking to become an SDR must comply with the same requirements in order to become a provisionally-registered or fully-registered SDR. Finally, the removal of the term ''registered swap data repository'' would increase consistency in terms within part 49 and would also increase consistency between part 49 and other Commission regulations, which overwhelmingly use the term ''swap data repository.'' The Commission emphasized that removing the defined term ''registered swap data repository'' is a non-substantive amendment that would not in any way modify the requirements applicable to current or future SDRs.

3. Additions and Substantive Amendments

a. Definition of As Soon as Technologically Practicable

The Commission proposed to add the term ''as soon as technologically practicable'' as a defined term in § 49.2. The Proposal defined the term to mean ''as soon as possible, taking into consideration the prevalence,

[19] *See generally* Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, 80 FR 14740 (Mar. 19, 2015). The SEC adopted Regulation SBSR (Rules 900 through 909, 17 CFR 242.900 through 909) to create a reporting framework for SBSs. The SEC has also adopted additional regulations regarding the reporting and dissemination of certain information related to SBSs. *See generally* 81 FR 53546 (Aug. 12, 2016).

[20] The Office of the Federal Register prefers the solely alphabetical approach to definitions sections. *See* Office of the Federal Register, Document Drafting Handbook May 2017 Update, Revision 5, 2–31 (2017) (''*Definitions.* In sections or paragraphs containing only definitions, we recommend that you do not use paragraph designations if you list the terms in alphabetical order.'').

[21] Other than removing subsection numbering as discussed above in section II.A.1, the Commission did not propose any substantive changes to the definitions of ''affiliate,'' ''control,'' ''foreign regulator,'' ''independent perspective,'' ''position,'' or ''section 8 material,'' as those terms are defined in current § 49.2(a).

[22] *See, e.g.,* IATP at 4–5.

[23] *See* 17 CFR 43.2. Asset class means a broad category of commodities including, without limitation, any ''excluded commodity'' as defined in section 1a(19) of the Act, with common characteristics underlying a swap. The asset classes include interest rate, foreign exchange, credit, equity, other commodity and such other asset classes as may be determined by the Commission.

[24] *See* 17 CFR 1.3. Swap data repository is defined as any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps.

[25] *See* 7 U.S.C. 1a(48). Swap data repository means any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps.

[26] *See* 17 CFR 49.1. The provisions of part 49 apply to any swap data repository as defined under section 1a(48) of the CEA which is registered or is required to register as such with the Commission pursuant to Section 21(a) of the CEA.

[27] *See* 17 CFR 49.2(a)(11). Registered swap data repository means a swap data repository that is registered under section 21 of the CEA.

[28] *See* 17 CFR 49.3(b) (creating standards for granting provisional registration to an SDR).

implementation, and use of technology by comparable market participants.'' This addition would standardize the meaning and use of this term across the Commission's swap reporting regulations and is intended to be identical to the term as it is used in parts 43 and 45 of the Commission's regulations.[29]

The Commission received several comments on the proposed definition. One comment generally supported standardizing definitions across the Commission's regulations.[30] One comment recommended that the definition should be expanded to clarify what are considered comparable market participants.[31] The Commission declines to adopt this recommendation. The Commission proposed to add the term ''as soon as technologically practicable'' merely to create consistency in defined terms across the swap reporting regulations, not to modify or interpret the term. The Commission also does not believe this final rulemaking is the appropriate venue to provide guidance on the parameters of comparable market participants, as any guidance would need to evaluate and impose standards for many different market participants and scenarios, without the opportunity for the affected market participants to comment on the guidance. The Commission also notes that the defined term has been in use through the application of the Commission's swap reporting regulations since the inception of swap reporting, without the need for additional guidance.

The Commission is adopting the addition of ''as soon as technologically practicable'' as a defined term as proposed. The Commission notes that concomitant with adopting these final rules, the Commission is adopting final rules for § 43.2 and § 45.1, which both include the identical definition for this term.

b. Definition of Non-Swap Dealer/Major Swap Participant/Derivatives Clearing Organization Reporting Counterparty

The Commission proposed to add the term ''non-swap dealer/major swap participant/derivatives clearing organization reporting counterparty'' as a defined term in § 49.2. The Commission is not adopting this proposed definition.[32] This defined term was intended to clarify the meaning of the term in part 49, specifically in proposed § 49.11(b)(3). As discussed below in section II.G, the Commission is not finalizing proposed § 49.11(b)(3) and this term does not otherwise appear in part 49. Accordingly, the inclusion of the defined term is not necessary and Commission is not adopting this proposed definition.

c. Definition of Open Swap

The Commission proposed to add the term ''open swap'' as a defined term in § 49.2. The Proposal defined the term to mean an executed swap transaction that has not reached maturity or the final contractual settlement date, and has not been exercised, closed out, or terminated. Under this definition, the term ''open swap'' refers to swaps that are often colloquially called ''alive.'' The Commission noted in the Proposal that the definition is intended to have the same function as the definitions of ''open swap'' [33] and ''closed swap'' [34] in part 20.

The Commission received several comments on the proposed definition. One comment supported standardizing definitions across the Commission's rules, and supported the proposed definition for ''open swap.'' [35] One comment noted that there is no market practice of reporting a ''final contractual settlement date.'' [36] Instead, the comment stated, market practice is to report expiration, maturity date, or termination date. The comment further recommended that the definition be amended to allow for events to affect parts of a trade. The commenter recommended that the Commission define ''open swap'' to mean ''an executed swap transaction that has not reached maturity or expiration date, and has not been fully exercised, closed out, or terminated.'' [37] The Commission agrees with this comment and is adopting the recommended changes to the definition, with a slight modification for grammar. Accordingly, final § 49.2 includes the term ''open swap'' as a defined term, which means an executed swap transaction that has not reached maturity or expiration, and has not been fully exercised, closed out, or terminated.[38] The Commission notes that, as with the definition in the Proposal, the final definition of ''open swap'' is intended to mean swaps, or the remaining portion of a swap, that would be commonly thought of as ''alive.''

d. Definition of Reporting Counterparty and the Removal of Reporting Entity

The Commission proposed to add the term ''reporting counterparty'' as a defined term to § 49.2. This term would mean the counterparty responsible for reporting SDR data to an SDR pursuant to part 43, 45, or 46 of the Commission's regulations. The Proposal explained that this would standardize its meaning and use across the Commission's swap reporting regulations. The Commission also proposed to remove the term ''reporting entity'' from the definitions in § 49.2 because it is no longer necessary with the addition of ''reporting counterparty'' as a defined term.[39]

Concomitant with the adoption of these final rules, the Commission also is adopting final rules amending § 43.2 and § 45.1. Those final rules both include a definition for the term ''reporting counterparty'' specific to part 43 and part 45, respectively. Current § 46.1 also includes a definition for the term.[40] The definitions of the term ''reporting counterparty'' in §§ 43.2, 45.1, and 46.1 are more narrow than the proposed definition in § 49.2. While the definitions do not have identical wording, the defined terms have a standardized meaning that follows a consistent format and is appropriate for each context.

The Commission notes that the reporting counterparty may not always be the entity reporting SDR data to the SDR, particularly for transactions executed on a swap execution facility (''SEF'') or designated contract market (''DCM''), but it is the counterparty responsible for the initial and/or subsequent SDR data reporting, pursuant to part 43, 45, or 46 of the Commission's regulations, as applicable to a particular swap. SEFs and DCMs are

[29] *See* 17 CFR 43.2 (defining of as soon as technologically practicable). Part 45 of the Commission's regulations also uses the term ''as soon as technologically practicable'' in the same way as part 43 and as defined in proposed § 49.2.

[30] ISDA/SIFMA at 38.

[31] IATP at 4.

[32] The Proposal defined the term to mean a reporting counterparty that is not a swap dealer (''SD''), major swap participant (''MSP''), derivatives clearing organization (''DCO''), or exempt derivatives clearing organization.

[33] *See* 17 CFR 20.1. An open swap or swaption means a swap or swaption that has not been closed.

[34] *See* 17 CFR 20.1. A closed swap or closed swaption means a swap or swaption that has been settled, exercised, closed out, or terminated.

[35] DDR at 2.

[36] ISDA/SIFMA at 38.

[37] *Id.*

[38] As discussed below in section III.A, the Commission is also adding an identical definition for ''open swap'' to part 45 of this chapter, in order to create consistency between parts 45 and 49 of the Commission's regulations and to accommodate the use of the term ''open swap'' in part 45.

[39] *See* 17 CFR 49.2(a)(12) (defining reporting entity as entities that are required to report swap data to a registered swap data repository, which includes derivatives clearing organizations, swap dealers, major swap participants and certain non-swap dealer/non-major swap participant counterparties).

[40] 17 CFR 46.1.

the only entities not included in the proposed definition of ''reporting counterparty'' that may have a responsibility to report data.

The Commission did not receive any comments on the proposed definition of the term ''reporting counterparty'' and the related removal of the defined term ''reporting entity.'' The Commission is adopting these amendments as proposed, with minor, non-substantive editorial changes to conform the definition of ''reporting counterparty'' in § 49.2 to the definitions in §§ 43.2, 45.1, and 46.1, as discussed above. Accordingly, final § 49.2 includes the term ''reporting counterparty'' as a defined term, which means the counterparty required to report SDR data pursuant to part 43, 45, or 46 of 17 CFR chapter I. Final § 49.2 no longer includes the term ''reporting entity'' as a defined term.

e. Definition of SDR Data

The Commission proposed to add the term ''SDR data'' as a defined term in § 49.2. The Proposal defined the term to mean the specific data elements and information required to be reported to an SDR or disseminated by an SDR, pursuant to two or more of parts 43, 45, 46, and/or 49, as applicable in the context. The Commission noted that in this context, ''disseminated'' would include an SDR making swap data available to the Commission as required by part 49.

In the Proposal, the Commission noted that the proposed definition of ''SDR data'' would include multiple sources of data reported to the SDR or disseminated by the SDR. For example, ''SDR data'' could refer to all data reported or disseminated pursuant to parts 43, 45, and 46. It may also refer to data reported or disseminated pursuant to parts 45 and 46, depending on the context in which the term is used. This is in contrast with the proposed term ''swap transaction and pricing data,'' which, as defined in the Proposal, would only refer to data reported to an SDR or publicly disseminated by an SDR pursuant to part 43. It is also in contrast with the term ''swap data,'' which, as defined in the Proposal, would only refer to data reported to an SDR or made available to the Commission pursuant to part 45. In the Proposal, the Commission explained that consolidating references to the different types of data that must be reported to an SDR or disseminated by an SDR to the public or to the Commission into a single term would provide clarity throughout part 49.

The Commission received several comments on the proposed addition of the defined term ''SDR data'' and the proposed definition in § 49.2. One comment generally supported the proposed amendment.[41] One comment stated that the proposed definition limited ''SDR Data'' to information that is required to be reported or disseminated pursuant to ''two or more of parts 43, 45, 46 and/or 49,'' which would exclude information that is required to be reported or disseminated pursuant to one of those parts. The Commenter recommended that the Commission define the term ''SDR Data'' to include information that is required to be reported or disseminated by *one* or more of parts 43, 45, 46, and/or 49. The Commission disagrees with this comment and its interpretation of the term ''SDR data.'' By definition, ''SDR data'' will always include at least two sets of data or information that is required reported to an SDR or disseminated by an SDR. The definition is inclusive of all data being referenced, based on the context of the use of the term. When the Commission intends to refer to data that is reported or disseminated pursuant to only one of part 43, 45, 46, or 49, it uses the term or reference that corresponds to that specific set of data, for example ''swap transaction and pricing data'' for part 43-related data and ''swap data'' for part 45-related data.

The Commission is adopting the addition of the defined term ''SDR data'' to final § 49.2, as proposed. Accordingly, final § 49.2 includes the defined term ''SDR data,'' which is defined to mean the specific data elements and information required to be reported to a swap data repository or disseminated by a swap data repository pursuant to two or more of parts 43, 45, 46, and/or 49 of 17 CFR chapter I, as applicable in the context.

f. Definition of SDR Information

The Commission proposed to amend the existing definition of ''SDR information'' in § 49.2 to add the clause ''related to the business of the swap data repository that is not SDR data'' to the end of the definition. This change clarifies that the scope of SDR information is limited to information that the SDR receives or maintains related to its business that is not the SDR data reported to or disseminated by the SDR. SDR information would include, for example, SDR policies and procedures created pursuant to part 49.[42] The Commission did not receive comments on the proposed amendment and the Commission adopts the amendment as proposed.

g. Definition of Swap Transaction and Pricing Data

The Commission proposed to add ''swap transaction and pricing data'' as a defined term in § 49.2 to increase consistency in terminology used in the Commission's swap reporting regulations. The Proposal defined the term to mean the specific data elements and information required to be reported to a swap data repository or publicly disseminated by a swap data repository pursuant to part 43 of this chapter, as applicable. Concomitant with adopting these final rules, the Commission is adopting final rules in § 43.2 that add ''swap transaction and pricing data'' as a defined term. As defined in final § 43.2, the term means all data elements for a swap in appendix A of this part that are required to be reported or publicly disseminated pursuant to this part. In order to increase consistency throughout its rules, the Commission adopts the addition of the defined term ''swap transaction and pricing data'' and the definition in § 49.2 as proposed.

One commenter stated that the definition of the term in § 49.2 should not include the clause ''or publicly disseminated by a swap data repository.''[43] The Commission does not agree with this comment because dissemination is included in the definition of the same term in final § 43.2, and the term is being included in final § 49.2 to increase consistency between Commission regulations. Moreover, to not include the public dissemination requirements would frustrate the purpose of adding the defined term by not allowing the term to be used in reference to an SDR's public dissemination responsibilities. The Commission believes that the specific context in which the term is used will make clear whether the Commission is referring to the requirements to report the data to an SDR, for an SDR to disseminate the data to the public, or both. Accordingly, final § 49.2 includes ''swap transaction and pricing data'' as a defined term that means the specific data elements and information required to be reported to a swap data repository or publicly disseminated by a swap data repository pursuant to part 43 of 17 CFR chapter I, as applicable.

B. § 49.3—Procedures for Registration

Section 49.3 sets forth the procedures and standard of approval for registration

[41] ISDA/SIFMA at 41.

[42] This clarification is particularly relevant for the SDR recordkeeping obligations in the proposed amendments to § 49.12, discussed below in section II.H.

[43] DDR at 2.

as an SDR.[44] Current § 49.3(a)(1) requires a person seeking SDR registration to file an application on Form SDR.[45] Form SDR consists of instructions, general questions and a list of exhibits required by the Commission in order to determine whether an applicant for SDR registration is able to comply with the SDR core principles and Commission regulations thereunder.[46]

Existing § 49.3(a)(5) requires an SDR to promptly file an amended Form SDR to update any information that becomes inaccurate before or after the SDR's application for registration is granted. In addition, the regulation requires an SDR to annually file an amendment on Form SDR within 60 days after the end of its fiscal year.[47]

The Commission proposed to amend § 49.3(a)(5) to eliminate the requirements for an SDR that has been granted registration under § 49.3(a) to: (i) file an amended Form SDR if any of the information therein becomes inaccurate, and (ii) annually file an amended Form SDR.[48] Thus, proposed § 49.3(a)(5) would only require an SDR to file an amended Form SDR to update information before the Commission grants it registration under § 49.3(a). The Commission also proposed to make conforming amendments to the Form SDR and § 49.22(f)(2)[49] to eliminate references to the annual filing of Form SDR.[50]

The Commission is adopting the amendments to § 49.3(a)(5) and the conforming amendments to Form SDR and § 49.22(f)(2) as proposed in part and not adopting the amendments as proposed in part. The Commission is adopting the removal of the requirement to file an annual amendment to Form SDR because the Commission believes the annual Form SDR filing requirement is unnecessary and is duplicative of the requirement to file an amended Form SDR if any of the information in the Form SDR becomes inaccurate.

The Commission has, however, reconsidered the proposed removal of the requirement to file an amended Form SDR if any of the information in the Form SDR (including the Form SDR exhibits) becomes inaccurate and has determined not to finalize the proposed removal of this requirement. SDRs will continue to be required to file amendments to Form SDR as necessary after being granted registration under § 49.3(a). While the Commission stated in the Proposal that the Commission would have access to the information that would be updated in an amended Form SDR because an SDR would be required to file updates for some of the information with the Commission as a rule change under part 40 of the Commission's regulations and that, under proposed § 49.29, the Commission could require an SDR to file information demonstrating the SDR's compliance with its obligations under the CEA and Commission regulations,[51] the Commission no longer believes these methods of obtaining access to updated Form SDR information are the most efficient or practicable methods.

Instead, the Commission believes that Commission staff would be more effectively alerted to changes to the information in Form SDR for compliance monitoring purposes by maintaining the existing requirement for SDRs to update any Form SDR information that is or that becomes inaccurate. The Commission also believes it would be more efficient for SDRs to continue to send the updated Form SDR information to the Commission as currently required, as opposed to the Commission requesting the SDRs to demonstrate compliance whenever the Commission needs to check whether the Form SDR information remains current. Under the proposed approach, for example, the Commission may need to require SDRs to provide an all-encompassing demonstration of compliance for all of the Form SDR information under § 49.29, as opposed to the SDRs only updating Form SDR information that has changed, as the SDRs regularly do under the existing requirement, because the Commission will not be aware of what information may or may not have changed. The Commission is therefore not adopting the proposed removal of the requirement for an SDR that is registered under § 49.3(a) to file an updated Form SDR when the information in its Form SDR is inaccurate or becomes inaccurate, and this existing requirement in § 49.3(a)(5) remains in effect.

The Commission requested comment on all aspects of the proposed changes to § 49.3(a)(5). Two comments supported the proposed amendments to § 49.3(a)(5).[52] One comment also suggested the Commission further amend the text of proposed § 49.3(a)(5) to clarify that the requirement to file an amended Form SDR to update inaccurate information does not apply to an SDR provisionally registered under § 49.3(b).[53] Existing § 49.3(b)[54] provides that, upon request, the Commission may grant an applicant provisional registration as an SDR if, among other things, the applicant is in ''substantial compliance'' with the standard for approval for full SDR registration set forth in § 49.3(a)(4). If granted, provisional registration expires on the earlier of: (i) The date the Commission grants or denies full registration of the SDR; or (ii) the date the Commission rescinds the SDR's provisional registration.[55]

One comment suggested that the Commission add the legal entity identifier (''LEI'') of the applicant into the Form SDR, stating that incorporating an applicant's LEI record in the form would make various information fields unnecessary, while making the information provided more standardized and accurate.[56]

As explained above, the Commission agrees with the comments that supported the removal of the annual Form SDR update requirement and the Commission disagrees with the comments supporting the removal of the requirement to update Form SDR when the information is inaccurate. The Commission also disagrees with the suggestion regarding provisionally-registered SDRs. Final § 49.3(a)(5), as adopted, requires a provisionally-registered SDR to file an amended Form SDR if information in the form becomes inaccurate. The Commission notes that provisional registration is an interim status for applicants for registration, and the accuracy of information in the Form SDR of a provisionally-registered SDR is necessary for the Commission to make a determination regarding the SDR's application for full registration.

The Commission is also declining to adopt the suggestion to use the LEI of the applicant instead of various data fields in the Form SDR. While there may be benefits to doing so, the Commission believes the current format is more useful to Commission staff in reviewing applications for registration by providing the relevant entity names directly, without the need to reference the information underlying an LEI.

[44] 17 CFR 49.3. Form SDR is set forth in Appendix A to part 49.

[45] 17 CFR 49.3(a)(1).

[46] 17 CFR 49.3(a)(2).

[47] 17 CFR 49.3(a)(5).

[48] Proposal at 84 FR 21048 (May 13, 2019).

[49] 17 CFR 49.22(f)(2).

[50] Proposal at 84 FR 21048 (May 13, 2019).

[51] *Id.*

[52] CME at 2 (''[T]he addition of Part 49.29 is a much more effective and efficient approach for the Commission to ensure it has the information it needs to ensure an SDR's compliance with the regulations''); DDR at 3.

[53] DDR at 3.

[54] 17 CFR 49.3(b).

[55] *Id.*

[56] GLEIF at 1.

C. § 49.5—Equity Interest Transfers

Section 49.5 sets forth requirements for an SDR that enters into an agreement involving the transfer of an equity interest of ten percent or more in the SDR.[57] The Commission proposed various amendments to § 49.5 to simplify and streamline the requirements of the regulation. The Commission is adopting the amendments to § 49.5 as proposed. The Commission continues to believe, as stated in the Proposal, that the amendments to § 49.5 will simplify and streamline the requirements of the regulation, and remove unnecessary burdens on SDRs while preserving the Commission's ability to obtain information regarding transfers of SDR equity interests.

Current § 49.5(a) requires an SDR to (i) notify the Commission of the agreement no later than the business day following the date of the agreement and; (ii) amend any information that is no longer accurate on Form SDR.[58] Current § 49.5(b) sets forth various agreements, associated documents and information, and representations an SDR must provide the Commission in advance of the equity interest transfer.[59] Current 49.5(c) provides that within two business days following the equity interest transfer, an SDR must file with the Commission a certification stating that the SDR is in compliance with CEA section 21 and Commission regulations adopted thereunder, stating whether any changes were made to the SDR's operations as a result of the transfer, and, if so, identifying such changes.[60]

The Commission is amending § 49.5 to specify that the regulation applies to both direct and indirect transfers of ten percent or more of an equity interest in an SDR. As the Commission explained in the Proposal, indirect transfers of equity ownership (*e.g.,* the transfer of an equity interest in a parent company of an SDR) also require Commission oversight of the SDR to address any compliance concerns that may arise.[61] The Commission is also replacing the documentation and informational requirements in current § 49.5(b) with a provision in § 49.5(a) stating that the Commission may, upon receiving an equity transfer notification, request that the SDR provide supporting documentation for the transaction. The Commission believes reserving the authority to request supporting documentation rather than compelling specific production satisfies the Commission's need for information without placing unnecessary burdens on an SDR.

In addition, the Commission is amending § 49.5 to extend the deadline by which an SDR must file an equity transfer notification and to specify that the SDR shall file the notice with the Secretary of the Commission and the Director of the Division of Market Oversight (''DMO'') via email. The Commission believes an SDR may need additional time to file the necessary documents, and ten business days provides greater flexibility without sacrificing the availability of information the Commission needs to conduct effective oversight of the SDR. The Commission also is removing the requirement for an SDR to amend information that is no longer accurate on Form SDR due to the equity interest transfer because the requirement is duplicative of other requirements.

Finally, the Commission is amending § 49.5(c) to simplify the certification and information requirements in the filing an SDR is required to make with the Commission following an equity interest transfer. The Commission believes these amendments provide the Commission with the pertinent information it needs to assess the impact of an equity interest transfer on the SDR's operations.

The Commission requested public comment on all aspects of proposed § 49.5. One comment supported the Commission's proposal to simplify § 49.5, stating that current requirements of the regulation are overly burdensome, and reserving authority for the Commission to request supporting documentation, rather than compelling specific document production, would satisfy the Commission's need for information.[62] The Commission agrees with this comment and is finalizing § 49.5 as described.

D. § 49.6—Request for Transfer of Registration

The Commission proposed to amend § 49.6[63] to clarify and streamline the process and procedures for the transfer of an SDR registration to a successor entity.[64] The amendments include re-titling the section ''Request for transfer of registration,'' to more accurately reflect the subject of the regulation.[65] The Commission has determined to adopt the amendments to § 49.6 as proposed. The Commission believes the amendments to § 49.6 will simplify the process for requesting a transfer of SDR registration by providing procedures that focus on informing the Commission of changes relevant to the Commission's oversight responsibilities, as opposed to requiring the successor entity to file a Form SDR, which would likely duplicate most of the transferor's existing Form SDR. Further, the amendments to § 49.6 provide the Commission with the information it needs in order to determine whether to approve a request for a transfer of an SDR registration.

Current § 49.6(a) provides that, in the event of a corporate transaction that creates a new entity as which an SDR operates, the SDR must request a transfer of its registration no later than 30 days after the succession.[66] Current § 49.6(a) also specifies that the SDR registration shall be deemed to remain effective as the registration of the successor if the successor, within 30 days after such succession, files a Form SDR application for registration, and the predecessor files a request for vacation. Further, the SDR registration ceases to be effective 90 days after the application for registration on Form SDR is filed by the successor SDR.

Final § 49.6(a) instead requires an SDR seeking to transfer its registration to a new legal entity as a result of a corporate change to file a request for approval of the transfer with the Secretary of the Commission in the form and manner specified by the Commission. Examples of such corporate changes may include, but are not limited to, re-organizations, mergers, acquisitions, bankruptcy, or other similar events that result in the creation of a new legal entity for the SDR.

Final § 49.6(b) specifies that an SDR shall file a request for transfer of registration as soon as practicable prior to the anticipated corporate change.

Final § 49.6(c) sets forth the information that must be included in a request for transfer of registration, including, among other things, the underlying documentation that governs the corporate change, a description of the corporate change and its impact on the SDR and on the rights and obligations of market participants, governance documents of the transferee, and various representations by the transferee related to its ability to operate the SDR and comply with the Act and Commission regulations.

Final § 49.6(d) specifies that upon review of a request for transfer of registration, the Commission, as soon as practicable, shall issue an order either

[57] 17 CFR 49.5.

[58] 17 CFR 49.5(a).

[59] 17 CFR 49.5(b).

[60] 17 CFR 49.5(c).

[61] Proposal at 84 FR 21048 (May 13, 2019).

[62] CME at 2–3.

[63] 17 CFR 49.6.

[64] Proposal at 84 FR 21049 (May 13, 2019).

[65] *Id.*

[66] 17 CFR 49.6(a).

approving or denying the request for transfer of registration.

The Commission requested public comment on all aspects of proposed § 49.6. One comment opposed the proposed amendments to § 49.6, asserting that the amendments will add uncertainty into the transfer process by making a transfer contingent upon obtaining prior Commission approval without specifying a deadline by which the Commission must approve or deny a request for transfer.[67]

The Commission has determined to adopt the amendments to § 49.6 as proposed. With respect to the comment, the Commission recognizes that corporation transactions and reorganizations that involve the transfer of an SDR registration may arise without significant notice, and require certainty and prompt action by regulators. The Commission similarly has an interest in facilitating such transfers in order to maintain the operation of SDRs while also ensuring compliance with the applicable statutory and regulatory requirements. To that end, the Commission believes it is important to apply the information and procedural requirements set forth in § 49.6, as proposed and adopted, in order to enable the Commission and its staff to promptly address requests for transfer and to ensure that the transferee entity is fully capable of complying with the Commission's regulations for SDRs.

E. § 49.9—Open Swaps Reports Provided to the Commission

The Commission proposed to remove the text of existing § 49.9[68] and replace it with new requirements for SDRs to provide open swaps reports to the Commission.[69] Existing § 49.9 lists and briefly summarizes the duties of SDRs, with references to where those duties are found in other sections of part 49.[70] The Commission believes existing § 49.9 is superfluous because all of the SDR duties listed in § 49.9 are also contained, in much greater detail, in the other sections of part 49. Removing existing § 49.9 is a non-substantive amendment that does not affect the requirements for SDRs.

As part of the Commission's proposed new requirements in § 49.9 for SDRs to provide open swaps reports to the Commission,[71] the Commission proposed renaming § 49.9 ''Open swaps reports provided to the Commission'' and, as discussed above, proposed to add a new definition in § 49.2 for the term ''open swap.''[72] The Commission received several comments on the proposed new requirements for open swaps reports under § 49.9, as discussed below. The Commission has determined to adopt the amendments to § 49.9 as proposed.

Final § 49.9(a) requires each SDR to provide the Commission with open swaps reports that contain an accurate reflection of the swap data maintained by the SDR for every swap data field required to be reported under part 45 of the Commission's regulations for every open swap, as of the time the SDR compiles the report. Open swaps reports must be organized by the unique identifier created pursuant to § 45.5 of the Commission's regulations that is associated with each open swap.

SDRs currently send reports that are similar to the proposed open swaps reports to the Commission on a regular basis. The Commission currently uses these reports to produce a weekly swaps report that is made available to the public[73] and for entity-netted notional calculations.[74] The Commission also uses these reports to perform market risk and position calculations, and for additional market research projects. However, in formulating these reports, SDRs employ a variety of calculation approaches and differing formats, which reduces the utility of the data for the Commission. The Commission therefore proposed requiring each SDR to regularly provide the Commission with standardized open swaps reports containing accurate and up-to-date information. The Commission continues to believe it is necessary to require SDRs to provide open swaps reports and to require such reports to be standardized, in order to maximize their utility to the Commission and enhance the Commission's ability to perform its regulatory functions.

Final § 49.9(b) requires an SDR to transmit all open swaps reports to the Commission as instructed by the Commission. Such instructions may include, but are not limited to, the method, timing, and frequency of transmission, as well as the format of the swap data to be transmitted.[75] Retaining the flexibility to determine these requirements, and the ability to modify them over time as necessary, allows the Commission to tailor the information that is required to be in the reports to meet the Commission's needs without imposing undue burdens on SDRs. As stated in the Proposal, the Commission intends to work with SDRs in formulating instructions pursuant to final § 49.9(b) and expects to provide a reasonable amount of time for SDRs to adjust their systems before any instructions regarding open swaps reports take effect. This collaborative process will allow the Commission's current practice of working with SDRs to implement changes to swaps reports to continue, which provides SDRs time to update their systems as needed.

The Commission requested comment on all aspects of proposed § 49.9. One comment generally supported standardizing the open swaps reports.[76] Several comments addressed the Commission's discretion with respect to the transmission of open swaps reports under proposed § 49.9(b). One comment stated that any revisions the Commission makes to the requirements for transmitting open swaps reports should not require revisions to reports provided by the SDR to reporting counterparties, which would increase costs for reporting counterparties.[77] Likewise, the requirements should not result in reporting counterparties having to submit additional data, or to submit previously reported data in a different data format.[78] One comment stated that the Commission should modify the proposed rule to include ''reasonable constraints'' on the instruction process by amending the text of proposed § 49.9(b) to include ''as soon as practicable, given the nature of the instructions and the swap data repository's circumstances'' at the end of the first sentence.[79]

The Commission is adopting § 49.9 as proposed, with non-substantive editorial changes for clarity. With regard to the comments on open swaps reports provided by SDRs to reporting counterparties, the Commission notes that, as described in section II.G below, final § 49.11 will not require SDRs to

[67] CME at 3.

[68] 17 CFR 49.9.

[69] Proposal at 84 FR 21050 (May 13, 2019).

[70] 17 CFR 49.9. As discussed below in section II.Q, the Commission proposed conforming amendments to § 49.25 to remove references to current § 49.9.

[71] Section 49.2, as proposed and as adopted in this final rulemaking, defines the term ''open swap'' to mean an executed swap transaction that has not reached maturity or expiration, and has not been fully exercised, closed out, or terminated.

[72] See section II.A above for a discussion of the definitions in final § 49.2.

[73] The Commission's various public reports, including the weekly swaps reports, are available at *http://www.cftc.gov/MarketReports/index.htm.*

[74] *See generally* ''Introducing ENNs: A Measure of the Size of Interest Rate Swaps Markets,'' Jan. 2018, *available at https://www.cftc.gov/sites/default/files/idc/groups/public/@economicanalysis/documents/file/oce_enns0118.pdf.*

[75] As discussed below in section II.V, proposed § 49.31 delegates to the Director of DMO the Commission's authority in proposed § 49.9, including the authority to create instructions for transmitting open swaps reports to the Commission.

[76] DDR at 3.

[77] ISDA/SIFMA at 39.

[78] *Id.*

[79] DDR at 3.

provide open swaps reports to reporting counterparties as part of the swap data verification process, and therefore the comments are moot.

The Commission declines to adopt the suggested revisions related to constraints, which would unnecessarily restrict the Commission's discretion to issue transmission instructions. The Commission reiterates its intent to work with the SDRs before creating or modifying any instructions pursuant to § 49.9 and to provide a reasonable amount of time for SDRs to adjust their systems before any instructions take effect. The Commission's existing practice of collaborating with SDRs stems from the recognition that such collaboration will ultimately improve SDRs' ability to comply with their regulatory obligations and further the Commission's regulatory objectives.

F. § 49.10—Acceptance of Data

The Commission is adopting new § 49.10(e) generally as proposed, with modifications and textual clarifications in response to the comments received. Final § 49.10(e) complements the error correction requirements in other Commission regulations, including final §§ 43.3(e) and 45.14(b), that apply to the entities that report SDR data to the SDRs. Each SEF, DCM, and reporting counterparty must correct errors in their SDR data by submitting complete and accurate SDR data to the relevant SDR.[80] Final § 49.10(e) is intended to ensure that SDRs correct errors in SDR data and disseminate corrected data as soon as possible.

As it stated in the Proposal, the Commission believes that clearly delineating an SDR's obligations to receive and make corrections to SDR data, and to disseminate the corrected SDR data to the public and the Commission, as applicable, will further the Commission's goal of more accurate and complete SDR data being made available to the public and the Commission. The Commission believes that the steps required by § 49.10(e) will also facilitate, and therefore encourage, compliance by SEFs, DCMs, and reporting counterparties with their regulatory obligation to correct SDR data. The Commission further believes proposed § 49.10(e) is consistent with the current statutory and regulatory requirements for SDRs to correct errors and omissions.

Final § 49.10(e)(1) requires an SDR to accept corrections of errors and omissions[81] reported to the SDR pursuant to part 43, 45, or 46 of the Commission's regulations. Final § 49.10(e) specifies that the requirements of § 49.10(e) apply to SDR data regardless of the state of the swap that is the subject such data, unless the record retention period for the SDR data under final § 49.12(b)(2) has expired. Thus, final § 49.10(e) requires an SDR to correct and disseminate SDR data for swaps that have matured or were otherwise terminated and are no longer open swaps, if such swaps are still within the required SDR data retention period. Final § 49.10(e)(2) requires an SDR to record corrections as soon as technologically practicable after the SDR accepts the corrections. Final § 49.10(e)(3) requires an SDR to disseminate the corrected SDR data to the public and the Commission, as applicable, as soon as technologically practicable after the SDR records the correction to the SDR data. Lastly, final § 49.10(e)(4) requires each SDR to establish, maintain, and enforce policies and procedures designed for the SDR to fulfill its responsibilities under § 49.10(e).

One comment suggested that the final rule should clarify that the only obligation on SDRs under § 49.10(e) is to accept, record, and disseminate corrections to SDR data.[82] The Commission notes that this is the scope of proposed § 49.10(e), and is the scope of final § 49.10(e).

The comment also stated that applying the requirements of proposed § 49.10(e)(2) to SDR data ''regardless of the state of the swap'' will require SDRs to make SDR data available for corrections for an unlimited amount of time.[83] The comment suggested that the Commission should instead limit the requirements in the regulation with respect to ''dead swaps'' to the required SDR data recordkeeping retention period.[84] The Commission agrees with this comment and final § 49.10(e)(1) provides that the rules in § 49.10(e) apply only if ''the record retention period under § 49.12(b)(2) of this part has not expired as of the time the error correction is reported.''

Finally, the comment stated that the Commission should make clear that an entity submitting SDR data corrections or previously omitted SDR data must comply with the then current technical specifications of the SDR and that an SDR is not required to make accommodations for data that is unable to comport with the then current technical specifications.[85] The Commission does not agree with the recommendation that the regulation be revised to require error corrections to be made using the prevailing validations and technical specifications of the SDR. The Commission notes that final § 49.10(e) provides discretion to SDRs to establish, maintain, and enforce policies and procedures designed for the SDRs to fulfill their responsibilities under final § 49.10(e), which includes the discretion to require error corrections to use prevailing validations and the SDR's technical specifications. Final §§ 43.3(e) and 45.14(a) contain companion requirements for market participants to conform to these SDR policies and procedures when correcting SDR data. The Commission believes that this discretion provides necessary flexibility to SDRs and market participants.

G. § 49.11—Verification of Swap Data Accuracy

1. Background

Section 21(c)(2) of the CEA requires SDRs to confirm submitted swap data.[86] The Commission implemented this statutory requirement by promulgating current § 49.11.[87] Current § 49.11(a) requires an SDR to establish policies and procedures to ensure the accuracy of swap data and other regulatory information reported to the SDR. Current § 49.11(b) sets forth the general requirement that an SDR confirm the accuracy and completeness of all swap data submitted pursuant to part 45. The regulation then sets forth specific confirmation requirements for creation data in § 49.11(b)(1) and for continuation data in § 49.11(b)(2).[88]

[80] *See* section IV below for a discussion of final § 43.3(e) (regarding swap transaction and pricing data) and section III.C below for a discussion of final § 45.14 (regarding swap data).

[81] The Commission notes that, as described below, final § 45.14 and final § 43.3(e) do not use the word ''omission'' in the error correction requirements. The word ''omission'' is not included in those sections because the term ''error'' is defined to include all omissions in final § 45.14(c) and final § 43.3(e)(4). The Commission is, however, using the word ''omission'' in final § 49.10(e), because ''error'' is not defined in final part 49. The Commission emphasizes that this difference between the three sections is merely semantic and does not in any way change the SDRs' data correction requirements. All omissions of required SDR data are errors, and an SDR is required to correct, in accordance with final § 49.10(e), all errors reported to the SDR, including errors that arise from omissions in SDR data reported to an SDR or the omission of all SDR data for a swap.

[82] Joint SDR at 9.

[83] *Id.*

[84] *Id.*

[85] *Id.* at 9–10.

[86] *See* 7 U.S.C. 24a(c)(2) (providing that, among other duties, a swap data repository shall confirm with both counterparties to the swap the accuracy of the data that was submitted).

[87] *See* Part 49 Adopting Release at 54547.

[88] In both cases, the requirements vary depending on whether the SDR received the data directly from a counterparty or from a SEF, DCM, derivatives clearing organization (''DCO''), or third-party service provider acting on behalf of the swap counterparty.

For swap creation data, if the swap data was submitted directly by a swap counterparty, such as an SD, MSP, or non-SD/MSP counterparty, an SDR is required to notify both counterparties to the swap and to receive from both counterparties acknowledgement of the accuracy of the swap data and corrections for any errors.[89] However, because counterparties do not currently have a corollary obligation to respond to an SDR's notifications, SDRs have adopted rules based on the concept of negative affirmation: Reported swap data is presumed accurate and confirmed if a counterparty does not inform the SDR of errors or omissions or otherwise make modifications to a trade record for a certain period of time.[90]

If the swap data was instead submitted by a SEF, DCM, DCO, or third-party service provider acting on behalf of a swap counterparty, the SDR must, among other things, provide both counterparties with a 48-hour correction period after which a counterparty is assumed to have acknowledged the accuracy of the swap data.[91] For swap continuation data, an SDR may rely on a 48-hour correction period regardless of the type of entity that submitted the swap data.[92]

These provisions in existing § 49.11 reflect the Commission's view in adopting the regulation that an SDR need not always affirmatively communicate with both counterparties to in order to confirm the accuracy of swap data.[93] In the Proposal, the Commission stated that, based on the its experience with swap data submitted by SEFs, DCMs, DCOs, and third-party service providers, the current requirements of § 49.11 have failed to ensure swap data accuracy and consistency, which has hampered the Commission's ability to carry out its regulatory responsibilities.[94]

As noted in the Proposal, the Commission previously raised these issues in the Roadmap and received many comments in response.[95] As discussed in the Proposal, commenters generally held the view that SDRs are not able to confirm swap data with non-reporting counterparties;[96] the obligation to confirm data accuracy should generally reside with the parties to the swap, not SDRs;[97] and confirmation requirements for non-reporting counterparties are generally unnecessary and will not improve data accuracy.[98]

Based on its experience with swap data reporting and the comments it received in response to the Roadmap, the Proposal set forth a new swap verification scheme for swap data.

2. Summary of the Final Rule

The Commission is modifying its approach to verification in final § 49.11, based on comments received on proposed § 49.11. The Commission believes the verification process required by final § 49.11 is less burdensome and more flexible than the verification process set forth in the proposed regulation. As described in detail below, in order for SDRs to verify the accuracy and completeness of swap data, final § 49.11 requires each SDR to provide reporting counterparties that are users of the SDR with a mechanism that allows a reporting counterparty to access the current swap data for all open swaps for which the reporting counterparty is serving as the reporting counterparty, in such a manner that allows the reporting counterparty to fulfill its own verification obligations under final § 45.14.[99]

This approach is similar to the requirements in proposed § 49.11 in many respects, particularly in that under final § 49.11, SDRs are required to facilitate verification by reporting counterparties of all swap data for all open swaps on a regular basis. However, the Commission believes final § 49.11 provides a less prescriptive and less burdensome method to achieve the Commission's goals related to swap data verification. In particular, final § 49.11 will not require the SDRs to create and send open swaps reports to reporting counterparties as proposed.[100] Also, in place of the requirement that SDRs establish, maintain, and enforce policies and procedures reasonably designed for the SDR to successfully receive replies to open swaps reports from reporting counterparties in the form of a verification of data accuracy or notice of discrepancy, the SDR's policies and procedures will be required to address how the SDR will fulfill all of the requirements of § 49.11, including how reporting counterparties and third-party service providers may successfully use the verification mechanism to fulfill the reporting counterparties' responsibilities under § 45.14. Final § 49.11 will also require reporting counterparties to perform verification on a less frequent basis than proposed, meaning that SDRs will likewise not be required to facilitate verification on as frequent a basis as proposed.

a. § 49.11(a)

The Commission adopts final § 49.11(a) largely as proposed, with some non-substantive rearrangement of proposed § 49.11(a) into final paragraphs § 49.11(a) and (c). The first sentence of proposed § 49.11(a) is being finalized as final § 49.11(a). Final § 49.11(a) reiterates each SDR's statutory duty to verify the accuracy of swap data pursuant to CEA section 21(c)(2). The second sentence of proposed § 49.11(a) is now included in final § 49.11(c)(1), with non-substantive rewording to more clearly articulate the requirement for SDRs to establish, maintain, and enforce policies and procedures related to verification and the content requirements for the policies and procedures.

b. § 49.11(b)(1)

Final § 49.11(b)(1) requires each SDR to provide a mechanism through which each reporting counterparty that is a user of the SDR can access all swap data the SDR maintains for each open swap for which the reporting counterparty serves as the reporting counterparty. The mechanism must allow sufficient access, provide sufficient information, and be in a form and manner to enable each reporting counterparty to perform swap data verification as required under § 45.14 of this chapter. The Commission believes that, together with final § 45.14(b), final § 49.11(b)(1) will create an effective verification process to help ensure that swap data maintained by SDRs is complete and accurate.

The Commission notes that, similar to the communication requirements in proposed § 49.11, it is not prescribing the form of mechanism that SDRs must provide in final § 49.11(b)(1), beyond the data access, data scope, frequency, and confidentiality requirements contained in final § 49.11(b). The Commission expects that SDRs and

[89] *See* § 49.11(b)(1)(i) (providing that an SDR has confirmed the accuracy of swap creation data that was submitted directly by a counterparty if the swap data repository has notified both counterparties of the data that was submitted and received from both counterparties acknowledgement of the accuracy of the swap data and corrections for any errors) and § 49.11(b)(2)(i).

[90] *See* DTCC Data Repository (U.S.) LLC Rule 3.3.3.3 and ICE Trade Vault Rules 4.6 and 4.7.

[91] Additional requirements include the following: (i) The SDR must have formed a reasonable belief that the swap data is accurate; and the swap data that was submitted, or any accompanying information, evidences that both counterparties agreed to the data. *See* 17 CFR 49.11(b)(1)(ii).

[92] *See* 17 CFR 49.11(b)(2)(ii).

[93] *See* Part 49 Adopting Release at 54547 (describing the requirements of § 49.11).

[94] *See* Proposal at 84 FR 21052 (May 13, 2019).

[95] *See id.*

[96] *Id.*

[97] *Id.*

[98] *Id.*

[99] *See* section III.C below for a discussion of final § 45.14.

[100] The Commission is requiring SDRs to create and send open swaps reports to the Commission under final § 49.9. *See* section II.E above for a discussion of final § 49.9.

reporting counterparties will be able to work together to devise the most effective and efficient verification mechanism, with particular attention to accommodating non-SD/MSP/DCO reporting counterparties that may have fewer resources to perform verification than their SD/MSP/DCO counterparts. The Commission is also aware that at least one SDR already offers a mechanism that allows counterparties to access their own swap data, which may be readily modified to meet the requirements of final § 49.11(b).

c. § 49.11(b)(2)

The Commission adopts the substance of the Proposal in final § 49.11(b)(2) in regards to the scope of data that the SDRs must make available to reporting counterparties for verification. Final § 49.11(b)(2) provides that the swap data accessible through the mechanism must accurately reflect the most current swap data maintained by the SDR, as of the time the reporting counterparty accesses the swap data using the mechanism, for each data field that the reporting counterparty was required to report under part 45 for each of the reporting counterparty's open swaps for which it is serving as the reporting counterparty. Final § 49.11(b)(2) only requires the mechanism to make available the then-current swap data for each of the data fields that the SDR maintains for the relevant open swaps. There is no requirement to include swap data contained in any particular messages from the reporting counterparty or any outdated swap data.

The Commission notes again that it is not prescribing the particular method by which the mechanism grants access to all of the swap data as required, as long as the mechanism satisfies the requirements in final § 49.11(b)(2), including the general requirement that the swap data accessible through the mechanism provides sufficient information to allow the reporting counterparties utilizing the mechanism to successfully perform their swap data verification responsibilities as required under final § 45.14. The Commission expects that SDRs will work with reporting counterparties to devise the most efficient and effective method by which the mechanism will provide access to all of the required swap data, with particular attention to accommodating non-SD/MSP/DCO reporting counterparties.

The Commission also notes that final § 49.11(b)(2) references the limits on providing access to swap data that must be kept confidential under final § 49.11(b)(3). The swap data access provided under final § 49.11(b)(2) must not allow access to data that is required to be kept confidential, as described further below in the discussion of § 49.11(b)(3).

d. 49.11(b)(3)

Final § 49.11(b)(3) adopts the proposed limits on access to swap data as part of verification for swap data that is required to be kept confidential from reporting counterparties under the Act or other Commission regulations. Notwithstanding the other requirements of final § 49.11(b), final § 49.11(b)(3) explicitly prohibits SDRs from allowing access to swap data that a reporting counterparty is otherwise prohibited to access. The Commission notes that the same confidential swap data is also excluded from the reporting counterparties' corresponding verification requirements in final § 45.14(b).

This confidentiality requirement is particularly relevant for counterparty identity information that is required to be kept confidential under final § 49.17.[101] Existing and final § 49.17(f) prohibit SDRs from allowing access to counterparty identifying information for certain anonymously-executed cleared swaps. Under the provisions of final § 49.11(b)(3), nothing in final § 49.11 overrides the confidentiality requirements of § 49.17, or any other confidentiality requirements of the Act or other Commission regulations. This information is also excluded from the verification requirements in the corresponding verification obligation rules in final § 45.14(b).

e. § 49.11(b)(4)

Final § 49.11(b)(4) provides that the mechanism each SDR adopts under final § 49.11(b) must allow sufficiently frequent access for reporting counterparties to perform the required swap data verification under § 45.14(b). This minimum frequency is necessary so that reporting counterparties are able to access all of their relevant swap data every time they are required to perform verification under § 45.14(b), in order to help ensure that reporting counterparties perform a robust verification of all swap data for their relevant open swaps. Final § 45.14(b) requires SD/MSP/DCO reporting counterparties to verify every 30 calendar days and requires non-SD/MSP/DCO reporting counterparties to verify once every calendar quarter, with at least two months between verifications.[102]

The Commission notes that the frequency requirement in final § 49.11(b)(4) is a minimum frequency standard. Nothing prohibits SDRs from allowing reporting counterparties to access swap data through the mechanism more frequently than required and nothing prohibits reporting counterparties from utilizing the mechanism to access their own swap data more frequently than is required.

f. § 49.11(b)(5)

Final § 49.11(b)(5) provides requirements related to SDRs making swap data available to third-party service providers for verification purposes. As with other Commission regulations, reporting counterparties are permitted to utilize third-party service providers to perform verification, and the Commission believes that accommodating the use of diligent third-party services providers may increase the efficiency and effectiveness of the verification process.

Accordingly, in order to accommodate the reporting counterparties' use of third-party service providers, final § 49.11(b)(5) provides that an SDR will satisfy its verification requirements under final § 49.11 by, after a reporting counterparty informs the SDR that the reporting counterparty will utilize a particular third-party service provider for verification purposes, providing the third-party service provider with the same access to the mechanism and the relevant swap data as the SDR is required to provide to the reporting counterparty.

As part of this third-party service provider access, final § 49.11(b)(5) also provides that the third-party service provider access is in addition to (*i.e.,* not instead of) the access for the relevant reporting counterparty. Each SDR must still grant the same required level of access to the mechanism and the relevant swap data to the reporting counterparty, regardless of whether a reporting counterparty utilizes a third-party service provider. The third-party service provider's access under final § 49.11(b)(5) must also continue until the reporting counterparty informs the SDR that the third-party service provider should no longer have access to the mechanism and relevant swap data on the reporting counterparty's behalf. This requirement is necessary to ensure that the third-party service provider can provide services to the

[101] The Commission is finalizing a technical correction to § 49.17(f) in this rulemaking, as described below in section II.L.

[102] See section III.C below for a discussion of the verification requirements for reporting counterparties under final § 45.14(b).

reporting counterparty without interruption.

Finally, § 49.11(b)(5) requires the verification policies and procedures an SDR must create pursuant to final § 49.11(c) to include instructions detailing how each reporting counterparty can successfully inform the SDR so that the SDR will grant or discontinue access for a third-party service provider at the reporting counterparty's instruction. This requirement is necessary to ensure that third-party service provider access for verification purposes is as efficient and seamless as possible. The Commission notes that these SDR policies and procedures are required to be publicly disclosed under final § 49.26(j).[103]

g. § 49.11(c)

The Commission made several non-substantive organizational and editorial modifications in final § 49.11(c), as compared to the Proposal. For example, as described above, the SDR verification policies and procedures requirement from proposed § 49.11(a) is included in final § 49.11(c). The wording in final § 49.11(c)(1) is changed slightly from proposed § 49.11(a) for clarity purposes, but similarly requires SDRs to establish, maintain, and enforce policies and procedures that address how the swap data repository will fulfill all of the applicable requirements of final § 49.11. The policies and procedures must also include instructions on how each reporting counterparty, or third-party service provider acting on behalf of a reporting counterparty, can successfully utilize the mechanism to access swap data in order to perform the reporting counterparty's verification responsibilities under final § 45.14(b). This requirement is necessary to ensure that reporting counterparties are clearly instructed on how to access the verification mechanism and their relevant swap data, in order to ensure that verification is as efficient and seamless as possible. The Commission notes that the companion verification requirements for reporting counterparties in final § 45.14(b) require reporting counterparties to follow the relevant SDR policies and procedures when performing verification.[104]

Final § 49.11(c)(2) sets forth the requirements for an SDR that amends its verification policies and procedures, which were previously set forth in proposed § 49.11(d). Final § 49.11(c)(2), like proposed § 49.11(d), requires each SDR to comply with the requirements of part 40 of the Commission's regulations in adopting or amending the verification policies and procedures required under final § 49.11(c)(1). The Commission notes that SDRs would be required to comply with part 40 when adopting or amending the verification policies and procedures regardless of whether this requirement is included in § 49.11(c)(2).

3. Comments on the Proposed Rule

The Commission received many comments on the verification approach in proposed § 49.11. Many commenters did not distinguish their comments between the verification requirements proposed for SDRs under proposed § 49.11 and the verification requirements proposed for reporting counterparties under proposed § 45.14, but the Commission has organized the discussion between the two different final rules based on its best estimation of whether particular comments applied to one or both of the proposed sections. The discussion of comments relevant to final § 49.11 is contained in this section, while the discussion of comments that pertain to the verification requirements for reporting counterparties is contained in the discussion of final § 45.14(b), unless otherwise noted below.[105]

Many comments on specific requirements of proposed § 49.11 are now moot, because the Commission is not adopting the proposed requirements. For example, some commenters addressed particular aspects and mechanics of the proposed verification of open swaps reports and the messages the Proposal would require reporting counterparties to send to SDRs related to verification results.[106] These comments are no longer applicable, because the Commission is not adopting the proposed requirement that SDRs provide open swaps reports to reporting counterparties or the companion requirement that reporting counterparties verify the data in such reports and send messages to SDRs related to verification results. The Commission acknowledges these comments on specific proposed requirements and thanks the commenters for submitting these comments, but these requirements are not included in the final rule.

Many comments were generally supportive of the Commission's efforts to improve the accuracy of data reported to and maintained by SDRs.[107] The Commission agrees with the many commenters and market participants who support the Roadmap rulemakings to improve the quality of swap data, and reiterates the importance of improved data accuracy and completeness.

Along with the comments of general support, the Commission received many comments supporting specific requirements in proposed § 49.11. Comments in particular supported limiting data verification to swap data,[108] and excluding non-reporting counterparties from data verification requirements.[109] The Commission agrees with these comments and is finalizing § 49.11 with requirements that only apply verification to swap data and only require verification for reporting counterparties.

Commenters also suggested alternatives for the proposed approach to verification, including alternatives that helped form the basis of the revised verification requirements in final § 49.11. Multiple comments suggested that the Commission adopt a more ''principles based'' approach to verification.[110] As part of a more principles-based approach, one comment suggested monthly verification for SDs and quarterly for non-SDs, while also recommending that SDRs or the Commission should be able to request evidence that verification was conducted as required.[111] Another comment advocated for requiring reporting counterparties to implement procedures to periodically reconcile swaps data reported to SDRs.[112] The Commission also received one comment related to alternatives to verification of accuracy and notice of discrepancy messaging, which recommended an obligation on reporting counterparties to maintain, and make available to the Commission upon request, evidence that verification was conducted and any necessary corrections were submitted to the SDR.[113]

The Commission recognizes the comments that provided robust alternatives to the proposed verification requirements that also met the Commission need for swap data to be verified in a thorough and timely manner. The Commission is finalizing § 49.11 with more principles-based requirements that incorporate each of these suggestions, including that reporting counterparties periodically

[103] *See* section II.R below for a discussion of final § 49.26(j).

[104] See section III.C for a discussion of the verification requirements for reporting counterparties under final § 45.14(b).

[105] *Id.*

[106] *See, e.g.,* GFMA at 4; IATP at 5; ICE TV at 3–4; ISDA/SIFMA at 40, 43–44; Joint SDR at 2–7.

[107] *See* Freddie Mac at 1, 2; IATP at 1–5; Joint SDR at 1; Markit at 2.

[108] ISDA/SIFMA at 39–41, 44.

[109] GFMA at 4, ISDA/SIFMA at 39, Joint SDR at 2.

[110] CS at 3, FIA at 7–8, ISDA/SIFMA at 45.

[111] ISDA/SIFMA at 45.

[112] CS at 3.

[113] Joint SDR at 6–8.

reconcile the open swap data maintained by SDRs with the open swap data in their own books and records; that verification occur on a monthly basis for SD reporting counterparties (though the Commission will also require monthly verification for MSPs and DCOs) and quarterly for other reporting counterparties; and that reporting counterparties maintain and make available to the Commission evidence that verification was conducted properly and any discovered corrections submitted to the relevant SDR(s).[114]

The Commission also received other comments addressing issues that have been incorporated into the final verification requirements. Though largely included with comments related to the proposed open swaps reports, multiple comments advocated for flexibility in the form and manner that SDRs and reporting counterparties perform verification, as these entities already have established methods for communicating swap data and other information.[115] These comments on the proposed open swaps reports also recommended that verification only be required for swap data as current at the time of verification, as opposed to verification on every data message.[116] Another comment also requested clarification that the required distribution of open swaps reports is a minimum, not a maximum, and that SDRs are able to provide open swaps reports more frequently than the minimum.[117]

The Commission recognizes the suggestions included with these comments and agrees with the comments. The Commission originally proposed, and is also now adopting, verification requirements that provide SDRs with flexibility in implementing the verification requirements. Thus, final § 49.11(b) intentionally does not prescribe the form and manner of the verification mechanism and allows SDRs to determine the means for reporting counterparties access to their relevant swap data. The Commission expects that SDRs and reporting counterparties will work together to devise the most efficient and effective mechanism that meets the specific verification requirements in final §§ 49.11 and 45.14. The Commission also proposed, and is now adopting, requirements that only require the verification of up-to-date swap data, as opposed to verification of all messages. Final § 49.11(b)(2) only requires SDRs to make the relevant ''most current'' swap data available to reporting counterparties, as opposed to every message regarding swap data. Though no longer related to open swaps reports, the Commission is also adopting verification timing requirements in § 45.14(b) that serve as a minimum frequency requirement, not a maximum. As the Commission detailed above in the discussion of final § 49.11(b)(4), the SDRs must make the verification mechanism available to the reporting counterparties at least as often as needed for the reporting counterparties to perform their verification responsibilities under final § 45.14(b), but that nothing prevents the SDRs from providing proper access more frequently. The Commission anticipates that some SDRs may choose to provide access to the mechanism on a more-frequent, even potentially continuous, basis.

The Commission also received a comment related to open swaps reports that observed that SDRs would not be able perform verification with reporting counterparties or third-party service providers that are not members of the SDR. The comment suggested that the Commission modify the verification requirement to limit an SDR's verification responsibilities to reporting counterparties and third-party service providers that are members of the SDR.[118] The Commission agrees with this comment and notes that it would not be practical for an SDR to perform verification with reporting counterparties or third-party service providers that are not connected to the SDR. To address this, the Commission is adopting final § 49.11(b)(1), which specifically requires an SDR to provide a verification mechanism that grants swap data access to each ''reporting counterparty that is a user of the swap data repository,'' as required under final § 49.11(b). The Commission notes that final § 49.11(b)(5) contains provisions related to access for a third-party service provider working on behalf of a reporting counterparty and that final § 49.11(c) requires SDR verification policies and procedures to address how a third-party service provider can successfully utilize the SDR verification mechanism on behalf of a reporting counterparty.

The Commission also received a number of comments that made suggestions that are not being accepted. In the context of open swaps reports, one comment suggested that the Commission should specify that verification timing requirements be clarified as ''business days'' and ''business hours,'' as this would facilitate the SDRs including the date and time that an open swap report was sent.[119] The Commission is including verification timing requirements for reporting counterparties in final § 45.14(b), but these timing requirements are stated in terms of calendar days, calendar months, and calendar quarters. The Commission notes that the comment is now moot, as there will be no open swaps reports from SDRs to the reporting counterparties that would necessitate a timestamp, but the Commission also believes that the final use of calendar timing instead of business timing will not cause any issues in regards to reporting counterparties and SDRs performing verification and will provide consistent parameters for when verification must be performed. The use of calendar time allows the reporting counterparties to choose the date most convenient for them to accomplish regular verification without the potential confusion arising from business days shifting based on weekends and holidays.

One comment suggested that the Commission should remove the requirement in proposed § 49.11(d) that SDRs make a filing under part 40 of the Commission's regulations when changing their verification policies and procedures, asserting that such a requirement is unnecessary because reporting counterparties will be required to follow SDR verification procedures.[120] The Commission disagrees and is adopting the requirement in final § 49.11(c)(2). The Commission notes that the requirements of part 40 of the Commission's regulations would apply to the SDR verification policies and procedures regardless of whether this provision is included in final § 49.11(c)(2), because the verification policies and procedures are ''rules'' for the purposes of part 40 of the Commission's regulations.[121] The Commission also believes that requiring SDRs to comply with part 40 to update verification policies and procedures will help alert reporting counterparties and other market participants to when an SDR seeks to change its policies and procedures, which will help ensure compliance with the verification

[114] See section III.C for a more thorough discussion of the verification requirements for reporting counterparties under final § 45.14(b).

[115] GFMA at 5, ISDA/SIFMA at 40, Joint SDR at 6.

[116] ISDA/SIFMA at 40, Joint SDR at 6.

[117] Joint SDR at 6–7.

[118] Joint SDR at 4–5.

[119] ISDA/SIFMA at 40.

[120] Joint SDR at 7.

[121] *See* 17 CFR 40.1(i) (defining ''rule'' for the purposes of part 40 of the Commission's regulations).

policies and procedures and help prevent errors in the verification process.

The Commission also received multiple comments suggesting changes that would narrow the data fields subject to verification. One comment recommended that verification be limited to data fields related to the ''economic terms'' of the trade only, with the Commission identifying which fields are included in the economic terms.[122] Comments also recommended limiting the reported information to information that would improve the Commission's market surveillance capabilities and promote price transparency, while also limiting optional fields and fields that do not apply to the relevant swaps.[123] One comment suggested the Commission clarify the duties relating to static data elements.[124] Other comments also suggested streamlining data fields to only those necessary for the Commission's work and to harmonize data fields with foreign regulators, if possible,[125] and clarifying the data fields.[126]

As described in more detail in the discussion of verification requirements under final § 45.14(b),[127] the Commission disagrees with comments suggesting that the Commission adopt any verification requirement that would allow reporting counterparties to verify anything less than all swap data fields for all of the reporting counterparty's relevant open swaps. All swap data fields are important and are necessary for the Commission to successfully fulfill its regulatory responsibilities, which extend beyond performing robust market surveillance and promoting price transparency. The Commission is adopting verification requirements that require the reporting counterparties to verify every swap data field for all swap data for every one of a reporting counterparty's relevant open swaps, and is adopting the requirements in final § 49.11(b) that will facilitate this by requiring SDRs to provide a mechanism that allows the reporting counterparties to verify every data field for all relevant swap data. This requirement includes all static data elements, as errors are still possible in swap data maintained by SDRs, even if it is intended to be static. The Commission also notes that streamlining, clarifying, and harmonizing data fields is one of the express purposes of the Roadmap rulemakings, and that this work on data fields is accomplished in a separate Roadmap rulemaking.[128]

The Commission received several comments suggesting that verification is unnecessary and that the Commission can instead rely on SDR swap data validation, standardized and harmonized swap data fields, and/or the swap data error corrections requirements to improve data quality.[129]

As described in more detail in the discussion of verification requirements under final § 45.14(b), the Commission disagrees with the suggestions that verification is unnecessary and that swap data validation, standardized swap data fields, and error correction would be sufficient to meet the Commission's data quality goals. While swap data validation and standardized data fields are valuable tools to prevent certain types of swap data errors, such as swap data being reported without required data, they do not address the same errors that swap data verification is intended to address. Swap data verification, which is designed to inform and trigger the swap data error correction process, is intended to address plausible but incorrect swap data that would not be identified by validation because the incorrect data meets the technical standards for the standardized fields, such as a swap being reported with a notional value of $1,000,000 instead of the correct $10,000,000. These errors would only be found, and the error correction requirement triggered, by a party to the swap reviewing the data after it has been reported and discovering the error(s), such as through the verification process. The Commission also notes that swap data validation and standardized data fields can only prevent errors in swap data that have not yet been reported, as opposed to swap data verification, which will be useful for finding undiscovered errors in swap data for open swaps that have already been reported.

Through its experience administering the data reporting regulations, the Commission is also aware of many examples of significant swap data errors that would not have been prevented by swap data validations, and that, in the absence of an adequate verification requirement, persisted for long periods of time before being discovered and corrected. Based on this experience, the Commission determined that swap data validation, standardized data fields, and the error correction requirements are not sufficient to meet the Commission's data quality goals without the addition of swap data verification. As a result, the Commission is adopting final § 49.11, and the companion requirements in final § 45.14(b), in order to require a robust and effective verification process for SDRs and reporting counterparties that the Commission expects will help ensure significant improvements in swap data quality.

H. § 49.12—Swap Data Repository Recordkeeping Requirements

Section 49.12 sets forth recordkeeping requirements for SDRs.[130] The Commission proposed to amend § 49.12 to incorporate the recordkeeping requirements for SDRs in current § 45.2(f) and (g)[131] into final § 49.12, and to resolve ambiguities and potential inconsistencies between the regulations.[132] The Commission has determined to adopt the amendments to §§ 49.12 and 45.2 as proposed, except for a technical change discussed below.

Current § 49.12(a) requires an SDR to maintain its books and records in accordance with the recordkeeping requirements of part 45. The Commission proposed to amend § 49.12(a) to incorporate the provisions of current § 45.2(f) and to clarify that the requirement in final § 49.12(a) that an SDR keep records applies to records of all activities relating to the business of the SDR, not just records of swap data reported to the SDR.[133] Accordingly, as amended, final § 49.12(a) requires an SDR to keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities relating to the business of the SDR, including, but not limited to, all SDR information and all SDR data that is reported to the SDR. The amendments to § 49.12(a) do not impose new requirements on an SDR; rather, the amendments incorporate the currently-applicable requirements of § 45.2(f).

[122] GFMA at 10–11, 13–14.

[123] Joint Associations at 4–10, NGSA at 4.

[124] Markit at 2–3.

[125] Eurex at 1–2, GFMA at 14, Joint Associations at 4–10.

[126] CEWG at 2–3.

[127] See section III.C for a more thorough discussion of the verification requirements for reporting counterparties under final § 45.14(b).

[128] *See generally* 85 FR 21578, *et seq.* (Apr. 17, 2020).

[129] CEWG at 2–3, Chatham at 3, Eurex at 2, NGSA at 4, Joint Associations at 6–10, Joint SDR at 7–8.

[130] 17 CFR 49.12. Current § 49.12 sets forth specific recordkeeping requirements and references the public reporting requirements and recordkeeping requirements for SDRs included in parts 43 and 45.

[131] 17 CFR 45.2(f) and (g).

[132] Proposal at 84 FR 21055 (May, 13, 2019). Consolidating these regulations in part 49 will reduce confusion that may arise from having separate SDR recordkeeping requirements in two different rules.

[133] *Id.* Current § 49.12(a) applies to swap data required to be reported to the SDR, whereas § 45.2(g) applies to records of all activities relating to the business of the SDR and all swap data reported to the SDR.

Current § 49.12(b) requires an SDR to maintain swap data (including all historical positions) throughout the existence of the swap and for five years following the final termination of the swap, during which time the records must be readily accessible by the SDR, and available to the Commission via real-time electronic access; and in archival storage from which the data is retrievable by the SDR within three business days.[134]

The Commission is amending § 49.12(b) by incorporating the requirements of § 45.2(g) into final § 49.12(b). Thus, as amended, final § 49.12(b) will: (i) Clarify that the requirements of the regulation apply to all records required to be kept by an SDR, not just swap data reported to an SDR,[135] and (ii) incorporate the additional ten-year retention period set forth in current § 45.2(g)(2).[136]

Final § 49.12(b) sets forth separate recordkeeping requirements for SDR information in final § 49.12(b)(1) and SDR data reported to the SDR in final § 49.12(b)(2). Section 49.12(b)(1) requires an SDR to maintain all SDR information, including, but not limited to, all documents, policies, and procedures required to be kept by the Act and the Commission's regulations, correspondence, memoranda, papers, books, notices, accounts, and other such records made or received by the SDR in the course of its business. An SDR must maintain such information in accordance with § 1.31 of the Commission's regulations.[137]

As amended, final § 49.12(b)(2) requires an SDR to maintain all SDR data and timestamps reported to or created by the SDR, and all messages related to such reporting, throughout the existence of the swap that is the subject of the SDR data and for five years following final termination of the swap, during which time the records must be readily accessible by the SDR and available to the Commission via real-time electronic access, and for a period of at least ten additional years in archival storage from which such records are retrievable by the SDR within three business days.[138]

The amendments to § 49.12(b) are also intended to help harmonize the Commission's regulations with the SEC's regulations.[139] The SDR information listed in final § 49.12(b)(1) largely matches the SEC's requirement for SBSDR recordkeeping [140] and the retention provisions of § 1.31 largely match the requirement for SBSDRs.[141] Any SDR that also registers with the SEC as an SBSDR will have to comply with both final § 49.12 and § 240.13n–7, and therefore consistency between the recordkeeping provisions is particularly beneficial to such SDRs.

The Commission again notes that the amendments to § 49.12(b) do not change the requirements for SDRs; they merely consolidate existing requirements set forth in current § 45.2(f) and (g) into final § 49.12.[142]

The Commission is amending existing § 49.12(c) and renumbering it as § 49.12(d).[143] In place of existing § 49.12(c), final § 49.12(c) requires an SDR to create and maintain records of SDR validation errors and SDR data reporting errors and omissions. Final § 49.12(c)(1) requires an SDR to create and maintain an accurate record of all reported SDR data that fails to satisfy the SDR's data validation procedures. The records must include, but are not be limited to, records of all of the SDR data reported to the SDR that failed to satisfy the SDR data validation procedures, all SDR validation errors, and all related messages and timestamps.

Final § 49.12(c)(2) requires an SDR to create and maintain an accurate record of all SDR data errors and omissions reported to the SDR and all corrections disseminated by the SDR pursuant to parts 43, 45, 46, and 49 of the Commission's regulations. Section 49.12(c)(2) also requires SDRs to make the records available to the Commission on request.

The Commission believes SDRs already receive the data validation information specified in final § 49.12(c) via regular interaction with SEFs, DCMs, and reporting counterparties. The Commission emphasizes that such data must be maintained in order to allow for assessments of reporting compliance, including the initial reporting and the correction of the SDR data.

The Commission notes that while final § 49.12(c) specifies recordkeeping requirements for SDR data validation errors and SDR data reporting errors, these requirements do not in any way limit the applicability of the recordkeeping requirements in final § 49.12 to these records. Thus, since the records specified in final § 49.12(c) are

[134] 17 CFR 49.12(b).

[135] Proposal at 84 FR 21055 (May 13, 2019). Current § 49.12(b) applies to swap data, whereas § 45.2(g) applies to all records required to be kept by an SDR.

[136] Section 45.2(g)(2) provides that all records required to be kept by an SDR must be kept in archival storage for ten years after the initial 5-year retention period under § 45.2(g)(1). Current § 49.12(b) only sets forth the initial 5-year retention period.

[137] Section 1.31 of the Commission's regulations is the Commission's general recordkeeping provision, which requires, among other things, that any regulatory records that do not pertain to specific transactions and are not retained oral communications be kept for no less than five years from their creation date. *See* 17 CFR 1.31(b)(3). As noted in the Proposal, current § 49.12(b) and § 45.2 use the existence of the swap as the basis for the record retention timeframes specified therein, but this offers no guidance on how long to keep a record of SDR information, such as SDR policies and procedures. *See* Proposal at 21056. Therefore, the Commission is clarify in § 49.12(b)(1) that the record retention period for such records is the generally applicable retention period under § 1.31 of the Commission's regulations.

[138] The retention period under § 49.12(b)(2) is the current requirement for SDR records retention under § 45.2(g).

[139] The concept of separate recordkeeping requirements for information similar to SDR information and for SDR data reported to an SDR has already been adopted by the SEC in its regulations governing SBSDRs. *See* 17 CFR 240.13n–7(b) (listing recordkeeping requirements for SBSDRs); 17 CFR 240.13n–7(d) (excluding ''transaction data and positions'' from the recordkeeping requirements and instead referring to 17 CFR 240.13n–5 for such recordkeeping).

[140] *See* 17 CFR 240.13n–7(b)(1). This rule provides that every security-based swap data repository shall keep and preserve at least one copy of all documents, including all documents and policies and procedures required by the Securities Exchange Act and the rules and regulations thereunder, correspondence, memoranda, papers, books, notices, accounts, and other such records as shall be made or received by it in the course of its business as such.

[141] *Compare* 17 CFR 1.31(b)(3) (providing that a records entity shall keep each regulatory record for a period of not less than five years from the date on which the record was created) *and* 17 CFR 1.31(b)(4) (providing that a records entity shall keep regulatory records exclusively created and maintained on paper readily accessible for no less than two years, and shall keep electronic regulatory records readily accessible for the duration of the required record keeping period) *with* 17 CFR 240.13n–7(b)(2) (providing that every SBSDR shall keep all such documents for a period of not less than five years, the first two years in a place that is immediately available to representative of the Securities and Exchange Commission for inspection and examination).

[142] *See* 17 CFR 45.2(f) and (g). Though the term ''swap data'' is defined in § 49.2(a) to mean the specific data elements and information set forth in 17 CFR part 45, the Commission notes that the term ''swap data'' is not currently defined in part 45. Current § 45.2(f) requires the SDR to keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities related to the business of the swap data repository and all swap data reported to the swap data repository, as prescribed by the Commission. This expansive requirement for all pertinent data and memoranda for all activities related to the business of the swap data repository and all swap data reported to the swap data repository reflects that § 45.2(f) requires an SDR to keep records of data from activities beyond reporting pursuant to part 45, including, for example, all of the required swap transaction and pricing data reporting pursuant to part 43. The ''full, complete, and systematic records'' that must be kept for ''all activities related to the business'' of the SDR also include all messages related to the reported data, including all messages sent from the SDR and to the SDR. This recordkeeping obligation on SDRs is analogous to recordkeeping obligations on DCMs, SEFs, and DCOs. *See* 17 CFR 38.950, 37.1001, and 39.20(a).

[143] As discussed below, as part of the amendments to § 49.12, the Commission is removing current § 49.12(d).

comprised of, or relate to, SDR data reported to an SDR, all records created and maintained by an SDR pursuant to final § 49.12(c) are subject to the requirements of final § 49.12(b)(2).

Existing § 49.12(d) requires an SDR to comply with the real time public reporting and recordkeeping requirements of existing § 49.15 and part 43. The Commission believes that existing § 49.12(d) [144] is redundant because its requirements that an SDR comply with the real time public reporting and recordkeeping requirements set forth in § 49.15 and part 43 are also required by final § 49.12(b)(2) and § 49.15, as well as part 43.

Accordingly, the Commission is moving the text of existing § 49.12(c) to final § 49.12(d) and amending the regulation to provide that (i) all records required to be kept pursuant to part 49 must be open to inspection upon request by any representative of the Commission or any representative of the U.S. Department of Justice; and (ii) an SDR must produce any record required to be kept, created, or maintained by the SDR in accordance with § 1.31 of the Commission's regulations.

Finally, the Commission proposed a technical change to move the existing requirements of § 49.12(e) to proposed § 49.13.[145] However, as discussed below, the Commission is not adopting the proposed amendments to § 49.13 at this time. Therefore, the Commission is not moving existing § 49.12(e) to § 49.13.

The Commission requested comment on all aspects of proposed § 49.12.[146]

One comment supported consolidating the SDR recordkeeping requirements in part 45 into part 49.[147] Another comment stated that the requirement in proposed § 49.12(b)(2) for an additional ten-year retention period following a five-year period after termination of a swap is excessive.[148] This comment recommended that the Commission replace the proposed requirements for record retention in proposed § 49.12 with a seven-year retention period following final termination of the swap, during which time the records would be readily accessible by the SDR and available to the Commission.[149]

The Commission has determined to adopt the amendments to §§ 49.12 and 45.2 as proposed, except the Commission is not adopting the technical change of moving § 49.12(e) to § 49.13, as discussed below in Section II.I.

With regard to record retention period comments, the Commission notes that retention period in final § 49.12(b)(2) is the current retention period applicable to SDRs, not a new requirement, and that SDRs currently have this unique ten-year retention period because they are the source of all SDR data for the public and the CFTC. Further, the Commission believes the existing 10-year retention period has functioned well and did not propose to amend the retention period. Accordingly, the Commission declines to shorten the retention period.

I. § 49.13—Monitoring, Screening, and Analyzing Data

Existing § 49.13 implements CEA section 21(c)(5), which requires SDRs to, at the direction of the Commission, establish automated systems for monitoring, screening, and analyzing swap data, including compliance and frequency of end-user clearing exemption claims by individuals and affiliated entities.[150] Existing § 49.13 requires SDRs to: (i) Monitor, screen, and analyze all swap data in their possession as the Commission may require, including for the purpose of any standing swap surveillance objectives that the Commission may establish as well as ad hoc requests; and (ii) develop systems and maintain sufficient resources as necessary to execute any monitoring, screening, or analyzing functions assigned by the Commission.[151]

The Commission proposed to amend § 49.13 to provide more detail on the monitoring, screening, and analyzing tasks that an SDR may be required to perform as directed by the Commission. The Commission also proposed to amend § 49.13 to make clear that the requirements of proposed § 49.13 apply to SDR data reported to the SDR pursuant to parts 43, 45, and 46. The Commission received a number of comments on the proposed rule, both supporting and recommending against its adoption.[152]

The Commission has determined not to make any amendments to § 49.13 at this time. The Commission believes it may benefit from further consideration and experience with swap data following the implementation of the requirements of part 49, as amended in this final rule, as well as the implementation of the significantly amended rules in part 45 that the Commission is adopting as final along with this final rule. The Commission may consider the proposed amendments to § 49.13 in a future rulemaking.

As part of the Proposal, the Commission also proposed a technical change that would move existing § 49.15(c) to § 49.13.[153] The Commission also proposed to move the requirements of existing § 49.12(e) to § 49.13. While moving existing §§ 49.15(c) and 49.12(e) to § 49.13 is not a substantive amendment, the Commission has determined that it would be more efficient to defer these proposed amendments along with the other proposed changes to existing § 49.13, and is therefore not adopting these amendments as part of this final rulemaking. Thus, the current text of § 49.13 will remain in effect after this rulemaking.

J. § 49.15—Real-Time Public Reporting by Swap Data Repositories

The Commission proposed to amend existing § 49.15 to conform the regulation to the proposed amended definitions in § 49.2. As discussed above, the Commission also proposed to

[144] *See* 17 CFR 49.12(d) (providing that a registered swap data repository shall comply with the real time public reporting and recordkeeping requirements prescribed in § 49.15 and in 17 CFR part 43).

[145] Current § 49.12(e) requires an SDR to establish policies and procedures to calculate positions for position limits and for any other purpose as required by the Commission.

[146] The Commission also invited specific comment on the archival storage requirements of current § 45.2(g)(2) and proposed § 49.12(b)(2). *See* Proposal at 21057.

[147] ISDA/SIFMA at 43.

[148] Joint SDR at 11.

[149] *Id.* Joint SDR also stated the Commission ''should harmonize the SDR retention periods with that of Europe and other Commission regulated entities such as [DCMs, DCOs and SEFs],'' and that a 7-year retention period ''gets closer to a harmonized global standard.'' *Id.*

[150] 7 U.S.C. 24a(c)(5).

[151] *See generally* 17 CFR 49.13.

[152] IATP generally supported the proposed rule. IATP at 7. IATP further provided recommendations and support for adopting specific requirements for SDRs, such as a requirement to produce a report regarding ''mortgage swaps risks of reporting counterparties'' that would be relevant to assessing climate-related financial risks, and to calculate positions for market participants. *Id.* at 8–9. ISDA/SIFMA recommended adopting a requirement that SDRs produce rejection statistics reports. ISDA/SIFMA at 45. Joint SDR generally supported adopting rules that provide more detail about the tasks that the Commission may require an SDR to perform. Joint SDR at 12. However, Joint SDR recommended against adopting the proposed rule, stating that the requirements in the proposed rule exceed those authorized by the Act, would impermissibly require the SDRs to perform regulatory functions, and that it would be impracticable for the SDRs to fulfill the proposed requirements for lack of sufficient data. Joint SDR at 12–15.

[153] Existing § 49.15(c) provides that an SDR must notify the Commission of any swap transaction for which the real-time swap data was not received by the SDR in accordance with 17 CFR part 43. In addition to moving existing § 49.15(c) to § 49.13, the Commission proposed to amend the regulation to similarly require an SDR to notify the Commission with regard to data not received by the SDR pursuant to parts 45 and 46.

move existing § 49.15(c) to proposed § 49.13(c). Additionally, the Commission proposed to amend existing § 49.15(a) and § 49.15(b) to remove the term ''swap data,'' which is defined in § 49.2 as part 45 data, and replace it with text clarifying that § 49.15 pertains to swap transaction and pricing data submitted to an SDR pursuant to part 43. These non-substantive amendments do not affect the existing requirements of § 49.15.

The Commission did not receive any comments on the proposed amendments to § 49.15(b) and is adopting the amendments as proposed, with the exception of the proposed movement of existing § 49.15(c) to proposed § 49.13(c).

K. § 49.16—Privacy and Confidentiality Requirements of Swap Data Repositories

The Commission proposed to amend existing § 49.16 to conform the regulation to the proposed amendments to the definitions in § 49.2.[154] Specifically, the Commission proposed to amend § 49.16(a)(1) to clarify that the policy and procedure requirements of § 49.16 apply to SDR information and to any SDR data that is not swap transaction and pricing data disseminated under part 43.[155] The requirements include that an SDR have policies and procedures to protect the privacy and confidentiality of any and all SDR information and all SDR data (except for swap transaction and pricing data disseminated under part 43) that the SDR shares with affiliates and non-affiliated third parties. The proposed amendments also conform the text of § 49.16 with the removal of the term ''reporting entity'' and the amended definitions of ''SDR data'' and ''swap data'' in final § 49.2. The amendments are non-substantive and do not affect the existing requirements or applicability of § 49.16.

The Commission did not receive any comments on the proposed conforming amendments to § 49.16 and is adopting the amendments as proposed.

L. § 49.17—Access to SDR Data

Section 49.17 sets forth the requirements and conditions for an SDR to provide access to SDR data to the Commission, foreign and domestic regulators, and swap counterparties, among others.[156] The Commission proposed to amend § 49.17 to clarify some of the requirements in the regulation with respect to the Commission's access to SDR data. One commenter recommended revisions to the proposed amendments to § 49.17, as discussed below. The Commission has determined to adopt the amendments to § 49.17 as proposed.

As discussed in the Proposal, the Commission believes the amendments to the definition of ''direct electronic access'' in final § 49.17(b)(3) will provide additional flexibility to implement methods for data transfers from SDRs to the Commission, and may facilitate the use of advancing technology and more efficient means of direct electronic access for the Commission. The amendments also make clear that the Commission may decide to accept other methods of access, as long as the method is able to efficiently provide the Commission with real-time access to SDR data and scheduled SDR data transfers to the Commission.

1. Amendments to § 49.17(b)—Definition of Direct Electronic Access

Existing § 49.17(c)(1) requires an SDR to provide ''direct electronic access,'' a term defined in existing § 49.17(b)(3),[157] to the Commission or the Commission's designee, including another registered entity, in order for the Commission to carry out its legal and statutory responsibilities under the Act.[158] The Commission is amending the definition of ''direct electronic access'' in final § 49.17(b)(3) to mean an electronic system, platform, framework, or other technology that provides internet-based or other form of access to real-time SDR data that is acceptable to the Commission and also provides scheduled data transfers to Commission electronic systems. The amended definition expands the potential means by which an SDR may provide direct electronic access to include ''other technology'' and ''other forms of access.''[159] The amendments are intended to provide greater flexibility to SDRs and the Commission by making clear that the Commission may accept other technology or other forms of access that are not internet-based, as long as the access to SDR data is real-time and provides for scheduled SDR data transfers to the Commission. The Commission believes innovation and advances in technology may provide alternative, more-efficient means for data transfer, and the amended regulation is intended to facilitate the use of such technology by SDRs and the Commission.

The revised definition of direct electronic access also adds a condition that the technology or form of access be ''acceptable to the Commission'' in order to clarify that any form of direct electronic access, including any new technology, must be approved by the Commission. As discussed below, the Commission anticipates working with SDRs to determine acceptable forms of direct electronic access, consistent with the Commission's current practice of coordinating and collaborating with SDRs to facilitate transfers of, and real-time access to, SDR data.

Finally, the amended definition of ''direct electronic access'' replaces the phrase ''real-time swap transaction data''[160] with ''real-time SDR data,'' to eliminate confusion and maintain consistency with the use of the term ''SDR data'' in other amended provisions in part 49.[161] This non-substantive amendment is not intended to change the existing requirements or current SDR practice for providing the Commission with direct electronic access to SDR data.

2. Amendments to § 49.17(c)—Commission Access

The Commission is amending § 49.17(c) to incorporate the requirements of current § 45.13(a),[162] which relates to the requirements for an SDR to maintain and transmit data to the Commission, and to make additional clarifications in the regulation. The Commission is also making non-substantive edits to final § 49.17 to conform terms used in the section with the rest of the Commission's regulations (*e.g.,* replacing ''swap data and SDR Information'' with ''SDR data and SDR Information''). The amendments are intended to consolidate other related requirements into final § 49.17(c) and to improve the regulation's clarity and

[154] *See* section II.A above.

[155] Proposal at 21059.

[156] *See generally* 17 CFR 49.17.

[157] 17 CFR 49.17(b)(3).

[158] 17 CFR 49.17(c)(1).

[159] Current § 49.17(b)(3) defines direct electronic access as an electronic system, platform or framework that provides internet or Web-based access to real-time swap transaction data and also provides scheduled data transfers to Commission electronic systems.

[160] 17 CFR 49.17(b)(3).

[161] The Commission notes that the phrase ''real-time'' is often used to reference swap transaction and pricing data that is publicly reported pursuant to part 43. In this instance, the term refers to direct electronic access requiring that SDR data be available in real time to the entity granted direct electronic access (*i.e.,* the Commission or its designee).

[162] While the amendments consolidate the requirements for Commission access to SDR data, the Commission did not propose to modify current § 45.13(a) in the Proposal. *See* Proposal at 21060, n. 132. The Commission subsequently proposed amendments to current § 45.13(a) that are consistent with final § 49.17(c) in a separate notice of proposed rulemaking related to the Roadmap. *See* 85 FR at 21633.

consistency with other Commission regulations.

Final § 49.17(c) adds introductory text that requires an SDR to provide the Commission with access to all SDR data maintained by the SDR.[163] Final § 49.17(c)(1) retains the requirements of current § 49.17(c)(1) and adds a provision to incorporate the requirements of current § 45.13(a), with modifications.[164] Specifically, final § 49.17(c)(1) requires an SDR to maintain all SDR data reported to the SDR in a format acceptable to the Commission, and to transmit all SDR data requested by the Commission to the Commission as instructed by the Commission. Section 49.17(c)(1) also includes a new provision not found in current § 45.13(a), stating that the Commission's instructions may include, but are not limited to, the method, timing, and frequency of transmission, as well as the format and scope of the SDR data to be transmitted. Final § 49.17(c)(1) also revises the requirement in existing § 45.13(a) that an SDR maintain and transmit ''swap data'' to ''SDR data,'' to make clear that an SDR must maintain all SDR data reported to the SDR in a format acceptable to the Commission and transmit all SDR data requested by the Commission.[165]

3. § 49.17(f)(2)—Technical Correction

The Commission is amending existing § 49.17 to replace an incorrect reference to ''§ 37.12(b)(7)'' at the end of paragraph (f)(2) with the correct reference to ''§ 39.12(b)(7).'' [166] The Commission is also making non-substantive amendments to conform the terminology in final § 49.17(f)(2) with the terms listed in final § 49.2.

4. Delegation of Authority—§ 49.17(i)

The Commission is moving the delegation of authority provision in existing § 49.17(i) [167] to final § 49.31(a)(7). Existing § 49.17(i) delegates to the Director of DMO the authority reserved to the Commission in existing § 49.17. This includes the authority to instruct an SDR on how to transmit SDR data to the Commission. As discussed below, the Commission proposed to consolidate the delegation of authority provisions in part 49 in final new § 49.31. This amendment is not a substantive change, as all functions delegated to the Director of DMO under existing § 49.17(i) will continue to be delegated under final § 49.31.

5. Comments

The Commission requested comment on all aspects of proposed § 49.17. The Commission also requested specific comment on a whether there is a need to further clarify any of the requirements of proposed § 49.17 and whether there are any aspects of existing or proposed § 49.17 that would inhibit or prevent the development of new technological approaches to SDR operations or the provision of SDR data to the Commission.[168]

The Commission received one comment on the proposed rule. The comment agreed with the Commission that flexibility as to future technological advancements and innovations is an important consideration in an SDR's provision of direct electronic access to the Commission.[169] This comment also, however, recommended a number of textual revisions to proposed § 49.17 that would condition or limit the Commission's authority and discretion in making determinations regarding an SDR's maintenance and transfer of data pursuant to the regulation.[170]

Specifically, the comment asserted that the amended definition of direct electronic access in proposed § 49.17(b)(3) is too broad because the term ''SDR data'' includes data reported pursuant to part 46 of this chapter, and the Commission should not have a time-sensitive need for such data.[171] The comment also recommended revising the text of the proposed definition to subject the Commission's determinations regarding methods of transmission to a reasonableness standard and require the Commission to work with SDRs in making such determinations.[172]

In addition, the comment recommended the Commission remove the phrase ''in a format acceptable to the Commission'' from the second sentence of proposed § 49.17(c)(1), asserting that the phrase deprives the SDRs of the flexibility and discretion needed with respect to the storage and maintenance of data without a clear regulatory purpose.[173] Similarly, the comment recommended amending the text of the second sentence of proposed § 49.17(c)(1) to provide ''reasonable limitations'' on the Commission's discretion to instruct an SDR on the transmission of SDR data to the Commission.'' [174]

6. Final Rule

The Commission has determined to adopt the amendments to 49.17 as proposed.

With regard to the comment that the definition of direct electronic access is too broad and provides the Commission with too much discretion, the Commission believes the amendments to the definition are appropriately tailored to help ensure that the Commission's direct electronic access, and the data provided through this access, serves the Commission needs to meet its regulatory obligations, and ensures that an SDR does not change the means of direct electronic access in a manner that impairs the Commission's regulatory functions. The Commission intends to be flexible, when possible, in regards to the methods and forms of direct electronic access an SDR may utilize, especially in the context of technological advancement, and believes that the definition ensures an appropriate level of discretion as to whether a method of direct electronic access is acceptable.

The Commission believes final § 49.17(b)(3) will not hinder or prevent an SDR from incorporating new technology for collecting or maintaining SDR data, as long as the SDR data is collected by the SDR and provided to the Commission as required. The Commission does, however, expect an SDR to provide SEFs, DCMs, and reporting counterparties with commonly-used methods for reporting SDR data and to not force SEFs, DCMs, and reporting counterparties to unnecessarily expend resources on technology upgrades by unreasonably limiting available reporting methods. The Commission also expects SDRs to be particularly accommodating of non-SD/MSP/DCO reporting counterparties

[163] *See* 17 CFR 49.17(c)(1) (providing that a registered swap data repository shall provide direct electronic access to the Commission or the Commission's designee, including another registered entity, in order for the Commission to carry out its legal and statutory responsibilities under the Act and related regulations).

[164] Section 45.13(a) provides that an SDR shall maintain all swap data reported to it in a format acceptable to the Commission, and shall transmit all swap data requested by the Commission to the Commission in an electronic file in a format acceptable to the Commission.

[165] The Commission believes this revision is consistent with current SDR practice.

[166] There is no § 37.12(b)(7) in the Commission's regulations. *See* 17 CFR 37.12(b).

[167] 17 CFR 49.17(i).

[168] Proposal at 21061.

[169] DDR at 4.

[170] *Id.*

[171] *Id.* (stating the Commission should replace the term ''SDR data'' which ''swap data and swap transaction and pricing information'').

[172] *Id.* (recommending the Commission replace the phrase ''that is acceptable to the Commission'' with ''that has been agreed to by the Commission, in its reasonable discretion, following consultation with the SDR'').

[173] *Id.*

[174] DDR at 4 (stating that the Commission should add the phrase ''as soon as practicable, given the nature of the instructions and the SDR's circumstances'' at the end of the second sentence of proposed § 49.17(c)(1)).

that may have limited resources to devote to technology changes.

Similarly, final § 49.17(c)(1) is intended to provide clarity and certainty to SDRs regarding their responsibilities and the Commission's authority with respect to how an SDR maintains and transmits data to the Commission.[175] The Commission believes it is critical that it has the ability to instruct SDRs regarding all aspects of SDR data transfers to the Commission, including, but not necessarily limited to, method of transmission (*e.g.,* electronic or non-electronic transmission and file types used for transmission), the timing of data transmission, the frequency of data transmission, the formatting of the data to be transmitted (*e.g.,* data feeds or batch transmission), and the actual SDR data to be transmitted. As noted above, innovation and advances in technology may provide alternative and more efficient means for data transfer, so this flexibility may facilitate the use of such technology by SDRs and the Commission. Also, the format, frequency, and related matters may well depend on the circumstances of a particular context, so an inflexible rule would not be appropriate.

With regard to the comments' suggested revisions, the Commission believes the revisions would unduly constrain the Commission's authority. The Commission notes that it currently works with SDRs to facilitate data transfers and implement technology changes.[176] The Commission fully expects to continue to collaborate with SDRs to ensure any Commission instructions or changes requested pursuant its authority in § 49.17(c)(1) are practical and reasonable, and provide SDRs with the requisite time for implementation. To do otherwise would be counterproductive and harmful to the Commission's ability to fulfill its regulatory functions. The Commission believes the coordination and collaboration between the Commission and SDRs is, and will be, supported and enhanced by clarity regarding the Commission's authority in this area. This, in turn, will encourage SDRs and the Commission to work together to devise the most efficient and effective ways for data transfer to the Commission, while ensuring that the Commission has the data it needs to perform its regulatory functions.

M. § 49.18—Confidentiality Arrangement

The Commission proposed to amend existing § 49.18 [177] to move the delegation of authority provision in § 49.18(e) to proposed § 49.31(a)(8).[178] Existing § 49.18(e) delegates to the Director of DMO all functions reserved to the Commission in § 49.18, including the authority to specify the form of confidentiality arrangements required prior to disclosure of swap data by an SDR to an appropriate domestic or foreign regulator, and the authority to limit, suspend, or revoke such appropriate domestic or foreign regulator's access to swap data held by an SDR.

This non-substantive amendment does not change the functions delegated by the Commission and, as discussed further below, is intended to enable the Commission to locate most delegations of authority in proposed § 49.31. The Commission did not receive any comments on the proposed amendments to § 49.18 and is adopting amendments as proposed.

N. § 49.20—Governance Arrangements (Core Principle 2)

The Commission proposed to amend § 49.20 [179] to conform the regulation to the amended definitions and related numbering changes in final § 49.2. Specifically, final § 49.20 amends the citations to § 49.2(a)(14) in § 49.20(b)(2)(v) and to § 49.2(a)(1) in § 49.20(c)(1)(ii)(B) to citations to § 49.2(a). The proposed amendments also conform the provisions of § 49.20(b)(2)(vii) to reflect the amendments in final § 49.2 to the definitions of ''SDR data,'' ''SDR information,'' ''registered swap data repository,'' and ''reporting entity.'' [180] These non-substantive amendments to final § 49.20 do not affect the existing requirements of the regulation.

The Commission did not receive any comments on the proposed amendments to § 49.20 and is adopting the amendments as proposed.

O. § 49.22—Chief Compliance Officer

Existing § 49.22 sets forth an SDR's requirements with respect to its chief compliance officer (''CCO'').[181] The Commission proposed to amend § 49.22 to clarify an SDR's obligations, remove unnecessary requirements, and make technical corrections and non-substantive changes. The Commission received a number of comments on the proposed amendments to § 49.22, including on the proposed amendments to existing § 49.22(d)(2) with respect to a CCO's obligation to resolve conflicts of interest.[182]

The Commission has determined not to address the proposed amendments in this final rulemaking, with the exception of a number of technical changes to conform § 49.22 to other regulations amended in this final rulemaking.[183] The Commission notes that a number of the proposed amendments to § 49.22, including provisions that were the subject of public comment, mirror the Commission's proposed amendments to the CCO requirements for SEFs under § 37.1501,[184] which have not been adopted to date. The Commission believes it may be appropriate to address the proposed amendments to the CCO requirements for SDRs and for SEFs concurrently, in order to maintain consistency in the CCO requirements for different registered entities, to the extent appropriate. The Commission may do so in a future rulemaking.

P. § 49.24—System Safeguards

The Commission proposed to make non-substantive amendments § 49.24 [185] to provide additional detail as to the duties and obligations of an SDR under the regulation and to make other conforming technical changes.[186]

[175] While these revisions may appear to broaden the scope of the Commission's ability to define the terms of data transfer to the Commission, existing § 45.13 provides the Commission broad discretion in instructing SDRs on how to send data to the Commission to enable the Commission to perform its regulatory functions, increase market transparency, and mitigate systemic risk. *See* Swap Data Recordkeeping and Reporting Requirements 77 FR 2136, 2169 (Jan. 13, 2012) (requiring an SDR to maintain all swap data reported to it in a format acceptable to the Commission, and to transmit all swap data requested by the Commission to the Commission in an electronic file in a format acceptable to the Commission); *see also* Part 49 Adopting Release at 54552 (stating that the Commission does not believe that SDRs should have the discretion or ability to determine the appropriate data sets that should be provided to the Commission).

[176] Current SDR practice also reflects the Commission's wide discretion in instructing SDRs in how to send data to the Commission, as the SDRs currently send large amounts of data to the Commission on a regular basis in various formats, based on instructions provided by the Commission.

[177] 17 CFR 49.18.

[178] Proposal at 84 FR 21061 (May 13, 2019).

[179] 17 CFR 49.20.

[180] *Id.*

[181] 17 CFR 49.22.

[182] *See, e.g.,* IATP at 9–10 (asserting that the proposed amendments that limit a CCO's obligation to resolve conflicts are not consistent with statutory requirements).

[183] As discussed above, the conforming changes include the removal of the reference in § 49.22(f)(2) to the annual filing of a Form SDR, which is not required under final § 49.3(a)(5). The Commission is also making a technical correction to final § 49.22(f)(3) to correct a reference to nonexistent § 49.22(e)(67). The correct reference is to existing § 49.22(e)(6).

[184] 17 CFR 37.1501. *See* Swap Execution Facilities and Trade Execution Requirement, 83 FR 61946, 62032 (Nov. 30, 2018).

[185] 17 CFR 49.24.

[186] Proposal at 21063.

Existing § 49.24(d) requires an SDR's BC–DR plans, resources, and procedures to enable an SDR to resume operations and meet its regulatory duties and obligations, and sets forth a non-exhaustive list of those duties and obligations.[187] The amendments to existing § 49.24 expand the non-exhaustive list of duties and obligations of an SDR under part 49 that are enumerated in final § 49.24(d) to include specific reference to §§ 49.10 to 49.21, § 49.23, and §§ 49.25 to 49.27. The Commission emphasizes that the part 49 provisions listed in the amended regulation are only references intended for clarification, and the amendments to existing § 49.24(d) do not change any requirements applicable to an SDR.

The Commission also proposed to make technical amendments to § 49.24(i), to remove a reference to § 45.2. As described above, the Commission is moving the SDR recordkeeping requirements contained in current § 45.2(f) and (g) to § 49.12 for consistency and clarity purposes. This proposed technical change would conform § 49.24(i) to final §§ 45.2 and 49.12, but would not change any of the requirements applicable to SDRs.

The Commission did not receive any comments on the proposed amendments to § 49.24 and is adopting the amendments as proposed.

Q. § 49.25—Financial Resources

As discussed above, the Commission proposed conforming changes to existing § 49.25 [188] to remove the reference to existing § 49.9 and to core principle obligations identified in existing § 49.19.[189] Proposed § 49.25(a) would instead refer to SDR obligations under ''this chapter,'' to be broadly interpreted as any regulatory or statutory obligation specified in part 49 of the Commission's regulations. These technical amendments do not impact any existing obligations of SDRs.

The Commission also proposed to amend existing § 49.25(f)(3) to change the deadlines for an SDR to submit the financial resources report under § 49.25.[190] Existing § 49.25(f)(3) requires an SDR to submit the report no later than 17 business days after the end of the SDR's fiscal quarter, or a later time that the Commission permits upon request. The proposed amendment to existing § 49.25(f)(3) provides that an SDR must submit its quarterly financial resources report to the Commission not later than 40 calendar days after the end of the SDR's first three fiscal quarters, and not later than 90 calendar days after the end of the SDR's fourth fiscal quarter, or such later time as the Commission may permit in its discretion. The Commission requested comment on all aspects of proposed § 49.25.

One comment supported the extension of the deadline for filings financial reports under § 49.25, stating that the amendment reduces burdens on SDRs without material detriment to the CFTC's oversight.[191]

The Commission has determined to adopt the proposed amendments to § 49.25, except for the proposed amendments to 49.25(f)(3),which would align the deadline for an SDR's fourth quarter financial resources report with the deadline for an SDR to submit its annual CCO report under proposed § 49.22(f)(2). As discussed above, the Commission has determined not to address the proposed changes to the filing deadline for the annual compliance report under § 49.22(f)(2) in this final rulemaking, and accordingly, the Commission is not adopting the related proposed amendment to § 49.25(f)(3).

R. § 49.26—Disclosure Requirements of Swap Data Repositories

Section 49.26 requires an SDR to furnish SEFs, DCMs, and reporting counterparties with an SDR disclosure document that sets forth the risks and costs associated with using the services of the SDR, and contains the information specified in § 49.26(a) through (i).[192] The Commission proposed to add a new § 49.26(j) providing that an SDR disclosure document must set forth the SDR's policies and procedures regarding the reporting of SDR data to the SDR, including the SDR's data validation procedures, swap data verification procedures, and procedures for correcting SDR data errors.[193] The Commission also proposed to amend existing § 49.26 to conform terms in the regulation to proposed § 49.2.[194] The Commission has determined to adopt the amendments to § 49.26 as proposed.

The addition of final § 49.26(j) is intended to provide information about an SDR's operations to market participants in order to assist them in making decisions regarding which SDR to use for swaps reporting.[195] Moreover, requiring an SDR to disclose its data reporting policies and procedures, data validation procedures, swap data verification procedures, and SDR data correction procedures should reduce the number of data errors and improve data quality by providing SEFs, DCMs, and reporting counterparties with the information needed to properly design their reporting systems before any reporting occurs.[196] The Commission notes that the disclosure requirements in § 49.26(j) apply for all SDR data required to be reported, as applicable.

The Commission requested comment on all aspects of proposed § 49.26. The Commission also invited specific comment on whether the Commission should require an SDR to disclose any other information under § 49.26.[197]

Two comments supported the proposed disclosure requirements under § 49.26(j).[198] One of these comments also suggested requiring an SDR to disclose any revisions to the policies specified in proposed 49.26(j) at a reasonable time before implementation.[199] Similarly, the other comment suggested that an SDR should be required to provide any revisions to such policies and procedures promptly to a reporting counterparty.[200]

The Commission has determined to adopt the amendments to § 49.26(j) as proposed. With regard to the suggestions in the comments, the Commission notes that the requirement to make the specified disclosures in § 49.26 is an ongoing requirement that applies to an SDR ''[b]efore accepting any swap data from [the relevant party] . . . '' Accordingly, the Commission believes § 49.26(j), as proposed and adopted, requires an SDR to update the required disclosures if the SDR revises the policies or procedures specified in § 49.26(j). Moreover, under part 40, an SDR would be required to file with the Commission revisions to the policies and procedures required to be disclosed § 49.26(j).[201] Under part 40, such filings are generally required to be made publicly available.[202]

[187] 17 CFR 49.24(d).

[188] 17 CFR 49.25.

[189] Proposal at 21063.

[190] *Id.*

[191] DDR at 5.

[192] 17 CFR 49.26.

[193] Proposal at 21063–64.

[194] *Id.* at 21063. Specifically, the proposed amendments to the introductory paragraph of § 49.26 reflect updates to the terms ''SDR data,'' ''registered swap data repository,'' and ''reporting entity.'' These non-substantive amendments do not change the current requirements of § 49.26.

[195] *See id.*

[196] *See id.*

[197] *Id.* at 21064.

[198] ISDA/SIFMA at 43; CS at 3.

[199] ISDA/SIFMA at 43.

[200] CS at 3.

[201] *See* 17 CFR 40.6(a).

[202] *See, e.g.,* 17 CFR 40.6(a)(2) (requiring a registered entity that self-certifies a rule or rule amendment under § 40.6 to post a notice of pending certification with the Commission and a copy of the submission, concurrent with the filing of a submission with the Commission, on the registered entity's website); *See also* 17 CFR 40.8(c) (providing

Continued

S. § 49.28—Operating Hours of Swap Data Repositories

The Commission proposed to add a new § 49.28 to address an SDR's obligations with respect to its hours of operation, which are currently set forth in existing § 43.3(f) and (g).[203] The Commission proposed to (i) move the provisions in existing § 43.3(f) and (g) to proposed § 49.28 and (ii) amend the provisions so that the operating hours requirements also apply with respect to an SDR's responsibilities under parts 45, 46, and 49.[204] The amendments to these requirements reflect the Commission's belief that SDRs should operate as continuously as possible while still being afforded the opportunity to perform necessary testing, maintenance, and upgrades of their systems.

The Commission has determined to adopt § 49.28 as proposed. The Commission continues to believe that the continuous operation of SDRs is critical to the proper functioning of the swaps market and the SDR data reporting process. Moreover, the need for continuous operation of SDRs is not limited to the receipt and dissemination of swap transaction and pricing data pursuant to part 43. Rather, an SDR must be able to continuously perform all of its responsibilities under the Commission's regulations. To this end, proposed and final § 49.28 expands the obligations of an SDR to continuously accept, promptly record, and publicly disseminate all SDR data reported to the SDR.

While the Commission strongly encourages SDRs to adopt redundant systems to allow public reporting during closing hours, final § 49.28 continues to allow SDRs to schedule downtime to perform system maintenance. However, the Commission continues to believe that disruptions to the data reporting process due to closing hours should be as limited as possible, with advance notice of, or, if not possible, notice promptly after, closing.

The need for continuous operations of SDRs also mandates that SDRs minimize and mitigate disruptions caused by necessary downtime or unexpected disruptions, to the extent reasonably possible. Therefore, final § 49.28 requires an SDR to have the capacity to receive and hold in queue data reported to it, and to process and disseminate that data following a resumption in its operations. The Commission emphasizes that it expects SDRs to be able to accept and hold in queue SDR data that is reported during closing hours. The inability to accept and hold in queue SDR data should be a rare occurrence that results from unanticipated emergency situations, and the provisions in final § 49.28(c)(2) are intended as a last resort to prevent data loss.

As discussed below, the requirements of final § 49.28 also include many of the requirements of the SEC's operating hours regulations governing SBSDRs in order to increase consistency between the regulations for SDRs and SBSDRs.[205]

1. General Requirements—§ 49.28(a)

Existing § 43.3(f) requires an SDR to have systems in place to continuously receive and publicly disseminate swap transaction and pricing data in real-time. Existing § 43.3(f) allows an SDR to declare closing hours to perform system maintenance, while requiring that the SDR must, to the extent reasonably possible, avoid scheduling closing hours when, in its estimation, the U.S. market and major foreign markets are most active.[206]

These provisions were adopted based on the Commission's belief that the global nature of the swaps market necessitates that SDRs be able to publicly disseminate swap transaction and pricing data at all times and that SDRs should generally be fully operational 24 hours a day, seven days a week.[207]

Proposed and final § 49.28(a) require an SDR to have systems in place to continuously accept and promptly record all SDR data reported to the SDR, and publicly disseminate swap transaction and pricing data reported to the SDR as required under part 43.

Final § 49.28(a)(1) allows an SDR to establish normal closing hours to perform system maintenance during periods when, in the SDR's reasonable estimation, the SDR typically receives the least amount of SDR data.[208] Under final § 49.28(a)(1), an SDR must provide reasonable advance notice of its normal closing hours to market participants and to the public.

Final § 49.28(a)(2) allows an SDR to declare, on an ad hoc basis, special closing hours to perform system maintenance that cannot wait until normal closing hours. Similar to final § 49.28(a)(1), final § 49.28(a)(2) requires an SDR to schedule special closing hours during periods when, in the SDR's reasonable estimation, the special closing hours would, to the extent possible given the circumstances prompting the special closing hours, be least disruptive to the SDR satisfying its SDR data-related responsibilities. Final § 49.28(a)(2) also requires an SDR to provide reasonable advance notice of the special closing hours to market participants and the public whenever possible, and, if advance notice is not reasonably possible, to notify market participants and the public as soon as is reasonably possible after declaring special closing hours.

2. Part 40 Requirement for Closing Hours—§ 49.28(b)

Proposed and final § 49.28(b) require an SDR to comply with the requirements under part 40 of the Commission's regulations when adopting or amending normal closing hours and special closing hours.[209] This requirement is already applicable to SDRs pursuant to current § 43.3(f)(3).[210] The Commission anticipates that, due to the unexpected and emergency nature of special closing hours, rule filings related to special closing hours will likely qualify for the emergency rule certification provisions of § 40.6(a)(6).[211]

that a registered entity's filing of new rules and rule amendments for Commission review and approval or pursuant to the self-certification procedures in part 40 shall be treated as public information unless accompanied by a request for confidential treatment).

[203] Proposal at 21064. The Commission believes that is beneficial to SDRs and market participants to move all SDR operating hours requirements to part 49 from part 43.

[204] *Id.*

[205] The SEC's operating hours regulations are contained in 17 CFR 242.904. While current § 43.3(f) allows SDRs to schedule closing hours while avoiding the times that, in an SDR's estimation, U.S. markets and major foreign markets are most active, and requires the SDRs to provide advance notice of closing hours to market participants and the public, current § 43.3(f) does not make a distinction between regular closing hours and special closing hours. The distinction is present, however, in operating hours requirements for SBSDRs, and final § 49.28(a)(1) and (2) largely adopts the SBSDR requirements. These requirements make clear that an SDR may establish both normal and special closing hours and allow an SDR that also registers with the SEC as an SBSDR to effectively follow the same operating hours requirements for both requirements.

[206] 17 CFR 43.3(f).

[207] *See* Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1204 (Jan. 9, 2012).

[208] This reflects a minor change from the existing requirements of § 43.3(f)(2), which provides that an SDR shall, to the extent reasonably possible, avoid scheduling closing hours when, in its estimation, the U.S. market and major foreign markets are most active. The Commission believes that final § 49.28(a)(1) provides a better measure of when an SDR should schedule closing hours.

[209] The establishment or change to closing hours constitutes a ''rule'' for the purposes of part 40 requirements. *See* 17 CFR 40.1, *et seq.*

[210] *See* 17 CFR 43.3(f)(3) (providing that a registered swap data repository must comply with the requirements under 17 CFR part 40 in setting closing hours and must provide advance notice of its closing hours to market participants and the public).

[211] *See* 17 CFR 40.6(a)(6) (setting forth the requirements for implementing rules or rule amendments in response to an emergency, as defined under 17 CFR 40.1(h)).

3. Acceptance of SDR Data During Closing Hours—§ 49.28(c)

Existing § 43.3(g) addresses an SDR's obligations regarding swap transaction and pricing data sent to the SDR for publicly reportable swap transactions during closing hours. The Commission is moving existing § 43.3(g) to final § 49.28(c), and expanding the existing requirements for swap transaction and pricing data in current § 43.3(g) [212] to all SDR data. Proposed and final § 49.28(c) require an SDR to have the capability to accept and hold in queue any and all SDR data reported to the SDR during normal closing hours and special closing hours. Final § 49.28(c) is intended to prevent the loss of any SDR data that is reported to an SDR during closing hours and to facilitate the SDR's prompt fulfillment of its data reporting responsibilities, including public dissemination of swap transaction and pricing data, as applicable, once the SDR reopens from closing hours. The requirements in § 49.28(c) mirror the requirements for an SBSDR to receive and hold in queue information regarding security-based swaps.[213]

Final § 49.28(c)(1) requires an SDR, on reopening from normal or special closing hours, to promptly process all SDR data received during the closing hours and, pursuant to part 43, publicly disseminate swap transaction and pricing data reported to the SDR that was held in queue during the closing hours. Final § 49.28(c)(1) expands the existing requirements for an SDR to disseminate swap transaction and pricing data pursuant to § 43.3(g)(1) [214] to also include the prompt processing of all other SDR data received and held in queue during closing hours.[215]

Final § 49.28(c)(2) expands existing requirements for swap transaction and pricing data that an SDR cannot receive and hold in queue during closing hours in existing § 43.3(g)(2) to all SDR data and also mirrors the requirements for an SBSDR that cannot receive and hold in queue information regarding security-based swaps during closing hours.[216] Final § 49.28(c)(2) requires an SDR to immediately issue a notice to all SEFs, DCMs, reporting counterparties, and the public in the event that an SDR is unable to receive or hold in queue any SDR data reported during normal closing hours or special closing hours. Final § 49.28(c)(2) also requires an SDR to issue a notice to all SEFs, DCMs, reporting counterparties, and the public that the SDR has resumed normal operations immediately on reopening.[217] Lastly, final § 49.28(c)(2) requires a SEF, DCM, or reporting counterparty that was not able to report SDR data to an SDR because of the SDR's inability to receive and hold in queue any SDR data to immediately report the SDR data to the SDR after the SDR provides notice that it has resumed normal operations.

Though final § 49.28 expands the existing requirements of § 43.3(f) and (g) to apply to all SDR data, the Commission believes the regulation will not lead to significant changes in the operations of an SDR. The Commission understands that, under current practice, SDRs routinely receive and hold in queue all SDR data submitted during declared SDR closing hours, regardless of whether that data is being submitted pursuant to part 43. Additionally, because the requirements of final § 49.28 largely mirror the requirements for an SBSDR to receive and hold in queue information regarding security-based swaps, final § 49.28 will not impose additional requirements on an SDR that is also registered as an SBSDR. Therefore, the Commission believes that expanding the operating hours requirements to all SDR data would have little practical impact on current SDR operations.

The Commission requested comment on all aspects of proposed § 49.28. The Commission also invited specific comment on whether proposed § 49.28 provides SDRs sufficient flexibility to conduct necessary maintenance on their systems while facilitating the availability of SDR data for the Commission and the public.[218]

One comment stated that business flow considerations should be taken into account in addition to sufficient flexibility for SDRs when considering operating hours. The comment suggested that proposed § 49.28(a)(1) be revised to employ the phrase ''based on historical volume'' in place of ''in the reasonable estimation of the [SDR]'' to describe the basis on which an SDR may determine when it typically receives the least amount of SDR data.[219]

Another comment supported the proposed requirements in § 49.28(a)(2) for normal closing hours and special closing hours.[220] This comment, however, also opposed the requirement in proposed § 49.28(b) that the adoption or amendment of special closing hours be subject to part 40 filing requirements. The comment asserted that ''for the foreseeable future SDRs may need to frequently make use of special closing hours to accommodate changes to their systems'' and that requiring an SDR to comply with part 40 in each such instance would ''impose an administrative burden that does not provide a corresponding benefit to impacted parties.'' [221]

This comment also opposed the requirement in proposed § 49.28(c)(2) that an SDR provide notice of its resumption of normal activities following a period of time during which it was unable to receive and hold in queue any SDR data. The comment asserted such notice is unnecessary when the downtime was planned and

[212] *See* 17 CFR 43.3(g) (providing that during closing hours, a registered swap data repository must have the capability to receive and hold in queue any data regarding publicly reportable swap transactions pursuant to part 43).

[213] *See* 17 CFR 242.904(c) (providing that during normal closing hours, and to the extent reasonably practicable during special closing hours, a registered security-based swap data repository must have the capability to receive and hold in queue information regarding security-based swaps that has been reported pursuant to §§ 242.900 through 242.909).

[214] *See* 17 CFR 43.3(g)(1) (providing that upon reopening after closing hours, a registered swap data repository must promptly and publicly disseminate the swap transaction and pricing data of swaps held in queue, in accordance with the requirements of part 43).

[215] These requirements mirror the SBSDR requirements for disseminating transaction reports after reopening following closing hours. *See* 17 CFR 242.904(d) (providing that when a registered security-based swap data repository re-opens following normal closing hours or special closing hours, it must disseminate transaction reports of security-based swaps held in queue, in accordance with the requirements of § 242.902).

[216] *See* 17 CFR 242.904(e) (providing that if a registered security-based swap data repository could not receive and hold in queue transaction information that was required to be reported pursuant to §§ 242.900 through 242.909, it must immediately upon re-opening send a message to all participants that it has resumed normal operations. Thereafter, any participant that had an obligation to report information to the registered security-based swap data repository pursuant to §§ 242.900 through 242.909, but could not do so because of the registered security-based swap data repository's inability to receive and hold in queue data, must promptly report the information to the registered security-based swap data repository.).

[217] Consistent with the current requirements under part 43, an SDR may issue such notices to its participants and the public by publicizing the notices that the SDR is unable to receive and hold in queue any SDR data and that the SDR has resumed normal operations in a conspicuous place on the SDR's website. *See* 77 FR at 1205, n. 208 (Jan. 9, 2012) (allowing SDRs to provide reasonable advance notice of its closing hours to participants and the public by providing notices directly to its participants or publicizing its closing hours in a conspicuous place on its website).

[218] Proposal at 21065.

[219] ISDA/SIFMA at 42.

[220] DDR at 6 (stating that these requirements ''recognize the importance of system maintenance to the safe operation of an SDR's systems'').

[221] *Id.* (recommending that, instead of a making a submission under part 40, an SDR should be required to notify the Commission along with market participants when declaring special closing hours).

previously communicated to the SDR's members and the public.[222]

In response to the business flow considerations comment, the Commission believes an SDR is best situated to make a judgement regarding when it receives the least amount of SDR data. The Commission agrees that historical volume is one factor SDRs may consider, but other considerations may factor into an SDR's determination, so long as the estimation is reasonable.

With regard to the comment on proposed § 49.28(b), the Commission notes that the regulation, as adopted, does not impose requirements beyond what is already required under part 40. The Commission also notes that special closing hours are intended for unforeseeable, emergency situations, not planned system updates and maintenance, as described in the comment. For planned system updates or maintenance, under the normal closing hours provisions, an SDR could use a single part 40 filing for all planned updates or maintenance, to the extent that the SDR knows the schedule for such activities. The Commission would expect SDRs to plan anticipated system updates or maintenance, and the related closing hours determinations, well ahead of time and for SDRs to follow the normal closing hours requirements, and their reasonable discretion on timing of such closing hours, when performing the system updates or maintenance.

With regard to the comment on proposed § 49.28(c)(2), the Commission believes that in circumstances where an SDR is unable to receive and hold in queue SDR data, keeping impacted parties informed and updated as to changes to the SDR's operations is critical to limiting potential negative impacts caused by the disruption. The Commission expects that instances where an SDR is unable to receive and hold in queue SDR will be the result of emergency situations that prompt special closing hours, as opposed to planned and scheduled SDR system outages. Such situations do not easily allow for accurate planning or estimation of when the SDR will resume normal operations. Further, even for planned outages, the scheduled outage may not finish on schedule, for myriad reasons, and it would be extremely disruptive for market participants to begin reporting SDR data to an SDR based on an outdated estimate of when the SDR would resume normal operations. Accordingly, the Commission believes an SDR should be required to inform market participants and the public that it has resumed operations following a period during which it was unable to receive and hold SDR data, regardless of whether the inability to receive and hold SDR was planned and announced ahead of time.

T. § 49.29—Information Relating to Swap Data Repository Compliance

The Commission proposed to add a new § 49.29 to require an SDR to provide, upon the Commission's request, information necessary for the Commission to perform its duties or to demonstrate the SDR's compliance with its obligations under the Act and Commission regulations.[223]

Proposed § 49.29(a) would require an SDR, upon request by the Commission, to file with the Commission information related to its business as an SDR and information the Commission determines to be necessary or appropriate for the Commission to perform its duties under the Act and Commission regulations thereunder. The SDR must provide the requested information in the form and manner and within the time specified by the Commission in its request.

Proposed § 49.29(b) would require an SDR, upon request by the Commission, to file with the Commission a written demonstration, containing supporting data, information, and documents, that it is in compliance with its obligations under the Act and the Commission's regulations. SDRs must provide the written demonstration in the form and manner and within the time specified by the Commission in its request. The Commission notes that the requests may include, but are not limited to, demonstrating compliance with the core principles applicable to SDRs under CEA section 21(f) and with any or all requirements in part 49 of the Commission's regulations.

The Commission requested comment on all aspects of proposed § 49.29 and received one comment in response. The comment generally supported proposed § 49.29,[224] but also recommended that the Commission revise § 49.29(a) and 49.29(b) to include the phrase ''as soon as practicable, given the nature of the request and the SDR's circumstances'' in order to recognize that SDRs will need a reasonable amount of time to comply with a request, and to encourage collaboration with the SDR in determining the appropriate form, manner and timing associated with the request.[225] The comment also asserted that the proposed language of § 49.29 is vague and lacking detail, which would hinder an SDR in determining what is required to comply with the proposed regulation.[226]

The Commission has determined to adopt final § 49.29 as proposed. The Commission believes that § 49.29, as proposed and adopted, provides the Commission with the necessary flexibility to obtain information and documentation to determine whether an SDR is complying with applicable statutory and regulatory requirements, and to ensure that the Commission is able to fulfill its responsibilities in the oversight of SDRs. The Commission notes that requests under § 49.29 may be made for any Commission oversight purpose. For example, the Commission may request that an SDR provide information relating to its operations or its practices in connection with its compliance with particular regulatory duties and core principles, other conditions of its registration, or in connection with the Commission's general oversight responsibilities under the Act. Final § 49.29 is also based on similar existing Commission requirements applicable to SEFs and DCMs, which have successfully assisted the Commission in obtaining needed information from these registered entities for many years without difficulty.[227]

The Commission also notes that, as discussed above, final § 49.29 facilitates the removal of the requirement in § 49.3(a)(5) that an SDR file an annual amendment to Form SDR, by allowing the Commission to request the relevant information as needed without requiring an SDR to file a full Form SDR update.

The Commission believes the comment's proposed revisions would unduly constrain the Commission's ability to obtain needed information in a timely manner and inappropriately restrict the Commission in fulfilling its oversight responsibilities. However, the Commission emphasizes that it intends to coordinate and collaborate with SDRs in formulating information requests pursuant to § 49.29 in order to ensure that such requests are reasonable, based on the facts and circumstances, as is the current practice between the Commission and the SDRs.

[222] *Id.* (stating that in these situations, the impacted parties would be prepared for the resumption of normal operations and, therefore, a notification to that effect is unnecessary).

[223] Proposal at 21065–66.

[224] DDR at 6 (''DDR supports the Commission's inclusion of a requirement to provide information on an as needed basis in place of a requirement for SDRs to file an annual Form SDR update in proposed section 49.29.).''

[225] DDR at 6–7.

[226] DDR at 7.

[227] *See* 17 CFR 37.5 and 38.5.

U. § 49.30—Form and Manner of Reporting and Submitting Information to the Commission

The Commission proposed to add a new § 49.30 to place in one location the requirements governing the form and manner in which an SDR must provide information to the Commission.[228] Final § 49.30, as adopted in this final rulemaking, requires SDRs to provide reports and other information to the Commission in ''the form and manner'' requested or directed by the Commission. Other regulations within part 49, such as final § 49.29, require an SDR to provide reports and certain other information to the Commission in the ''form and manner'' requested or directed by the Commission. The Commission has determined to adopt § 49.30 as proposed.

Final § 49.30 sets forth the broad parameters of the ''form and manner'' requirement. Under final § 49.30, unless otherwise instructed by the Commission, an SDR must submit SDR data reports and any other information required to be provided to the Commission under part 49 within the time specified, using the format, coding structure, and electronic data transmission procedures approved in writing by the Commission.

The Commission requested comment on all aspects of proposed § 49.30. The Commission also invited specific comment on (i) whether the Commission should provide a single format or coding structure for each SDR to deliver reports and other information in a consistent manner; (ii) whether existing standards and formats are sufficient for providing the Commission with requested information; and (iii) whether the Commission should require specific electronic data transmission methods and/or protocols for SDRs to disseminate reports and other information to the Commission.[229]

One comment supported mandating messaging formats for transmission from an SDR to the Commission, but emphasized the Commission should not mandate the format for reporting from a reporting counterparty to an SDR.[230]

Another comment recommended that the Commission revise the text of proposed § 49.30 to include the phrase ''as soon as practicable, given the nature of the request and the SDR's circumstances'' after ''[u]nless otherwise instructed by the Commission.''[231] The comment asserted that the suggested revision recognizes an SDR will need a reasonable amount of time to implement technical changes necessary to comply with the request and will encourage collaboration between an SDR and Commission in determining the appropriate form, manner and timing associated with the request.[232] Similar to the comment on § 49.29, noted above, the comment also asserted that the proposed language of § 49.30 is vague and lacking detail as to data transmission requirements, which may be determined by the Commission at a later time.[233]

The Commission has determined to adopt § 49.30 as proposed. The Commission notes that final § 49.30 does not expand the existing substantive SDR informational requirements of part 49. Rather, the regulation authorizes the Commission to specify how information reported to an SDR under other requirements of part 49 should be formatted and delivered to the Commission.

Under final § 49.30, the format, coding structure, and electronic data transmission procedures an SDR uses for reports and submissions to the Commission pursuant to part 49 must be approved in writing by the Commission. These written specifications could include specifications similar to the ''guidebooks'' and other technical specifications currently published on the Commission's website.[234] Specifications may also be more limited in their application, potentially involving more specific or tailored requirements applicable to a report or information required by the Commission from a particular SDR.

The Commission believes the comment's proposed revision may unduly constrain the Commission's ability to adjust the process by which it obtains information. However, the Commission emphasizes that it intends to continue to coordinate and collaborate with SDRs in formulating information requests and specifications pursuant to § 49.30 in order to ensure that such requests are reasonable, based on the facts and circumstances, as is the current practice for the Commission and the SDRs.

V. § 49.31—Delegation of Authority to the Director of the Division of Market Oversight Relating to Certain Part 49 Matters

The Commission proposed to add new § 49.31 to set forth and consolidate delegations of authority for part 49 of the Commission's regulations.[235] A number of current and proposed provisions in part 49 require an SDR to perform various functions at the Commission's request or to provide information as prescribed or instructed by the Commission. The Commission proposed to adopt new § 49.31 by which the Commission would delegate its authority under most these of the part 49 provisions to the Director of DMO. The new delegations are intended to enhance the Commission's ability to respond to changes in the swaps market and technological developments, to quickly and efficiently access information and data from SDRs to meet the Commission's oversight obligations, and to more efficiently perform the Commission's regulatory functions.

More specifically, the Commission proposed to delegate its authority under the current and proposed part 49 regulations, as set forth below, to the Director of DMO, and to such members of the Commission's staff acting under his or her direction as he or she may see fit from time to time.

The Commission did not receive any comments on proposed § 49.31. The Commission continues to believe the proposed addition of § 49.31 and the proposed new delegations thereunder will improve the Commission's ability to respond to developments in the swaps market, to access information and data from SDRs, and to fulfill the Commission's oversight obligations. Accordingly, the Commission is adopting § 49.31 as proposed.

Final § 49.31(a)(1) delegates to the Director of DMO the Commission's authority to request documentation related to an SDR equity interest transfer pursuant to § 49.5.[236]

Final § 49.31(a)(2) delegates to the Director of DMO the Commission's authority to instruct an SDR on transmitting open swaps reports to the Commission pursuant to § 49.9.[237]

Final § 49.31(a)(3) delegates to the Director of DMO the Commission's authority under § 49.10 to modify an SDR's required acceptance of all SDR data in a particular asset class for which the SDR accepts data.

Final § 49.31(a)(4) delegates to the Director of DMO the Commission's

[228] Proposal at 21066.

[229] *Id.*

[230] ISDA/SIFMA at 42.

[231] DDR at 7.

[232] *Id.*

[233] *Id.*

[234] The Commission's current published ''guidebooks'' include those published for reporting required by parts 15, 16, 17, 18, and 20 of the Commission's regulations relating to ownership and control reports, large trader reports, and data reporting. These guidebooks are available on the Commission's website at *http://www.cftc.gov/Forms/index.htm.*

[235] Proposal at 21066–67.

[236] *See* section II.C above.

[237] *See* section II.E above.

authority under § 49.12 to request records from an SDR.[238]

Final § 49.31(a)(5) delegates to the Director of DMO the Commission's authority under § 49.13 to require an SDR to monitor, screen, and analyze SDR data.[239]

Final § 49.31(a)(6) delegates to the Director of DMO the Commission's authority under § 49.16 to request that an SDR disclose aggregated SDR data in the form and manner prescribed by the Commission.

Final § 49.31(a)(7) delegates to the Director of DMO the Commission's authority with respect to all functions reserved to the Commission under § 49.17.[240]

Final § 49.31(a)(8) delegates to the Director of DMO the Commission's authority under § 49.18 to permit an SDR to accept alternative forms of confidentiality arrangements and the ability to direct an SDR to limit, suspend, or revoke access to swap data.[241]

Final § 49.31(a)(9) delegates to the Director of DMO the authority under § 49.22 to grant an SDR an extension to the annual compliance report filing deadline.

Final § 49.31(a)(10) delegates to the Director of DMO the Commission's authority under § 49.23 to require an SDR to exercise emergency authority and to request the documentation underlying an SDR's decision to exercise its emergency authority.

Final § 49.31(a)(11) delegates to the Director of DMO the Commission's authority under § 49.24 to determine an SDR to be a ''critical SDR'' and to request copies of BC–DR books and records, assessments, test results, plans, and reports.

Final § 49.31(a)(12) delegates to the Director of DMO the Commission's authority under § 49.25, including the authority under § 49.25(b)(2) to deem other financial resources as acceptable; the authority under § 49.25(c) to review and require changes to an SDR's computations of projected operating costs; the authority under § 49.25(f)(1) to request reports of financial resources; and the authority under § 49.25(f)(3) to extend the deadline by which an SDR must file a quarterly financial report.

Final § 49.31(a)(13) delegates to the Director of DMO the Commission's authority under § 49.29 to request information from an SDR, and to require an SDR to provide a written demonstration of its compliance with the Act and Commission regulations, including the authority to specify the form, manner and time for the an SDR's provision of such information or written demonstration.[242]

Final § 49.31(a)(14) delegates to the Director of DMO the Commission's authority under § 49.30 to establish the format, coding structure, and electronic data transmission procedures for the submission of SDR data reports and any other information required by the Commission under part 49.[243]

III. Amendments to Part 45

A. § 45.1—Definitions

The Commission is adding a definition for the term ''open swap'' to final § 45.1 that will define the term as an executed swap transaction that has not reached maturity or expiration, and has not been fully exercised, closed out, or terminated. The definition is identical to the definition for ''open swap'' added to final § 49.2 and is intended to create consistency between defined terms in parts 45 and 49 of the Commission's regulations. The term ''open swap'' is used is both final part 45 and part 49, particularly in regards to the requirements related to swap data verification, and consistency in the use of the term across both parts is crucial to ensure swap data verification functions properly. See section II.A.3 above for a more robust discussion of the definition of ''open swap.''

B. § 45.2—Swap Recordkeeping

As discussed above in Section II.H, as part of the amendments to § 49.12, the Commission proposed to consolidate the SDR recordkeeping requirements set forth in current § 45.2(f) and (g) into § 49.12. As discussed above, the Commission has determined to adopt the consolidation of § 45.2(f) and (g) into § 49.12, as proposed.

C. § 45.14—Correcting Errors in Swap Data and Verification of Swap Data Accuracy

1. Background and Summary of the Final Rule

Pursuant to CEA section 2(a)(13)(G), all swaps must be reported to an SDR.[244] The requirements for reporting swaps to an SDR, including requirements regarding swap data, are set forth in part 45 of the Commission's regulations.[245] If the information for a specific data element that is required to be reported is incorrect, or swap data was not reported as required, the SEF, DCM, DCO, or reporting counterparty that was required to report has not satisfied its obligations under the Act and the Commission's regulations. There is no expiration for the requirement in the CEA and the Commission's regulations to report swaps, and therefore, the requirement to report swap data remains in effect until satisfied. Accordingly, if swap data is not completely and accurately reported, the obligation to report the swap data remains in effect. The Commission also interprets the statutory requirement to report swaps to include a requirement to ensure that the reporting was performed completely and accurately. Further, as discussed in section II.G above, CEA section 21(c)(2) requires SDRs to confirm the accuracy of swap data with both counterparties. The Commission interprets this provision to require each counterparty to participate in ensuring the completeness and accuracy of swap data.

Accordingly, in order to ensure the high quality of swap data, the Commission is adopting the proposed rules, with modifications, to require counterparties to take steps to ensure the accuracy and completeness of swap data reported to SDRs. In response to comments, the Commission is modifying final § 45.14 to make the error-correction and verification processes less burdensome and more flexible than the processes set forth in proposed § 45.14. To this end, final § 45.14(a)(1), as does current § 45.14, requires each SEF, DCM, and reporting counterparty to correct errors[246] relating to swap data that it was required to report under part 45. Further, final § 45.14(b) requires reporting counterparties to verify the accuracy and completeness of the swap data for their open swaps. Final § 45.14(a)(2) requires each non-reporting

[238] *See* section II.H above.

[239] *See* section II.I above.

[240] This includes the authority to: prescribe the form of direct electronic access that an SDR must make available to the Commission; prescribe the format by which an SDR must maintain SDR data; request an SDR transmit SDR data to the Commission; and instruct an SDR on the transmission of SDR data to the Commission. *See* section II.L above.

[241] *See* section II.M above.

[242] *See* section II.T above.

[243] *See* section II.U above.

[244] 7 U.S.C. 2(a)(13)(g).

[245] *See generally* 17 CFR part 45.

[246] The Commission notes that current § 45.14 and proposed § 45.14 both use the phrases ''errors and omissions'' and ''errors or omissions'' in the correction requirements. *See generally* 17 CFR 45.14 and Proposal at 21098–99. The Commission is not including the word ''omission'' in final § 45.14 for simplicity purposes, but the Commission emphasizes that all omissions of required swap data, whether the omissions are the failure to report individual data elements for a swap or the failure to report all swap data for a swap, are errors that must be corrected under final § 45.14, just as the omissions must be corrected under current § 45.14. The Commission makes clear in final § 45.14(c), discussed below, that all omissions of required swap data are errors under final § 45.14.

counterparty to notify the reporting counterparty if it discovers an error.

Final § 45.14(a)(1) provides that any SEF, DCM, or reporting counterparty that by any means [247] becomes aware of any error relating to swap data that it was required to report under part 45 must correct the error. This correction requirement includes swap data for a swap that has terminated, matured, or otherwise is no longer considered to be an open swap. As noted, there is no expiration on the requirement to report swaps, and the requirement includes all swaps regardless of the state of the swap.

However, final § 45.14(a)(3) provides that the error correction requirement in final § 45.14(a)(1) does not apply to swaps for which the record retention periods under § 45.2 of this part have expired as of the time that the errors are discovered. The Commission determined that this exclusion is appropriate, as SEFs, DCMs, and reporting counterparties are not required to maintain records related to their swaps beyond the applicable retention periods in § 45.2. The exclusion therefore removes any potential confusion as to the correction of swaps beyond the retention period for these swaps. The Commission further notes that, with the adoption of the verification requirement, the Commission expects that errors will generally be discovered during the record retention period and the exclusion will not have a significant impact on the accuracy of swap data for future swaps. The Commission emphasizes that a SEF, DCM, or reporting counterparty may not in any way attempt to avoid ''discovering'' errors, including, but not limited to, by not performing thorough verification as required under final § 45.14(b).

Final § 45.14(a)(1)(i) provides that corrections must be made as soon as technologically practicable after discovery of an error. In all cases, errors must be corrected within seven business days after discovery. This deadline is necessary to ensure that errors are corrected in a timely manner. Final § 45.14(a)(1)(ii) provides that if an error will not be corrected in a timely fashion, the entity required to correct must notify the Director of DMO, or such other employee or employees of the Commission as the Director may designate from time to time, of the error. The notification must be made within twelve hours of when the determination is made that the error will not be corrected in time. This notification requirement is necessary to alert the Commission to problems with the quality of swap data. The notification must be made according to the instructions that will be specified by the Director of DMO, or such other employee or employees of the Commission as the Director may designate from time to time. The notification must generally include an initial assessment of the scope of the error or errors. If an initial remediation plan exists, the notification must include the initial remediation plan as well.[248]

Final § 45.14(b) requires each reporting counterparty to verify the accuracy and completeness of swap data for all of its open swaps. To perform verification, each reporting counterparty must utilize the mechanism adopted for verification under § 49.11 by each SDR the reporting counterparty uses for swap data reporting. Each reporting counterparty must use the relevant SDR mechanism to compare all swap data for each open swap that is maintained by the SDR for which it is the reporting counterparty with all swap data contained in the reporting counterparty's internal books and records to verify that there are no errors.

Final § 45.14(a)(1)(i) provides that any error that is discovered or could have been discovered during the performance of the verification process is considered discovered as of the moment the verification process began, and the error must be corrected accordingly. The Commission determined that this rule is necessary in order to ensure that reporting counterparties diligently perform verification.

Under final § 45.14(b)(1) and final § 49.11(b)(2), the verification requirement entails verifying that there are no errors for each data field for each open swap that the reporting counterparty was required to report under this part. The Commission determined that all swap data is relevant, and that none of the data that the Commission requires to be reported is unnecessary. All swap data fields are necessary to ensure the quality of all swap data available to the Commission, which the Commission uses to fully perform its regulatory mission. Accordingly, the verification requirement applies to all reporting counterparties, for all open swaps, and for each required data element. However, the Commission determined that it is only necessary for reporting counterparties to verify that there are no errors in the up-to-date swap data for each data field that is required to be reported under part 45 of this chapter, and it is unnecessary to require verification of data reporting messages. Accordingly, SDRs are only required to make available to reporting counterparties the most current swap data the SDR maintains using the verification mechanism, as discussed above in II.G, and reporting counterparties are only required to verify using the swap data available through this mechanism under final § 45.14(b).

Final § 45.14(b)(4) provides the minimum frequency at which a reporting counterparty must perform verification. A reporting counterparty that is an SD, MSP, or DCO, must perform verification once every thirty calendar days. All other reporting counterparties must perform verification once every calendar quarter, provided that there are at least two calendar months between verifications.

The Commission determined that these time frames are sufficient to ensure the quality of swap data because SDs, MSPs, and DCOs serve as reporting counterparties for the overwhelming majority of swap data,[249] meaning the overwhelming majority of open swaps would be verified on a monthly basis.

[247] The Commission notes that, as explained in the Proposal, ''by any means'' includes absolutely any means that alerts a SEF, DCM, or reporting counterparty to an error in the relevant swap data. Awareness or discovery of errors to be corrected would include, but would not be limited to, errors present in the swap data during the verification process specified in final § 45.14(b). This would include swap data for any open swaps that should be present in the swap data accessible through the applicable SDR verification mechanism that are omitted, or swap data for swaps that are no longer open that is still accessible through the verification mechanism, in addition to any other errors in the swap data accessible through the verification mechanism. The requirement would also include, but is not limited to, a SEF, DCM, or reporting counterparty being informed of errors by an outside source, such as a non-reporting counterparty under final § 45.14(a)(2), a SEF or DCM, or the Commission; errors discovered by a SEF, DCM, or reporting counterparty during a review of its own records or a voluntary review of swap data maintained by the SDR, including the discovery of any over-reporting or under-reporting of swap data; and the discovery of errors during the investigation of a separate issue. The Commission also expects that a SEF, DCM, or reporting counterparty that repeatedly discovers errors, especially repeated errors that follow a pattern, such as the reporting for a certain type of swap regularly resulting in errors, would evaluate its reporting systems to discover and correct any issues. *See* Proposal at 21069–70.

[248] The Commission notes that, while final § 45.14(a)(1)(ii) only requires the entity to provide an initial remediation plan with the notice if such a plan exists, the Commission may also request additional information regarding any error(s) and the correction process at any time, including requesting an updated or fully-developed remediation plan.

[249] *See* De Minimis Exception to the Swap Dealer Definition, 83 FR 56666, 56674 (Nov. 13, 2018) (stating that, in 2017, approximately 98 percent of swap transactions involved at least one registered SD).

The Commission also believes that non-SD/MSP/DCO reporting counterparties may include various entities that would bear a significant burden to verify swap data more often than quarterly, without a corresponding increase in data quality, because these entities are more likely to not have the same resources and experience to devote to verification as SD/MSP/DCO reporting counterparties and are only responsible for verifying a small proportion of swaps. The Commission further determined that final § 45.14(b)(4)(ii) requiring a duration of at least two calendar months between quarterly verifications for non-SD/MSP/DCO reporting counterparties is necessary to ensure that there is sufficient time between verifications to adequately ensure data quality.

Under final § 45.14(b), a reporting counterparty is not required to notify the relevant SDR regarding the result of a verification,[250] as was required under proposed § 45.14(a).[251] The Commission determined that in order to ensure the quality of swap data, it is sufficient for the Commission to have the ability to confirm that verification was performed timely and properly, and to enforce the verification and error correction requirements. Therefore, the notification of the result of a verification is not necessary to ensure data quality or to fulfill the SDR's obligation to confirm the accuracy of data under CEA section 21. Accordingly, final § 45.14(b)(5) requires each reporting counterparty to keep a log of each verification that it performs. The log must include all errors discovered during the verification, as well as the corrections made under final § 45.14(a). Final § 45.14(b)(5) further clarifies that the requirement to keep a verification log is in addition to all other applicable recordkeeping requirements.

Non-reporting counterparties must also participate in ensuring that errors in swap data are corrected, although to a much smaller degree than reporting counterparties. Final § 45.14(a)(2) provides that a non-reporting counterparty that by any means discovers an error must notify the reporting counterparty of the error. The notification must be made as soon as technologically practicable after discovery, but not later than three business days following discovery of the error. The Commission notes that non-reporting counterparties are not required to verify swap data, and that the notification only needs to include the errors that the non-reporting counterparty discovers. To the extent that an error exists, the reporting counterparty will be required to correct the error under the requirements of final § 45.14(a)(1). The Commission determined that this notification requirement is necessary to ensure the quality of swap data. The Commission further determined that the three-business-day notification deadline is necessary to ensure that the non-reporting counterparty will notify the reporting counterparty of errors in a timely manner.

The Commission recognizes that a non-reporting counterparty may not know the identity of the reporting counterparty. Accordingly, § 45.14(a)(2) provides that when the non-reporting counterparty does not know the identity of the reporting counterparty, the non-reporting counterparty must notify the SEF or DCM where the swap was executed of the error in the same time frame for notifying the reporting counterparty. Such notification constitutes discovery of the error for the SEF or DCM for purpose of the SEF's or DCM's error correction requirement under final § 45.14(a).

Errors are described in final § 45.14(c), which provides that for the purposes of § 45.14, there is an error when swap data is not completely and accurately reported. Under final § 45.14(c)(1), errors include, but are not limited to, where swap data is reported to an SDR, or is maintained by an SDR, containing incorrect information (*i.e.* the swap data is present, but is incorrect); where some required swap data for a swap is reported to an SDR, or is maintained by an SDR, and other required swap data is omitted (*i.e.* some required swap data elements are blank); where no required swap data for a swap is reported to an SDR, or maintained by an SDR, at all (*i.e.* none of the swap data was reported as required and/or is missing from the SDR); and where swap data for swaps that are no longer open is maintained by an SDR as if the swaps are still open (*i.e.,* swap data for swaps that are no longer open swaps is still available during the verification process).[252] In each of these circumstances, among others, swap data is not complete and accurate.

Under § 45.14(c)(2), there is a presumption that, for the purposes of § 45.14, an error exists if the swap data that is maintained and disseminated by an SDR for a swap is not complete and accurate. The Commission determined that this presumption is necessary because the swap data maintained and disseminated by the SDRs is the same as the swap data available to the Commission and it is necessary to ensure the accuracy of that swap data for the Commission's regulatory purposes. Further, the presumption that the swap data maintained and disseminated by SDRs is the same as the swap data that was reported is implicit in the structure of swap data reporting under CEA section 21. Under CEA section 21(c)(4) and (7), an SDR is required to make the swap data it maintains available to the Commission and to certain other regulators. This requirement only serves its purpose if there is a presumption that the swap data maintained by the SDR is the same as the swap data that was reported to the SDR.

2. Comments on the Proposal

The Commission received a number of comments on the Proposal recommending limitations on the scope of the error correction rules. Comments recommended that the error correction rules should only apply to open swaps[253] or that error correction rules should only apply in a limited fashion to swaps that are not open.[254] These comments included recommendations to add a materiality threshold to the requirement to correct errors for swaps that are not open;[255] to limit the requirement to correct errors to specific data elements, such as counterparty, price, and product;[256] to limit the requirement to correct errors to errors that are discovered within the relevant record retention period for the swap;[257] and to limit the requirement to correct errors to certain reporting counterparties.[258]

[250] However, as noted, under final § 45.14(a)(1)(i) and final § 45.14(b)(3), if the reporting counterparty discovered, or could have discovered, an error, the reporting counterparty is required to correct the error under final § 45.14(a)(1).

[251] *See* Proposal at 21099.

[252] The Commission notes that for each of these examples the entity responsible for the error may or may not be the entity that is required to correct the error. For example, if an SDR fails to record swap data that a reporting counterparty properly reported, it will still be the reporting counterparty that reports the error. The Commission emphasizes that the error correction process is one overarching requirement intended to result in accurate and complete swap data, regardless of the entities involved and their respective roles in any particular error correction. The SEFs, DCMs, and reporting counterparties have the responsibility to correct errors to the SDR once they are discovered, even if the SEF, DCM, or reporting counterparty is not at fault for the error, which is an independent responsibility from the responsibility to successfully report or maintain swap data. The Commission would endeavor to hold the entity responsible for the reporting error accountable for the failure to correctly report or maintain the erroneous swap data, as applicable, regardless of which entity corrects the error under final § 45.14.

[253] FIA at 9; Chatham at 4–5.

[254] ISDA/SIFMA at 46; FIA at 9.

[255] CS at 3.

[256] ISDA/SIFMA at 47; FIA at 9.

[257] *Id.*

[258] Joint Associations at 10–12.

The Commission generally does not agree with the recommendations to exclude swaps that are no longer open from the full requirement to correct errors. There is no expiration in the CEA and the Commission's regulations on the requirement to report swap data. If there is an error in the reporting of swap data, the reporting counterparty has not fulfilled its requirement to report swap data. Further, the Commission utilizes data regarding swaps that are no longer open in a variety of ways, including in its market and economic analyses and in its enforcement and administration of the provisions of the CEA. It is therefore necessary to ensure that swap data for these swaps does not contain errors. Although the Commission is limiting the verification requirements to open swaps, the Commission is doing so because the verification of swaps that are no longer open is not as practicable as with open swaps, not because it is unnecessary to ensure that swap data from these swaps is free from error.

The Commission similarly declines to accept recommendations to limit the scope of the error correction rules by adopting a materiality requirement, or by limiting the application of the rules to only certain data elements. A reporting counterparty does not satisfy the requirement to report swap data until all required elements are accurately reported. Further, all the required swap data elements are significant and required in order for the Commission to perform its regulatory functions. As a result, it is necessary for the Commission to ensure that the swap data for every data element is accurate.

However, the Commission agrees with the recommendation to exclude errors that are discovered after the expiration of the relevant recordkeeping requirement. The Commission recognizes that it would be impracticable for SEFs, DCMs, and reporting counterparties to be required to correct such errors, as these entities are not required to keep records of swap data beyond the applicable retention periods, and these records would be necessary to discover and correct errors. Accordingly, final § 45.14(a)(3) excludes such errors from the error correction requirement.

The Proposal provided that errors must be corrected as soon as technologically practicable after discovery, but no later than three business days after discovery.[259] The Proposal, like final § 45.14(a)(1)(ii), also included a requirement to notify the Director of DMO if an error will not be timely corrected.[260] The Commission received a number of comments on these rules. Comments generally recommended limiting the notification requirement by expanding the time frame to correct errors.[261] Comments also stated that three business days may not be sufficient time to identify the scope of the errors and develop a remediation plan.[262] Other comments recommended including a materiality threshold to the notification requirement,[263] and adopting a principles-based rule that would provide greater flexibility regarding the deadline for correcting errors.[264] Other comments recommended not adopting the three-day deadline and the notification requirement,[265] and instead replacing the notification requirement with a requirement to maintain a log of errors and remediation and only require notification for material errors and only after ''due review of the facts and circumstances.'' [266]

The Commission does not agree with the recommendations to replace or not adopt the notification requirement. The purpose of the notification requirement is to provide the Commission with the information that it needs to assess the accuracy of swap data. The notification requirement is not punitive. However, to make the notification more useful to the Commission, the Commission accepts the recommendation for a longer notification time frame and final § 45.14(a)(1)(ii) extends the notification deadline for correcting errors to seven business days. This longer time frame will provide the entity making the correction time to develop a more accurate understanding of the scope of the error. The Commission also agrees with the recommendations that it may not be feasible in every case to develop an initial remediation plan. Accordingly, final § 45.14(a)(1)(ii) provides that the notification needs to include the initial remediation plan, but only if one exists.[267]

The Commission received several comments recommending against requiring reporting counterparties to verify their swap data. Several commenters stated that improving SDR validations and the required data elements is a more efficient way to increase data accuracy than the proposed verification rules.[268] Other commenters stated that verification is unnecessary because it would only marginally improve the data accuracy, and the burden on reporting counterparties outweighs that marginal gain.[269] Other commenters stated that verification is unnecessary because the extent of errors in swap data is unknown.[270] The Commission also received several comments generally supporting the proposed verification rule, asserting that it will help to ensure the high quality of swap data.[271]

The Commission does not agree with the recommendations against requiring verification. As noted above, the Commission interprets the requirement to report data to an SDR in section 2(a)(13)(G) of the CEA to include a requirement that the reporting counterparty verifies that it accurately complied with the requirement. The Commission also interprets the requirement in section 21(c)(2) of the CEA for SDRs to confirm the accuracy of reported data with the counterparties to also include a requirement for counterparties to participate in ensuring the swap data accuracy, as not including counterparties in the confirmation process would render the statutory requirement useless. The purpose of the verification requirement is to ensure the quality of swap data, as required by the Act. Improving SDR validations and standardizing the data elements alone will not accomplish this, because a swap data error that is still a plausible value, such as reporting a notional value of $1,000,000 instead of the correct notional value of $10,000,000, would not be caught by validations. Only a review of the swap data by the counterparty that is responsible for reporting the swap data would catch this error.

Additionally, the Commission has ample experience with the existence of swap data errors that would pass validations that, in the absence of an adequate verification requirement, persisted for long periods of time before being discovered and corrected. The Commission cannot know the precise nature and scope of existing errors that have not been corrected, which the

[259] *See* Proposal at 21099 (proposed § 45.14(b)(1)(i)).

[260] *See id.* (proposed § 45.14(b)(1)(ii)).

[261] *See, e.g.,* CEWG at 5.

[262] *Id.;* ISDA/SIFMA at 46.

[263] *Id.* at 5–6.

[264] ICE Clear at 3–4.

[265] FIA at 8; Joint Associations at 13.

[266] ISDA/SIFMA at 46.

[267] The current common practice for market participants is to notify DMO after discovering reporting errors and to develop a remediation plan once a solution for the errors is formulated. The Commission expects that this practice will continue, but notes that final § 45.14(a)(1)(ii) does not require the notification of the failure to timely correct an error to include an initial remediation plan if one does not yet exist.

[268] Chatham at 6; FIA at 7–8; ICE TV at 2–4; NGSA at 4; Joint Associations at 6–10; Eurex at 2; CEWG at 2–3.

[269] FIA at 2–3.

[270] Chatham at 5; GIFMA at 14.

[271] Joint SDR at 1; IATP at 1–7; LCH at 4; Markit at 2.

verification requirement is designed to address, because the errors are not obvious from the swap data and will not be knowable to the Commission unless and until they are discovered and corrected. However, based on its experience, the Commission has determined that data quality can be further improved by requiring verification, and doing so is consistent with the requirements in the Act to report swap data and to verify the accuracy of the reported swap data.

The Commission also received comments regarding which counterparties should be required to perform verifications. Comments recommended excluding specific reporting counterparties, including end users with centralized trading structures,[272] non-bank SDs and reporting counterparties that are not SDs or MSPs,[273] ''unregistered end users,'' [274] reporting counterparties that report less than fifty-one swaps per month,[275] and DCOs.[276] The Commission rejects these recommendations to exempt any classes of reporting counterparties from verification. As noted, the requirement under section 2(a)(13)(G) of the CEA to verify that swap data was reported correctly and the requirement under section 21(c)(2) to confirm the accuracy of swap data applies to all reporting counterparties, regardless of size, registration status, type, or how frequently the reporting counterparty report swaps. All reporting counterparties are, by definition, also users of at least one SDR and are fully capable of communicating with an SDR to report swap data and correct swap data as required, whether directly or through the use of a third-party service provider, and are also therefore fully capable of verifying swap data through an SDR-provided mechanism, as required by final § 45.14(b). Further, all swap data for all swaps is significant, material, and important for the Commission's performance of its regulatory responsibilities. Verification is necessary to ensure that the swap data is free from errors, and every reporting counterparty performing verification as required is essential to rooting out swap data errors.

The Commission notes that although CEA section 21(c)(2) also includes non-reporting counterparties in the obligation to confirm the accuracy of reported swap data, the Commission determined that it is unnecessary to require non-reporting counterparties to perform verification. The Act places the burden of reporting on the reporting counterparty, and, as the only counterparty with swap data reporting responsibilities, the reporting counterparty is best positioned to perform verification. Commenters generally supported this determination.[277] Comments stated that non-reporting counterparties will generally not be able to communicate with the relevant SDR(s), and that it will be very uncommon for there to be discrepancies between the data maintained by the reporting counterparty and the non-reporting counterparty, such that the reporting counterparty's verification is sufficient to ensure the quality of swap data.[278]

The Commission also received comments recommending changes to the proposed verification rule. The proposed rule required reporting counterparties that are SDs, MSPs, or DCOs to perform verification weekly and all other reporting counterparties to perform verification monthly.[279] Instead, commenters recommended adopting a rule that would require verification to be performed less frequently. One suggested alternative was to adopt a more ''principles based'' approach, under which reporting counterparties would periodically perform verification less frequently than the proposed rule required.[280] One comment recommended that verification should only be required to be performed monthly by all reporting counterparties.[281] Another comment recommended that verification should only be required to be performed monthly by reporting counterparties that are SDs, and quarterly by all other reporting counterparties.[282] The Commission accepts the recommendation that it is not necessary for verification to be performed with the frequency of the Proposal in order to meet the Commission's swap data quality needs. Accordingly, final § 45.14(b)(4) provides that a reporting counterparty that is an SD, MSP or DCO must perform verification once every thirty calendar days, and all other reporting counterparties must perform verification once every calendar quarter, provided that there are at least two calendar months between the quarterly verifications.

The Commission also received comments on the scope of the data that must be verified. The verification rule in the Proposal would apply to all required swap data fields for all open swaps.[283] The Commission received comments in support of limiting the verification requirement to only the required swap data elements and not to all swap data messages.[284] The Commission also received a comment recommending that the verification rule should be limited to specific data elements, such as economic terms.[285]

The Commission declines to accept the recommendation to limit the scope of the verification requirement. Every data field that is required to be reported to the Commission is significant and necessary for the Commission's performance of its regulatory responsibilities, and to ensure the quality of all swap data.

One comment recommended limiting the verification requirement to once per swap, meaning that once swap data for a particular swap has been verified, the reporting counterparty no longer is required to verify the data for that swap.[286] The Commission does not agree with this recommendation. Swap data is often updated frequently through continuation data reporting, including lifecycle event reporting and valuation reporting, and errors can occur throughout the life of the swap. Regular verification of open swaps is necessary to ensure that the swap data for each open swap remains free from errors throughout the life of the swap.

The Commission also received comments regarding the requirements on non-reporting counterparties to ensure that swap data is free from errors. Comments supported excluding non-reporting counterparties from the verification requirements.[287] Comments also supported not requiring non-reporting counterparties to submit error corrections to SDRs.[288] The Commission received one comment recommending against requiring a non-reporting counterparty to notify the reporting counterparty when it discovers an error.[289] The Commission does not agree with this recommendation. The confirmation requirement in CEA

[272] Prudential at 1–2.

[273] NGSA at 1–4.

[274] Freddie Mac at 2.

[275] COPE at 3.

[276] lCH at 3–4; ICE Clear at 2.

[277] Joint Associations at 13; ISDA/SIFMA at 39; Chatham at 1–2; COPE at 2; Joint SDR at 2; ICI at 10–11.

[278] GIFMA at 4; Chatham at 1–2.

[279] Proposal at 84 FR 21103 (May 13, 2019).

[280] CS at 3; FIA at 7–8; ISDA/SIFMA at 45.

[281] GIFMA at 5.

[282] ISDA/SIFMA at 45.

[283] Proposal at 21098, 21103.

[284] GIFMA at 4–6; ISDA/SIFMA at 40–41; IATP at 5.

[285] GIFMA at 10.

[286] ISDA/SIFMA at 45.

[287] Joint Associations at 13; ISDA/SIFMA at 39; Chatham at 1–2; COPE at 2; Joint SDR at 2; ICI at 10–11.

[288] COPE at 2.

[289] Joint Associations at 13.

section 21(c)(2) requires both counterparties to confirm the accuracy of swap data. The Commission has excluded non-reporting counterparties from the requirement to verify swap data, but if a non-reporting counterparty discovers an error, it must take steps to correct the error by notify the reporting counterparty.

The Commission also received comments on the proposed § 45.14(b)(2),which provided, in part, that a reporting counterparty, SEF, or DCM that is notified of an error by a non-reporting counterparty is only required to correct the error if it agrees with the non-reporting counterparty that an error exists.[290] Comments recommended against adopting the requirement that the non-reporting counterparty and the reporting counterparty, SEF, or DCM must agree to the error,[291] and comments requested that the requirement be clarified.[292]

The Commission is not adopting the requirement. Final § 45.14(a) explicitly applies to errors regardless of the how the SEF, DCM, or reporting counterparty becomes aware of the error. If the non-reporting counterparty notifies the reporting counterparty of the error, and the SEF, DCM, or reporting counterparty disagrees that there is an error, then the SEF, DCM, or reporting counterparty has not discovered an error and there is nothing to correct. The Commission does however note that a SEF, DCM, or reporting counterparty refusing to acknowledge an error that does exist, and therefore not correcting the error, would violate the Commission's regulations.

IV. Amendments to Part 43

A. § 43.3(e)—Correction of Errors

The Commission is adopting proposed § 43.3(e), with modifications. Final § 43.3(e) is identical in substance to § 45.14(a), described in III.B, above, except that § 45.14(a) provides the rules for correcting errors [293] in swap data, while § 43.3(e) provides the rules for correcting errors in swap transaction and pricing data. As in § 45.14(a), § 43.3(e) generally requires each SEF, DCM, and reporting counterparty to correct any error it discovers, including for swaps that are no longer open. The Commission notes that, although market participants generally treat the current error correction requirements in § 43.3(e) and § 45.14 as if they are consistent, existing §§ 43.3(e) and 45.14 do not share consistent terminology and style. In addition to the substantive amendments and rules that are described above in section III.C, the Commission determined that the terminology and style of the error correction rules final §§ 45.14(a) and 43.3(e) should be consistent. This will add clarity to the error correction requirements, which may result in increased compliance. The Commission received numerous comments on the proposed amendments to the error correction rules The Commission did not receive any comments that apply only to § 43.3(e), and is assessing all comments on error correction as if they apply equally to both §§ 43.3(e) and 45.14(a).[294] The comments are described above in section III.C.

B. Removal of § 43.3(f) and (g)

Current § 43.3(f) and (g) set forth the operating hours requirements for SDRs.[295] As discussed above, the Commission proposed to remove § 43.3(f) and (g) and to incorporate the provisions in new § 49.28.[296] The Commission believes these provisions are better placed in part 49 of this chapter because they address SDR operations and, as amended, final § 49.28 applies to all SDR data and also incorporates provisions from SBSDR operating hours requirements. Accordingly, the Commission is adopting the proposed removal of § 43.3(f) and (g).

V. Amendments to Part 23

§ 23.204—Reports to Swap Data Repositories, and § 23.205—Real-Time Public Reporting

The Commission proposed additions to §§ 23.204 and 23.205 of the Commission's regulations. The proposed additions would require each SD and MSP to establish, maintain, enforce, review, and update as needed written policies and procedures that are reasonably designed to ensure that the SD or MSP complies with all obligations to report swap data to an SDR, consistent with parts 43 and 45. The Proposal noted that pursuant to other Commission regulations, SDs and MSPs are already expected to establish policies and procedures related to their swap market activities, including but not limited to, swaps reporting obligations.[297] The Commission proposed to make this expectation explicit with respect to swaps reporting obligations. Commenters recommended that the Commission take a less prescriptive approach than the Proposal, and noted that it is unnecessary to add specificity for swaps reporting obligations for data reporting policies and procedures.[298] The Commission notes that existing §§ 23.204 and 23.205 require SDs and MSPs to report all swap data and swap transaction and pricing data they are required to report under parts 43 and 45, and to have in place the electronic systems and procedures necessary to transmit electronically all such information and data.[299] As noted above, these requirements are encompassed by the existing requirement that SDs and MSPs establish policies and procedures. Therefore, the Commission agrees with the comments and determines that it is unnecessary to make the proposed additions. Accordingly, the Commission does not adopt any amendments to § 23.204 or 23.205.

VI. Compliance Date

In the Proposal, the Commission stated that it intended to provide a unified compliance date for all three of the Roadmap rulemakings because all three must work in tandem to achieve the Commission's goals.[300] The Commission also stated its intention to provide sufficient time for market participants to implement the changes in the rulemakings prior to the

[290] CEWG at 5, Joint Associations at 13.

[291] Joint Associations at 13.

[292] CEWG at 5.

[293] The Commission notes that, as with final § 45.14, current § 43.3(e) and proposed § 43.3(e) both use the phrases ''errors and omissions'' and ''errors or omissions'' in the correction requirements. *See generally* 17 CFR 43.3(e) and Proposal at 84 FR 21097–98 (May 13, 2019). The Commission is not including the word ''omission'' in final § 43.3(e) for simplicity purposes, but the Commission emphasizes that all omissions of required swap transaction and pricing data, whether the omissions are the failure to report individual data elements for a swap or the failure to report all swap transaction and pricing data for a swap, are errors that must be corrected under final § 43.3(e), just as the omissions must be corrected under current § 43.3(e). The Commission makes clear in final § 43.3(e)(4) that all omissions of required swap data are errors under final § 43.3(e).

[294] *See e.g.,* ISDA/SIFMA at 47 (''Refer to responses above for proposed § 45.14 which also apply similarly to § 43.3.'').

[295] 17 CFR 43.3(f) and (g).

[296] *See* section II.S above. Current § 43.3(f) contains the hours of operations requirements and current § 43.3(g) contains the requirements for SDRs to accept swap transaction and pricing data during closing hours.

[297] *See, e.g.,* 17 CFR 3.3(d)(1) (requiring a chief compliance officer to administer each of the registrant's policies and procedures relating to its business as an SD/MSP that are required to be establish pursuant to the Act and the Commission's regulations); 17 CFR 3.2(c)(3)(ii) (requiring the National Futures Association to assess whether an entity's SD/MSP documentation demonstrates compliance with the Section 4s Implementing Regulation to which it pertains, which includes § 23.204 and § 23.205).

[298] ISDA/SIFMA at 48; GFMA at 12.

[299] 17 CFR 23.204, 23.205.

[300] Proposal at 84 FR 21046 (May 13, 2019).

compliance date.[301] The Commission is adopting a unified compliance date for all three Roadmap rulemakings, May 25, 2022, unless otherwise noted.

The Commission received comments recommending a staggered implementation period instead of a unified one,[302] comments supporting an implementation period of one year,[303] and a comment stating that one year is insufficient and recommending a compliance date that allows for a two-year implementation period.[304] The Commission disagrees with comments recommending a staggered implementation period. The various rules in the Roadmap rulemakings, including verification and error correction, address different compliance areas and will achieve the overall goal of improved data quality only by working in tandem. The Commission agrees with the comment recommending an implementation period longer than a year, but the Commission disagrees that the implementation period should extend for two years. The amendments and additions in these final rules, as well as the related Roadmap rulemakings, are critical steps in implementing the requirements of the Act and ensuring high quality swap data. Accordingly, the Commission believes that an implementation period longer than eighteen months is unwarranted and to ensure that all market participants have sufficient time to implement the changes required in these rulemakings, the Commission has determined to provide an eighteen month implementation period.

VII. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities.[305] The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.[306] The changes to parts 43, 45, and 49 adopted herein would have a direct effect on the operations of DCMs, DCOs, MSPs, reporting counterparties, SDs, SDRs, and SEFs. The Commission has previously certified that DCMs,[307] DCOs,[308] MSPs,[309] SDs,[310] SDRs[311], and SEFs[312] are not small entities for purpose of the RFA.

Various changes to parts 43, 45, and 49 would have a direct impact on all reporting counterparties. These reporting counterparties may include SDs, MSPs, DCOs, and non-SD/MSP/DCO counterparties. Regarding whether non-SD/MSP/DCO reporting counterparties are small entities for RFA purposes, the Commission notes that CEA section 2(e) prohibits a person from entering into a swap unless the person is an eligible contract participant (''ECP''), except for swaps executed on or pursuant to the rules of a DCM.[313] The Commission has previously certified that ECPs are not small entities for purposes of the RFA.[314]

The Commission has analyzed swap data reported to each SDR[315] across all five asset classes to determine the number and identities of non-SD/MSP/DCOs that are reporting counterparties to swaps under the Commission's jurisdiction. A recent Commission staff review of swap data, including swaps executed on or pursuant to the rules of a DCM, identified nearly 1,600 non-SD/MSP/DCO reporting counterparties. Based on its review of publicly available data, the Commission believes that the overwhelming majority of these non-SD/MSP/DCO reporting counterparties are either ECPs or do not meet the definition of ''small entity'' established in the RFA. Accordingly, the Commission does not believe the rules would affect a substantial number of small entities.

Based on the above analysis, the Commission does not believe that this Final Rule will have a significant economic impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, pursuant to 5 U.S.C. 605(b), hereby certifies that the Final Rule will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'')[316] imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. The rule amendments adopted herein will result in the revision of three information collections, as discussed below. The Commission has previously received three control numbers from the Office of Management and Budget (''OMB''), one for each of the information collections impacted by this rulemaking: (1) OMB Control Number 3038–0096 (Swap Data Reporting and Recordkeeping Requirements), relating to part 45 swap data recordkeeping and reporting; (2) OMB Control Number 3038–0070 (Real-Time Public Reporting and Block Trades), relating to part 43 real-time swap transaction and pricing data; and (3) OMB Control Number 3038–0086 (Swap Data Repositories; Registration and Regulatory Requirements), relating to part 49 SDR regulations. Persons otherwise required to respond to an information collection are not required to respond to the collection of information unless a currently valid OMB control number is displayed.

The Commission did not receive any comments regarding its PRA burden analysis in the preamble to the Proposal. The Commission is revising the three information collections to reflect the adoption of amendments to parts 43, 44, and 49, including changes to reflect adjustments that were made to the final rules in response to comments on the Proposal (not relating to the PRA).

[301] *Id.*

[302] GFMA at 13; GFXD at 35.

[303] ISDSA/SIFMA at 36; LCH at 2 and 4; ICE SDR at 2 and 5.

[304] FIA at 10–11.

[305] *See* 5 U.S.C. 601 *et seq.*

[306] *See* Policy Statement and Establishment of ''Small Entities'' for purposes of the Regulatory Flexibility Act, 47 FR 18618 (Apr. 30, 1982).

[307] *See id.*

[308] *See* Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69334, 69428 (Nov. 8, 2011).

[309] *See* Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules, 77 FR 20128, 20194 (Apr. 3, 2012) (basing determination in part on minimum capital requirements).

[310] *See* Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 76 FR 6715 (Feb. 8, 2011).

[311] *See* Swap Data Repositories; Proposed Rule, 75 FR 80898, 80926 (Dec. 23, 2010) (basing determination in part on the central role of SDRs in swaps reporting regime, and on the financial resource obligations imposed on SDRs).

[312] Core Principles and Other Requirements for Swap Execution Facilities, 78 FR 33476, 33548 (June 4, 2013).

[313] *See* 7 U.S.C. 2(e).

[314] *See* Opting Out of Segregation, 66 FR 20740, 20743 (Apr. 25, 2001). The Commission also notes that this determination was based on the definition of ECP as provided in the Commodity Futures Modernization Act of 2000. The Dodd-Frank Act amended the definition of ECP as to the threshold for individuals to qualify as ECPs, changing ''an individual who has total assets in an amount in excess of'' to ''an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of . . . .'' Therefore, the threshold for ECP status is currently higher than was in place when the Commission certified that ECPs are not small entities for RFA purposes, meaning that there are likely fewer entities that could qualify as ECPs than when the Commission first made the determination.

[315] The sample data sets varied across SDRs and asset classes based on relative trade volumes. The sample represents data available to the Commission for swaps executed over a period of one month. These sample data sets captured 2,551,907 FX swaps, 98,145 credit default swaps, 357,851 commodities swaps, 603,864 equities swaps, and 276,052 interest rate swaps.

[316] *See* 44 U.S.C. 3501.

1. Revisions to Collection 3038–0096 (Relating to Part 45 Swap Data Recordkeeping and Reporting)

i. § 45.2—Swap Recordkeeping

The Commission is adopting changes that remove paragraphs (f) and (g) from § 45.2 and move the requirements of these paragraphs to amended § 49.12. Paragraphs (f) and (g) contain recordkeeping requirements specific to SDRs. Existing § 49.12 already incorporates the requirements of current § 45.2(f) and (g), and amended § 49.12 includes the same requirements, but deleting this requirement from § 45.2 and amending § 49.12 to clarify the requirements better organizes the regulations for SDRs by locating these SDR requirements in part 49 of the Commission's regulations. These amendments modify collection 3038–0096 because it removes these recordkeeping requirements from part 45 of the Commission's regulations. The Commission estimates that moving these requirements results in a reduction of 50 annual burden hours for each SDR in collection 3038–0096, for a total reduction of 150 annual burden hours across all three SDRs.

ii. § 45.14—Verification of Swap Data Accuracy and Correcting Errors and Omissions in Swap Data

Final § 45.14(a) requires SEFs, DCMs, and reporting counterparties to correct errors and omissions in swap data previously reported to an SDR, or erroneously not reported to an SDR as required, as soon as technologically practicable after discovery of the errors or omissions, similar to existing § 45.14. Also, similar to existing § 45.14, final § 45.14(a) requires a non-reporting counterparty to report a discovered error or omission to the relevant SEF, DCM, or reporting counterparty as soon as technologically practicable after discovery of the error or omission.[317] These requirements, being effectively the same as the requirements in existing § 45.14, do not require amendments to the collection.

Final § 45.14(a)(1)(ii) includes the new requirement for SEFs, DCMs, and reporting counterparties to notify the Director of DMO when errors or omissions cannot be timely corrected and, in such case, to provide the Director of DMO with an initial assessment of the errors and omissions and an initial remediation plan if one exists. The notification shall be made in the form and manner, and according to the instructions, specified by the Director of DMO. This requirement constitutes a new collection of information. The Commission estimates that each SEF, DCM, and reporting counterparty will, on average need to provide notice to the Commission under final § 45.14(a)(1)(ii) once per year and that each instance will require 6 burden hours.[318] As there are approximately 1,729 SEFs, DCMs, and reporting counterparties that handle swaps, the Commission estimates an overall additional annual hours burden of 10,374, hours related to this requirement. This estimate is based on the Commission's experience with the current practices of SEFs, DCMs, and reporting counterparties regarding the reporting of errors and omissions, including the initial assessments and remediation plans that SEFs, DCMs, and reporting counterparties provide to the Commission under current practice. The Commission does not anticipate any one-time, initial burdens related to final § 45.14(b)(1)(ii).

Final § 45.14(b) requires all reporting counterparties to verify the accuracy and completeness of all swap data for all open swaps to which they are the reporting counterparty. Reporting counterparties comply with this provision by utilizing the relevant mechanism(s) to compare all swap data for each open swap for which it serves as the reporting counterparty maintained by the relevant swap data repository or repositories with all swap data contained in the reporting counterparty's internal books and records for each swap, to verify that there are no errors in the relevant swap data maintained by the swap data repository. Additionally, reporting counterparties must conform to each relevant swap data repository's verification policies and procedures created pursuant to final § 49.11. Final § 45.14(b)(5) requires each reporting counterparty to keep a log of each verification that it performs. The log must include all errors discovered during the verification and the corrections performed under § 45.14(a). Compliance with § 45.14(b) constitutes a collection of information not currently included in collection 3038–0096, and therefore requires a revision of that collection.

The Commission expects that compliance with § 45.14(b) will include: (1) A one-time hours burden to establish internal systems needed to perform their verification responsibilities, and (2) an ongoing hours burden to complete the verification process for each report provided by an SDR.

In order to comply with the relevant SDR verification policies and procedures as required to complete the verification process, the Commission believes that reporting counterparties will create their own verification systems or modify their existing connections to the SDRs. The Commission estimates that each reporting counterparty will incur an initial, one-time burden of 100 hours to build, test, and implement their verification systems based on SDR instructions. This burden may be reduced, if complying with SDR verification requirements only requires reporting counterparties to make small modifications to their existing SDR reporting systems, but the Commission is estimating the burden based on the creation of a new system. The Commission also estimates an ongoing annual burden of 10 hours per reporting counterparty to maintain their verification systems and to make any needed updates to verification systems to conform to any changes to SDR verification policies and procedures. As there are approximately 1,702 reporting counterparties based on data available to the Commission, the Commission estimates a one-time overall hours burden of 170,200 hours to build reporting counterparty verification systems and an ongoing annual overall hours burden of 17,020 hours to maintain the reporting counterparty verification systems.

Under final § 45.14(b)(4), SD, MSP, or DCO reporting counterparties must perform verification once every thirty days for each SDR where the reporting counterparty maintains any open swaps. Non-SD/MSP/DCO reporting counterparties must perform verification once every calendar quarter for each SDR where the reporting counterparty maintains any opens swaps. The Commission also expects, based on discussions with SDRs and reporting

[317] The Commission notes that final § 45.14(a)(2) does add provisions that are not present in current § 45.14(a) to address the situation where a non-reporting counterparty does not know the identity of the reporting counterparty. The Commission does not believe that these additions have PRA implications, as the amount of information the non-reporting counterparty must provide and the frequency with which it must be provided remain the same and are de minimis. The only change is the requirement that non-reporting counterparties inform the SEF or DCM of errors, instead of the reporting counterparty. SEFs and DCMs have correction responsibilities under current § 45.14(b) and final § 45.14(a)(2) does not change these responsibilities.

[318] The Commission notes that, currently, it receives significantly less than one notice and initial assessment of reporting errors and omissions per SEF, DCM, or reporting counterparty per year, but estimates one notice annually, as the final requirements of § 45.14(a) may reveal more reporting errors to reporting counterparties that would then require corrections pursuant to final § 45.14(b).

counterparties, that the verification process will be largely automated for all parties involved. The Commission estimates an average burden of two hours per verification performed at each SDR per reporting counterparty.

As there are 117 SDs, MSPs, or DCOs that clear swaps registered with the Commission, the Commission estimates [319] that these 117 reporting counterparties will, at maximum, be required to verify data 13 times per year at a maximum of 3 SDRs, for an overall additional annual hours burden of 9,126 ongoing burden hours related to the verification process for these reporting counterparties. The Commission also estimates, based on data available to the Commission, that there are 1,585 non-SD/MSP/DCO reporting counterparties.[320] The Commission estimates that these 1,585 reporting counterparties will be required to, at maximum, verify data 4 times per year at a maximum of 3 SDRs, for an overall additional annual hours burden of 38,040 burden hours related to verification process for these reporting counterparties.

The Commission therefore estimates that the overall burden for updated Information Collection 3038–0096 will be as follows:

Estimated number of respondents affected: 1,732 SEFs, DCMs, DCOs, SDRs, and reporting counterparties.

Estimated annual number of responses per respondent: 257,595.

Estimated total annual responses: 446,154,540.

Estimated burden hours per response: 0.005.

Estimated total annual burden hours per respondent: 1,316.

Estimated aggregate total burden hours for all respondents: 2,279,312.

2. Revisions to Collection 3038–0070 (Real-Time Transaction Reporting)

§ 43.3—Method and Timing for Real-Time Public Reporting

Final § 43.3(e) requires SEFs, DCMs, and reporting counterparties to correct errors and omissions in swap transaction and pricing data as soon as technologically practicable after discovery. Final § 43.3(e) also requires a non-reporting counterparty to report a discovered error or omission to the relevant SEF, DCM, or reporting counterparty as soon as technologically practicable after discovery of the error or omission. These final rules clarify the requirements to be consistent with the requirements in final § 45.14(b), but are also effectively the same as the requirements of exiting § 43.3(e).[321] These requirements therefore do not require amendments to the collection.

Final § 43.3(e)(1)(ii) includes the new requirement for SEFs, DCMs, and reporting counterparties to notify the Director of DMO when errors or omissions cannot be timely corrected and, in such case, to provide the Director of DMO with an initial assessment of the errors and omissions and an initial remediation plan if one exists. This requirement constitutes a new collection of information. The Commission estimates that each SEF, DCM, and reporting counterparty will, on average need to provide notice to the Commission under final § 43.3(e)(1)(ii) once per year and that each instance will require 6 burden hours.[322] As there are approximately 1,729 SEFs, DCMs, and reporting counterparties that handle swaps, the Commission estimates an overall additional annual hours burden of 10,374 hours related to this requirement. This estimate is based on the Commission's experience with SEFs, DCMs, and reporting counterparties current practices regarding the reporting of errors and omissions, including the initial assessments that SEFs, DCMs, and reporting counterparties provide to the Commission under current practice. The Commission does not anticipate any one-time, initial burdens related to final § 43.3(e)(1)(ii).

The Commission is also removing paragraphs (f) and (g) from § 43.3 in order to move the requirements of these paragraphs to final § 49.28. Paragraphs (f) and (g) contain requirements for SDRs related to their operating hours. Final § 49.28 includes all of the current § 43.3(f) and (g) requirements, and this deletion and move is intended to better organize regulations for SDRs by locating as many SDR requirements as possible in part 49 of the Commission's regulations. Moving the requirements modifies collections 3038–0070 and 3038–0086 because it removes these recordkeeping requirements from part 43 of the Commission's regulations and adds them to part 49 of the Commission's regulations. The Commission estimates that the public notice requirements of existing § 43.3(f) and (g) require SDRs to issue three notices per year and spend five hours creating and disseminating each notice, for a total of 15 hours annually for each SDR, for a total of 45 annual burden hours being moved across all three SDRs. As a result, the Commission estimates that moving these requirements will result in a total reduction of 45 annual burden hours for SDRs in collection 3038–0070.

The Commission therefore estimates that the total overall burdens for updated Information Collection 3038–0070 will be as follows:

Estimated number of respondents affected: 1,732 SEFs, DCMs, DCOs, SDRs, and reporting counterparties.

Estimated annual number of responses per respondent: 21,247.

Estimated total annual responses: 36,799,804.

Estimated burden hours per response: 0.033.

Estimated total annual burden hours per respondent: 701.

Estimated aggregate total burden hours for all respondents: 1,214,392.

3. Revisions to Collection 3038–0086 (Relating to Part 49 SDR Regulations) [323]

The Commission is revising collection 3038–0086 to account for changes in certain SDR responsibilities under the final amendments to §§ 49.3, 49.5, 49.6, 49.9, 49.10, 49.11, and 49.26, and to the addition of §§ 49.28, 49.29, and 49.30. The estimated hours burdens and costs provided below are in addition to or subtracted from the existing hours burdens and costs in collection 3038–

[319] Though there are 117 SDs, MSPs, or DCOs that clear swaps registered with the Commission that could be a reporting counterparty, not all potential reporting counterparties will perform data verification for any given verification cycle. Only those reporting counterparties with open swaps are required to perform data verification for that verification cycle.

[320] Though there are 1,585 non-SD/MSP/DCOs that could be a reporting counterparty, not all potential reporting counterparties will perform data verification for any given verification cycle. Only those reporting counterparties with open swaps are required to perform data verification for that verification cycle.

[321] The Commission notes that final § 43.3(e)(2) does add provisions that are not present in current § 43.3(e)(1) to address the situation where a non-reporting counterparty does not know the identity of the reporting counterparty. The Commission does not believe that these additions have PRA implications, as the amount of information the non-reporting counterparty must provide and the frequency with which it must be provided remain the same as the current requirement and are de minimis. The only change is the requirement that non-reporting counterparties inform the SEF or DCM of errors, instead of the reporting counterparty. SEFs and DCMs have correction responsibilities under current § 43.3(e)(1) and final § 43.3(e)(2) does not change these responsibilities.

[322] The Commission notes that, currently, it receives significantly less than one notice and initial assessment of reporting errors and omissions per SEF, DCM, or reporting counterparty per year, but estimates one notice annually, as the final requirements of § 45.14(a) may reveal more reporting errors to reporting counterparties that would then require corrections pursuant to final § 43.3(e).

[323] The Commission is also proposing to reduce the number of SDRs used in collection 3038–0086 to calculate burdens and costs from 4 to 3. There are currently three SDRs provisionally registered with the Commission. The Commission has not received any applications for SDR registration since 2012.

0086. The Commission also describes a number of changes to sections that do not have PRA implications below, for clarity.

i. § 49.3—Procedures for Registration

The final amendments to § 49.3(a)(5) remove the requirement for each SDR to file an annual amendment to its Form SDR. This reduces the PRA burden for SDRs by lowering the number of filings required for each SDR. The Commission estimates that the PRA burden for each SDR will remain at 15 hours per filing, but that the number of filings per year will be reduced from three to two, meaning that the final amendments to § 49.3(a)(5) reduces the burden on SDRs by 15 hours per year, for a total reduction of 45 annual burden hours across all three SDRs. This estimate is based on the Commission's experience with current SDR practices and the original supporting statement for collection 3038–0086.[324] The Commission does not anticipate any one-time, initial burden changes related to final § 49.3(a)(5).

ii. § 49.5—Equity Interest Transfers

The final amendments to § 49.5 require SDRs to file a notification with the Commission for each transaction involving the direct or indirect transfer of ten percent or more of the equity interest in the SDR within ten business days of the firm obligation to transfer the equity interest, to provide the Commission with supporting documentation for the transaction upon the Commission's request, and, within two business days of the completion of the equity interest transfer, to file a certification with the Commission that the SDR will meet all of its obligations under the Act and the Commission's regulations. The Commission estimates that the requirements of final § 49.5 create a burden of 15 hours per SDR for each qualifying equity interest transfer. Equity interest transfers for SDR are rare, so the Commission estimates that each SDR will provide information pursuant to final § 49.5 no more often than once every three years. As a result, the estimated average annual PRA burden related to final § 49.5 is 5 hours per SDR, for a total estimated ongoing annual burden of 15 hours total for all three SDRs. The Commission does not anticipate any one-time, initial burdens related to final § 49.5.

iii. § 49.6—Request for Transfer of Registration

The final amendments to § 49.6 require an SDR seeking to transfer its registration to another legal entity due to a corporate change to file a request for approval with the Commission before the anticipated corporate change, including the specific documents and information listed in final § 49.6(c). The Commission estimates that the requirements of final § 49.6 create a burden of 15 hours per SDR for each transfer of registration. Transfers of registration for SDR are rare, so the Commission estimates that each SDR will provide information pursuant to final § 49.6 no more often than once every three years. As a result, the estimated average annual PRA burden related to final § 49.6 is 5 hours per SDR, for a total estimated ongoing annual burden of 15 hours total for all three SDRs. The Commission does not anticipate any one-time, initial burdens related to final § 49.6.

iv. § 49.9—Open Swaps Reports Provided to the Commission

The final amendments to § 49.9 remove the current text of the section and replace it with requirements related to SDRs providing open swaps reports to the Commission, as instructed by the Commission. The instructions may include the method, timing, frequency, and format of the open swaps reports.

The Commission estimates that SDRs will incur a one-time initial burden of 250 hours per SDR to create or modify their systems to provide the open swaps reports to the Commission as instructed, for a total estimated hours burden of 750 hours. This burden may be mitigated by the fact that SDRs currently have systems in place to provide similar information to the Commission, which may reduce the effort needed to create or modify SDRs' systems. The Commission additionally estimates 30 hours per SDR annually to perform any needed maintenance or adjustments to SDR systems.

The Commission expects that the process for providing the open swaps reports to the Commission will be largely automated and therefore estimates a burden on the SDRs of 2 hours per report. Though the Commission is not prescribing the frequency of the open swaps reports at this time, the Commission estimates, only for the purposes of this burden calculation, that the SDRs will provide the Commission with 365 open swaps reports per year, meaning that the estimated ongoing annual additional hours burden for generating the open swaps reports and providing the reports to the Commission is 730 hours per SDR.

The Commission therefore estimates a total ongoing additional annual hours burden related to final § 49.9 of 760 hours per SDR,[325] for a total estimated ongoing annual burden of 2,280 hours.

v. § 49.10—Acceptance of Data

Final § 49.10(e) requires SDRs to accept, process, and disseminate corrections to SDR data errors and omissions. Final § 49.10(e) also requires SDRs to have policies and procedures in place to fulfill these requirements.

The Commission estimates that SDRs will incur a one-time initial burden of 100 hours per SDR to update and implement the systems, policies, and procedures necessary to fulfill their obligations under final § 49.10(e), for a total increased initial hours burden of 300 hours across all three SDRs. This burden may be mitigated by the fact that SDRs already have systems, policies, and procedures in place to accomplish corrections to SDR data and that the SDRs currently make such corrections on a regular basis. The Commission additionally estimates 30 hours per SDR annually to perform any needed maintenance on correction systems and to update corrections policies and procedures as needed.

The Commission anticipates that the process for SDRs to perform corrections will be largely automated, as this is the case with current SDR corrections. Based on swap data available to the Commission and discussions with the SDRs, the Commission estimates that an SDR will perform an average of approximately 2,652,000 data corrections per year. Based on the same information, the Commission estimates that performing each correction will require 2 seconds from an SDR. As a result, the Commission estimates that the ongoing burden of performing the actual corrections to SDR data will be approximately 1,473 hours per SDR annually, on average. The Commission anticipates that once applicable, the verification rules may have the short term effect of increasing the number of corrections per year, as reporting counterparties discover errors in open swaps. The Commission further anticipates that the number of corrections will then decrease as the new validation rules and revised technical specifications improve the quality and accuracy of initial reporting, reducing the number of corrections.

[324] The original supporting statement for collection 3038–0086 estimated that the requirements of current § 49.3(a)(5) will necessitate three filings per year and 15 hours per filing.

[325] 730 hours for the open swaps reports, and 30 hours to perform system maintenance.

The Commission therefore estimates a total additional annual hours burden related to final § 49.10(e) of 1,503 hours per SDR annually, for a total estimated ongoing burden of 4,509 hours.

vi. § 49.11—Verification of Swap Data Accuracy

The final amendments to § 49.11 modify the existing obligations on SDRs to confirm the accuracy and completeness of swap data. Final § 49.11(b) requires SDRs to provide a mechanism that allows each reporting counterparty that is a user of the swap data repository to access all swap data maintained by the swap data repository for each open swap for which the reporting counterparty is serving as the reporting counterparty. Final §§ 49.11(a) and 49.11(c) [326] do not have PRA implications beyond the burdens discussed for paragraph (b) below.

While SDRs are already required to confirm the accuracy and completeness of swap data under current § 49.11, the requirements in final § 49.11 impose different burdens on the SDRs than the current regulation. The Commission estimates that each SDR will incur an initial, one-time burden of 300 hours to build, test, and implement updated verification systems, for a total of 900 initial burden hours across all SDRs. The Commission also estimates 30 hours per SDR annually for SDRs to maintain their verification systems and make any needed updates to verification policies and procedures required under final § 49.11(a) and (c).

Currently, SDRs are required to confirm swap data by contacting both counterparties for swaps that are not submitted by a SEF, DCM, DCO, or third-party service provider every time the SDR receives swap data related to the swap. For swaps reported by a SEF, DCM, DCO, or third-party service provider, the SDRs must currently assess the swap data to form a reasonable belief that the swap data is accurate every time swap data is submitted for a swap. Under final § 49.11(b) and (c), SDRs are only required to provide the mechanism that will allow reporting counterparties to perform verification, as described above. The Commission also anticipates, based on discussions with SDRs and other market participants, that the verification process will be largely automated once the processes are in place, and will consist of an annual burden of 30 hours per SDR.

The Commission therefore estimates a total additional ongoing hours burden related to final § 49.11 of 60 hours per SDR annually,[327] for a total estimated ongoing burden of 180 hours.

vii. § 49.12—Swap Data Repository Recordkeeping Requirements

The final amendments to § 49.12(a) and (b) incorporate existing SDR recordkeeping obligations from § 45.2(f) and (g) respectively, which are already applicable to SDRs under current § 49.12(a). As the recordkeeping requirements being moved from § 45.2 already apply to SDRs under current § 49.12, the Commission does not believe that amended § 49.12(a) or (b) requires any revision to hours burden related to § 49.12 already included in collection 3038–0086. Final amendments to § 49.12(c) require SDRs to maintain records of data validation errors and of data reporting errors, which include records of data subsequently corrected by a SEF, DCM, or reporting counterparty pursuant to parts 43, 45, and 46. Final § 49.12(c) does not, however, add any new requirement to part 49, as all of the records to be kept are already required to be kept by existing recordkeeping obligations as data submitted under part 43, 45, or 46. As a result, the Commission does not believe that final § 49.12(c) requires an additional PRA burden beyond that already included in collection 3038–0086.

viii. § 49.26—Disclosure Requirements of Swap Data Repositories

Final new § 49.26(j) requires SDRs to provide their users and potential users with the SDR's policies and procedures on reporting SDR data, including SDR data validation procedures, swap data verification procedures, and SDR data correction procedures. The Commission anticipates that SDRs will incur a one-time burden of 20 burden hours to draft written documents to provide to their users and potential users, for a total increase of 60 one-time burden hours across SDRs. The Commission also anticipates that SDRs will update their policies once per year and incur a recurring burden of 10 hours annually from providing any updated reporting policies and procedures to their users and potential users, as needed, for a for a total estimated ongoing annual burden of 30 hours across the three SDRs.

ix. § 49.28—Operating Hours of Swap Data Repositories

Final new § 49.28 incorporates existing provisions of § 43.3(f) and (g) with respect to hours of operation with minor changes and clarifications. Final § 49.28 extends the provisions of current § 43.3(f) and (g) to include all SDR data and clarifies the different treatment of regular closing hours and special closing hours. SDRs currently have closing hours systems, policies, and procedures that apply to all SDR functions and all SDR data under the current requirements. The final requirements related to declaring regular closing hours and special closing hours also effectively follow current requirements, without necessitating changes to current SDR systems or practices. The Commission does, however, anticipate that the SDRs will need to issue notices to the public related to closing hours under final § 49.28(a) and (c). The Commission estimates that each SDR will issue three notices per year and spend five hours creating and disseminating each notice, for a total of 15 hours per year preparing and providing public notices per SDR, for a for a total estimated ongoing annual burden of 45 hours per year across all SDRs.

x. § 49.29—Information Relating to Swap Data Repository Compliance

Final new § 49.29 requires each SDR to provide, upon request by the Commission, information relating to its business as an SDR, and such other information that the Commission needs to perform its regulatory duties. This provision also requires each SDR, upon request by the Commission, to provide a written demonstration of compliance with the SDR core principles and other regulatory obligations. The PRA burden associated with such responses is dependent on the number of requests made and the complexity of such requests. Based on its experience with requests to DCMs, the Commission estimates that each SDR will likely receive on average between three and five requests per year, considering that an SDR is a newer type of registered entity than a DCM. The Commission anticipates that the number of requests will decrease over time. The Commission also anticipates that each such request will require the SDR to spend 20 hours to gather information and formulate a response, and bases its estimate of burden hours assuming five such requests per year, for a total additional hours burden of 100 hours per SDR per year, for a total estimated ongoing annual burden of 300 hours per

[326] The Commission notes that requirements of part 40 of the Commission's regulations apply to SDRs amending their verification policies and procedures regardless of final § 49.11(c), because verification policies and procedures fall under the part 40 definition of a ''rule.'' *See* 17 CFR 40.1(i) (definition of rule for the purposes of part 40). PRA implications for final § 49.11(c) are included under the existing approved PRA collection for part 40 of the Commission's regulations.

[327] 30 hours for system maintenance and 30 hours for the verification process.

year across all SDRs. The Commission does not anticipate that SDRs will incur any one-time hours burden or costs in complying with this regulation.

The Commission therefore estimates that the total overall burdens for updated Information Collection 3038–0086 will be as follows:

Estimated number of respondents affected: 3 SDRs.

Estimated annual number of responses per respondent: 154,327,169.

Estimated total annual responses: 462,981,508.

Estimated burden hours per response: 0.0006.

Estimated total annual burden hours per respondent: 99,197.

Estimated aggregate total burden hours for all respondents: 297,591.

C. Cost-Benefit Considerations

1. Introduction

Section 15(a) [328] of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

In this release, the Commission is revising existing regulations in parts 43, 45, and 49. The Commission is also issuing new regulations in part 49. Together, these revisions and additions are intended to address swap data verification and to improve the quality of data reporting generally. Some of the amendments are substantive. A number of amendments, however, are non-substantive or technical, and therefore will not have associated cost-benefits implications.[329]

In the sections that follow, the Commission discusses the costs and benefits associated with the final rule and reasonable alternatives are considered. Comments addressing the associated costs and benefits of the rule are addressed in the appropriate sections. Wherever possible, the Commission has considered the costs and benefits of the final rule in quantitative terms.

Given that many aspects of the Proposal did not dictate the means by which SDRs or reporting counterparties must comply, the Commission recognized that the quantitative impact of the proposed rule would vary by each entity because the affected market participants vary in technological and staffing structure and resources. The Commission also noted in the Proposal that because of differences in the sizes of SDR operations, many of the costs associated with the proposed rulemaking were not readily quantifiable without relying on and potentially divulging confidential information. The Commission believed that many of the proposed rules would have affected a wide variety of proprietary reporting systems developed by SDRs and reporting counterparties.

With these understandings, the Commission asked the public to provide information regarding quantitative costs and benefits related to complying with the Commission's proposed rules. The Commission received comments from market participants, such as SDRs and reporting counterparties, and other interested public commenters. Some of the commenters asserted that some of the proposed rules would generate significant or burdensome costs, but no commenters quantified such costs. Nor did commenters, in particular the limited universe of market participants required to report and collect data, quantify costs they currently expend to comply with current swap data reporting requirements.[330] If the Commission possessed information regarding current and actual costs, the Commission could consider current monetary outlays against the anticipated quantitative costs and benefits needed to comply with the rules in this final rulemaking.

As a result, the Commission has considered the costs and benefits of the rules in this final rulemaking and has provided broad ranges of estimates of the costs associated with implementing some of the rule changes. It is reasonable to use ranges because the final rules are flexible, which means SDRs and reporting counterparties will take different approaches to comply with the final rules. In addition, ranges account for variation in technological and staffing structure, resources, and operational sophistication of affected market participants.

In several of the sections below, the Commission has estimated the number of hours it believes market participants will likely expend to comply with the final rules. These cost estimates focus on the technical aspects of the final rules and are separate from those listed in the Paperwork Reduction Act discussion above in section VII.B. The Commission has made reasonable estimations based, in part, on its familiarity with the work of SDRs and reporting counterparties, and its own experience in building systems to collect swap data. To monetize the hours, the Commission multiplies the number of hours and an hourly wage estimate. As most of the final rules may require technological changes, the Commission uses hourly wages for developers. The Commission estimated the hourly wages market participants will likely pay software developers to implement changes to be between $48 and $101 per hour.[331] The Commission recognizes that for some services—like compliance review, and legal drafting and review—the wage rates may be more or less than the $48 to $101 range for developers. The Commission believes, however, that the estimated cost ranges, discussed below, will cover most budgets for tasks, regardless of the exact nature of the tasks needed to comply with the final rules.

2. Background

Since their promulgation in 2011, the provisions in part 49 have required SDRs to, among other things, accept and confirm data reported to SDRs. The Commission believes SDRs' collection and maintenance of swap data as required in parts 45 and 49 has allowed the Commission to better monitor the overall swaps market and individual market participants. In contrast, before the adoption of the Dodd-Frank Act and its implementing regulations, the swaps

[328] 7 U.S.C. 19(a).

[329] The Commission believes there are no cost-benefit implications for Final §§ 49.2, 49.15, 49.16, 49.18, 49.20, 49.24, and 49.31.

[330] *See* section I above for discussion of the history behind swaps data reporting required by CEA section 21.

[331] Hourly wage rates were based on the Software Developers and Programmers category of the May 2019 National Occupational Employment and Wage Estimates Report produced by the U.S. Bureau of Labor Statistics, *available at https://www.bls.gov/oes/current/oes_nat.htm.* The 25th percentile was used for the low range and the 90th percentile was used for the upper range ($36.89 and $78.06, respectively). Each number was multiplied by an adjustment factor of 1.3 for overhead and benefits (rounded to the nearest whole dollar) which is in line with adjustment factors the Commission has used for similar purposes in other final rules adopted under the Dodd-Frank Act. *See, e.g.,* 77 FR at 2173 (Jan. 13, 2012) (using an adjustment factor of 1.3 for overhead and other benefits). These estimates are intended to capture and reflect U.S. developer hourly rates market participants are likely to pay when complying with the proposed changes. The Commission recognizes that individual entities may, based on their circumstances, incur costs substantially above or below the estimated averages.

market generally, and transactions and positions of individual market participants in particular, were not transparent to regulators or the public.

Under the current data reporting requirements, the Commission has had the opportunity to work directly with SDR data reported to, and held by, SDRs. Based on its experience working with SDR data, along with extensive feedback and comments received from market participants, the Commission believes that improving SDR data quality will help enhance the data's usefulness. In this final rulemaking, the Commission has focused on the operation and implementation of CEA section 21,[332] which contains requirements related to SDRs, including the requirement to confirm data.[333] The Commission also is modifying a number of other regulations for clarity and consistency and to enhance the Commission's ability to monitor and supervise the swaps market.

Prior to discussing the rule changes, the Commission describes below the current environment that will be impacted by these changes. Three SDRs are currently provisionally registered with the Commission: CME, DDR, and ICE. Each SDR has unique characteristics and structures that determine how the rule changes will impact its operations. For example, SDRs affiliated with DCOs tend to receive a large proportion of their SDR data from swaps cleared through those affiliated DCOs, while independent SDRs tend to receive SDR data from a wider range of market participants.

The current reporting environment also involves third-party service providers. These entities assist market participants with fulfilling the applicable data reporting requirements, though the reporting requirements do not apply to third-party service providers directly.

Current regulations have not resulted in data quality that meets the Commission's expectations. For example, current regulations do not include a specific affirmative obligation for swap counterparties to review reported swap data for errors.[334] Swap counterparties are required to correct data errors only if inaccurate data is discovered, and therefore data quality is partially dependent on processes that are not mandated by the Commission. The result has been that market participants too often have not reviewed data and corrected any errors. It is not uncommon for Commission staff to find discrepancies between open swaps information available to the Commission and reported data for the same swaps. For example, in processing open swaps reports to generate the CFTC's Weekly Swaps Report,[335] Commission staff has observed instances where the notional amount of a swap differs from the swap data reported to an SDR for the same swap. Other common examples of discrepancies include incorrect references to an underlying currency, such as a notional value incorrectly linked to U.S. dollars instead of Japanese Yen. These examples, among others, strongly suggest a need for better verification of reported swap data.

Weaknesses in SDR policies and procedures also have created additional challenges for swap data accuracy. As discussed above, certain SDR policies and procedures for swap data have been based on negative affirmation, *i.e.,* predicated on the assumption that reported swap data is accurate and confirmed if a reporting counterparty does not inform the SDR of errors, or otherwise make subsequent modifications to the swap data, within a certain period of time.[336] As reporting counterparties are typically not reviewing their reported swap data maintained by SDRs, the data is effectively assumed to be accurate, and errors are not sufficiently discovered and corrected. The volume of inaccurate swap data that is discovered by market participants or the Commission shows that current regulations are ineffective in producing the quality of swap data the Commission expects and needs to fulfill its regulatory responsibilities.

The Commission believes that amendments and additions to certain regulations, particularly in parts 43, 45, and 49, will improve data accuracy and completeness. The regulatory changes in this final rulemaking aim to meet this objective.

This final rulemaking also includes amendments to part 49 to improve and streamline the Commission's oversight of SDRs. These amendments include new provisions allowing the Commission to request demonstrations of compliance and other information from SDRs.

For each amendment discussed below, the Commission summarizes the changes,[337] and identifies and discusses the costs and benefits attributable to the changes. The Commission then considers reasonable alternatives to the rules. Finally, the Commission considers the costs and benefits of all of the rules jointly in light of the five public interest considerations in CEA section 15(a).

The Commission notes that this consideration of costs and benefits is based on the understanding that the swaps market functions internationally. Many swaps transactions involving U.S. firms occur across international borders and some Commission registrants are organized outside of the United States, with leading industry members often conducting operations both within and outside the United States, and with market participants commonly following substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the discussion of costs and benefits refers to the rules' effects on all swaps activity, whether by virtue of the activity's physical location in the United States or by virtue of the activity's connection with, or effect on, U.S. commerce under CEA section 2(i).[338] The Commission contemplated this cross-border perspective in 2011 when it adopted § 49.7, which applies to trade repositories located in foreign jurisdictions.[339]

3. Baseline

There are separate baselines for the costs and benefits that arise from the finalized regulations in this release. The baseline for final § 43.3(e) is existing § 43.3(e). The baseline for final § 45.14 is existing § 45.14. The baseline for amendments to current part 49 regulations is the existing part 49 and current practices. For final § 49.12, the baseline is existing § 49.12, as well as

[332] *See* 7 U.S.C. 24a.

[333] *See* 7 U.S.C. 24a(c)(2).

[334] *See* 17 CFR 43.3(e); 17 CFR 45.14.

[335] *See* CFTC's Weekly Swaps Report, *available at https://www.cftc.gov/MarketReports/SwapsReports/index.htm.*

[336] *See* 17 CFR 49.11(b)(1)(ii) and (b)(2)(ii).

[337] As described throughout this release, the Commission is also proposing a number of non-substantive, conforming rule amendments in this release, such as renumbering certain provisions and modifying the wording of existing provisions. Non-substantive amendments of this nature may be described in the cost-benefit portion of this release, but the Commission will note that there are no costs or benefits to consider.

[338] *See* 7 U.S.C. 2(i). CEA section 2(i) limits the applicability of the CEA provisions enacted by the Dodd-Frank Act, and Commission regulations promulgated under those provisions, to activities within the U.S., unless the activities have a direct and significant connection with activities in, or effect on, commerce of the U.S.; or contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of the CEA enacted by the Dodd-Frank Act. The application of section 2(i)(1) to § 45.2(a), to the extent it duplicates § 23.201, with respect to SDs/MSPs and non-SD/MSP counterparties is discussed in the Commission's final rule, ''Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants,'' 85 FR 56924, 56965–66 (Sept. 14, 2020).

[339] *See* 17 CFR 49.7.

§ 45.2(f) and (g), which will be replaced by final § 49.12. For final § 49.17, the baseline is current §§ 49.17 and 45.13.

The Commission is also finalizing four new regulations: §§ 49.28, 49.29, 49.30, and 49.31. For final § 49.28 the baseline is existing § 43.3(f) and (g), because the requirements in § 43.3(f) and (g) are being moved to final § 49.28. For final §§ 49.29 and 49.30, the baselines are current practices. Final § 49.31 concerns internal Commission practices and is not subject to consideration of costs and benefits.

4. Costs and Benefits of Amendments to Part 49

i. § 49.2—Definitions

The Commission is adopting editorial and conforming amendments to certain definitions in final § 49.2. The Commission considers the definitions to have no cost-benefit implications on their own. In addition, the Commission believes the amendments to § 49.2 are non-substantive changes that will not impact existing obligations on SDRs or reporting counterparties, and, therefore, the amended definitions have no cost-benefit implications.

ii. § 49.3—Procedures for Registration

The Commission is adopting the amendments to § 49.3(a)(5) and the conforming amendments to Form SDR and § 49.22(f)(2) as proposed in part and is not adopting the proposed amendments in part. The Commission is removing the current requirements for SDRs to file an annual amendment to Form SDR but declines to amend the requirement to update the Form SDR after the Commission grants an SDR registration under § 49.3(a).[340] The annual Form SDR filing requirement is unnecessary for the Commission to successfully perform its regulatory functions.

The amendments to § 49.3(a)(5) benefit SDRs by reducing the amount of information that SDRs must provide to the Commission on an annual basis and the frequency with which SDRs must deliver information updating Form SDR.

By removing the requirement to file an annual update to Form SDR in current § 49.3(a)(5), SDRs will benefit from expending fewer resources to provide information to the Commission. The Commission believes that the eliminated requirement is burdensome and unnecessary, as the SDRs already submit, and will continue to submit, the same updated information in the required periodic Form SDR amendments. The Commission believes that costs of eliminating the annual Form SDR update requirement, in terms of impairing the Commission's access to information, will be minimal. The costs related to the changes to § 49.3(a)(5) will largely be associated with any needed adjustments to SDR policies and procedures related to reducing the number of updates to Form SDR.

Notwithstanding the anticipated incremental costs, the Commission believes this change to § 49.3(a)(5) is warranted in light of the anticipated benefits.

iii. § 49.5—Equity Interest Transfers

The Commission is finalizing various amendments to § 49.5 to simplify and streamline the requirements for when an SDR enters into an agreement involving the transfer of an equity interest of ten percent or more in the SDR. The Commission also is extending the notice filing deadline.

Current § 49.5 requires three actions by an SDR as part of an equity interest transfer: (1) Issue a notice to the Commission within one business day of committing to the transfer; (2) submit specific documents to the Commission, as well as update its Form SDR; and (3) certify compliance with CEA section 21 and Commission regulations adopted thereunder within two business days of the transfer of equity.

Final § 49.5 is less demanding than current § 49.5. Final § 49.5 ensures that the Commission is apprised of a change that might impact SDR operations and provided with information to aid any evaluation processes the Commission undertakes. Yet, final § 49.5 gives an SDR more time in which to notify the Commission of an equity interest transfer and eliminates unnecessary filings. Final § 49.5(a) requires an SDR: (i) To notify the Commission of each transaction involving the direct or indirect transfer of ten percent or more of the equity interest in the SDR within ten business days of ''a firm obligation to transfer''; and (ii) to provide the Commission with supporting documentation upon request. Final § 49.5(b) requires that the notice in § 49.5(a) be filed electronically with the Secretary of the Commission and DMO at the earliest possible time, but in no event later than ten business days following the date upon which a firm obligation is made for the equity interest transfer. Final § 49.5(c) requires that upon the transfer, whether directly or indirectly, the SDR shall file electronically with the Secretary of the Commission and DMO a certification that the SDR meets all of the requirements of CEA section 21 and the Commission regulations thereunder, no later than two business days following the date on which the equity interest was acquired.

The Commission requested the public to comment on the cost-benefit considerations related to proposed § 49.5, but the Commission did not receive any comments. Consequently, the Commission continues to believe that the amendments will benefit SDRs by lowering the burdens related to notifying the Commission of equity interest transfers and by extending the time SDRs have to file the notice with the Commission. The amendments benefit SDRs by reducing the burden to notify the Secretary of the Commission and DMO of transfers by extending the available time from one business day to ten business days. More time will give SDRs greater latitude in managing how they use their time and allocate resources to file the required notices and certification.

In addition, SDRs will no longer have the obligations in current § 49.5(a) to update Form SDR and in current § 49.5(b) to provide specifically-identified documents to the Commission with the equity interest transfer notification. Final § 49.5 instead states that the Commission may request supporting documentation for the transaction. Even if the request causes the SDR to submit more documents than the ones listed in the current regulation or Form SDR, the requested documents will be tailored to the Commission's evaluation of the equity transfer. SDRs will benefit from not expending resources and time to collect, file, record, and track documents listed in current § 49.5 that may have no value to the Commission's review. The Commission's ability to request supporting documentation mitigates costs in terms of detrimental effects that could arise from less information about the transfer being available to the Commission.

Additional costs to SDRs, if any, will stem from the inclusion of ''indirect transfers'' of equity interest in § 49.5. This could increase the costs to SDRs, if the inclusion of indirect transfers results in more equity interest transfers being subject to the regulation and the associated need to provide information to the Commission. The inclusion of indirect transfers benefits the Commission by providing greater insight into equity interest transfers that could affect the business of an SDR, even though the equity interest transfer does not involve the SDR directly. As equity interest transfers are rare occurrences and the Commission does not anticipate that including indirect transfers will result in substantially more equity interest transfers, the

[340] *See* 17 CFR 49.3(a)(5).

Commission expects the potential additional costs connected to final § 49.5 to be small.

Notwithstanding the anticipated incremental costs, the Commission believes the changes to § 49.5 are warranted in light of the anticipated benefits.

iv. § 49.6—Request for Transfer of Registration

The Commission is finalizing § 49.6 as proposed. Final § 49.6(a) requires an SDR seeking to transfer its SDR registration following a corporate change to file a request for approval to transfer the registration with the Secretary of the Commission in the form and manner specified by the Commission. Final § 49.6(b) specifies that an SDR file a request for transfer of registration as soon as practicable before the anticipated corporate change. Final § 49.6(c) sets forth the information that must be included in the request for transfer of registration, including the documentation underlying the corporate change, the impact of the change on the SDR, governance documents, updated rulebooks, and representations by the transferee entity, among other things. Final § 49.6(d) specifies that upon review of a request for transfer of registration, the Commission, as soon as practicable, shall issue an order either approving or denying the request for transfer of registration.

The Commission sought public comment on its cost-benefit considerations related to § 49.6. The Commission did not receive any comments.

The Commission continues to believe that § 49.6 will not impose any additional costs on SDRs compared to the current requirements that include meeting filing deadlines for submitting a Form SDR. The amendments to § 49.6 create several benefits that include simplifying the process for requesting a transfer of SDR registration and reducing the burdens on SDRs for successfully transferring an SDR registration to a successor entity. Final § 49.6 eliminates duplicative filings by requiring a more limited scope of information and representations from the transferor and transferee entities than existing § 49.6, which requires a full application for registration on Form SDR, including all Form SDR exhibits. Final § 49.6 focuses on ensuring the Commission receives relevant information needed to approve a request for a transfer of an SDR registration promptly.

v. § 49.9—Open Swaps Reports Provided to the Commission

The Commission is finalizing § 49.9 as proposed. Final § 49.9 creates a new regulatory obligation by requiring an SDR to provide the Commission with an open swaps report that contains an accurate reflection of data for every swap data field required to be reported under part 45 for every open swap maintained by the SDR.

Final § 49.9 alters current § 49.9 substantially. Current § 49.9 does not specifically discuss open swaps reports; rather, it outlines twelve SDR duties through cross-references to other part 49 regulations. For example, current § 49.9 states that SDRs must ''accept swap data as prescribed in § 49.10;'' provide direct electronic access to the Commission ''as prescribed in § 49.17;'' and adopt disaster recovery plans ''as prescribed in § 49.23 and § 49.13.'' [341] The Commission is removing the list of duties in § 49.9 and replacing it with a regulation that assigns SDRs the obligation to issue open swaps reports to the Commission.[342]

The Commission requested public comment on its consideration of the costs and benefits related to proposed § 49.9. The Commission did not receive any comments.

The Commission believes that while there may be costs imposed by final § 49.9, costs will be mitigated by the fact that SDRs already send the Commission reports that are similar to the open swaps reports required by final § 49.9. Given that SDRs already have systems to issue reports, the adjustments SDRs must undertake to comply with final § 49.9 should be incremental in terms of financial and administrative outlays to modify technological infrastructures to meet the Commission's requirements. The Commission believes the costs may include expenditures to modify current reporting systems to meet the requirements for the open swaps reporting systems and costs to maintain SDR systems.

Currently, SDRs produce reports using differing approaches to calculations and formats. There may be costs to change systems to meet the Commission's required standardized format for open swaps reports. The Commission, however, does not expect the format of these reports to change frequently. The Commission believes a standardized report will ensure the report is in a more usable format that assists and improves the Commission's regulatory efforts. The Commission uses current SDR reports to perform market risk and position calculations. The Commission also uses SDR reports to create and publish the Commission's weekly swaps report and quarterly entity-netted notional reports. The Commission-issued reports benefit market participants and the public by providing and analyzing data sourced directly from the SDRs. This information on open swaps is unique and is not available to the public until the Commission publishes its reports.

The Commission recognizes that the three existing SDRs vary in size of operations. They also service and process different volumes of data for various asset classes. As a result, the qualitative and quantitative costs to comply with § 49.9 will differ between SDRs. Notably, however, no commenters submitted estimates of time or monetized costs for proposed § 49.9 or the amount of current costs to produce reports. Based on the Commission's knowledge of SDRs and its own technological experience, the Commission estimates that each SDR will expend 250 hours to establish an open swaps report system that complies with § 49.9. Thereafter, the Commission estimates that each SDR will spend 30 hours on maintenance and 730 hours dedicated to issuing open swaps reports annually. The Commission monetizes the initial set-up and annual hours by multiplying by the wage-rate range of $48 to $101 to estimate that each SDR will expend $12,000 to $25,250 to establish an open swaps report system and then expend $36,480 to $76,760 for annual maintenance and reporting.[343]

The Commission considered and rejected the alternative of not adopting § 49.9. The Commission believes that the absence of a requirement for open swaps reports creates regulatory ambiguity and the possibility that SDRs might stop voluntarily producing open swaps reports. If the latter were to

[341] 17 CFR 49.9(a).

[342] The Commission believes that removing the list of duties in § 49.9 is a non-substantive change that does not implicate cost or benefit considerations, because the list consists of cross-references to other regulations. The costs and benefits of the addition of new requirements in final § 49.9 are considered below.

[343] *See supra* note 344 (discussion of BLS wage estimates). These estimates, discussed here and below, focus on the costs and benefits of the amended rules market participants are likely to encounter with an emphasis on technical details, implementation, and market-level impacts. Where software changes are expected, these costs reflect software developer labor costs only, not a blend of different occupations. Costs and benefits quantified at the market participant or reporting entity level are listed in the Paperwork Reduction Act discussion above in section VII.B and reflect blended burden costs as defined in the supporting statement for Part 49. Those costs are not repeated in this section. Wherever appropriate, quantified costs reflected in the Paperwork Reduction Act discussion are noted below.

occur, the weekly swaps report would be adversely impacted, possibly temporarily eliminated, and efforts to inform the public of developments in swaps markets would be hindered. This cost is significant because SDR reports and Commission-issued reports have become invaluable to the public's and the Commission's understanding of derivatives markets.

Notwithstanding the costs and in light of the drawbacks of possible alternatives, the Commission believes § 49.9 is warranted in light of the anticipated benefits.

vi. § 49.10—Acceptance of Data

Final § 49.10(e) requires an SDR to accept corrections for errors in SDR data that was previously reported, or erroneously not reported, to SDRs. The Commission is finalizing § 49.10(e)(1) through (4) generally as proposed, with modifications and textual clarifications in response to public comments. The final rule sets forth the specific requirements SDRs will need to satisfy under § 49.10(e): (i) Accept corrections for errors reported to, or erroneously not reported to, the SDR until the end of the record-keeping retention period under § 49.12(b)(2); (ii) record corrections as soon as technologically practicable after accepting the corrections; (iii) disseminate corrected SDR data to the public and the Commission, as applicable; and (iv) establish, maintain, and enforce policies and procedures designed to fulfill these responsibilities under § 49.10(e)(1) through (3).

In the Proposal, the Commission explained that § 49.10(e) could impose some costs on SDRs, but that the costs would not be significant and are largely related to any needed updates to SDR error correction systems. The Commission based its belief, in part, on the fact that SDRs are currently required to identify cancellations, corrections, and errors under parts 43 and 45.[344] Joint SDR commented that this is an incorrect understanding because SDRs ''make available facilities to reporting entities to meet their obligations to make such corrections.'' [345] Joint SDR added: ''In order for an SDR to take on the new obligation of making corrections, rather than allowing a reporting entity to submit corrections themselves, would necessitate significant changes to the SDR's systems.'' [346] Joint SDR also stated that it would be costly to make corrections to data for dead swaps. They specifically explained: ''This requirement would be costly for the SDRs as data will need to be maintained in a readily accessible format for an unlimited amount of time and the SDR will be unable to archive the data in accordance with its internal policies and procedures.'' [347]

The Commission is persuaded by commenters' statements that proposed § 49.10(e) would be costly and burdensome without changes. Given that final § 49.10(e) must be read with final §§ 43.3(e), 45.14, and 49.11, SDRs' costs related to § 49.10(e) should be far less than anticipated.

The Commission believes that there will be costs connected with implementing final § 49.10(e). Currently, SDRs must accept and record data, as well as disseminate calculations and corrections to SDR data.[348] Final § 49.10(e) might require SDRs to expend incremental costs in terms of financial and staff outlays to adjust systems to ''accept'' and ''record'' corrections. These incremental costs should be limited because, as mentioned earlier, SDRs already make facilities available to reporting counterparties to make corrections. The Commission believes that the commenter misunderstands the requirements of proposed and final § 49.10(e) and the associated costs as requiring more direct participation in the correction process than is currently required. Nothing in proposed or final § 49.10(e) would require the SDRs to change a current approach based on making facilities available that allow market participants to submit corrections or obligate an SDR to do anything more to accept, record, and disseminate corrections than is currently required.

The Commission also believes that the inclusion of the technical specification and validation requirements for SDR data in parallel Commission rulemaking [349] will help prevent certain types of SDR data reporting errors before they occur, and, therefore, reduce the need for market participants and the SDRs to correct those types of errors and, as a result, the corresponding costs incurred by SDRs to correct errors will likely decrease over time.

Final § 49.10(e) will also limit SDR error correction requirements to the applicable recordkeeping obligation in final § 49.12. SDRs will not be obligated to indefinitely maintain storage and legacy systems for dead swaps or to correct dead swaps for which the records retention period has expired.

SDRs also might incur incremental costs related to establishing, maintaining, and enforcing the policies and procedures required by final § 49.10(e). The Commission, however, believes that costs will be limited to initial creation costs and update costs for the policies and procedures as needed, as mitigated by any existing SDR error correction policies and procedures.

The Commission continues to believe that one of the main benefits of § 49.10(e) is improved data quality resulting from SDRs collecting and disseminating accurate swaps data. Accurate and complete datasets will enable the Commission to better understand markets and trading behavior, and guard against abusive practices. In addition, the Commission uses swap SDR data to produce public information on the swaps markets, such as the weekly swaps reports. The Commission believes that accurate data reflected in the weekly swaps report will improve the quality and reliability of the reports. All market participants and the public benefit from complete and accurate SDR data.

Final § 49.10(e) is linked closely to final §§ 43.3(e), 45.14, and 49.11. Because of the changes to current §§ 43.3(e), 45.14, and 49.11, there will be costs associated with § 49.10(e). The Commission, however, believes that the benefits related to using accurate data sets warrant the costs of changes to § 49.10(e).

vii. § 49.11—Verification of Swap Data Accuracy

In response to comments, the Commission is modifying final § 49.11 so that the verification process is less burdensome and more flexible than the process set forth in proposed § 49.11. Final § 49.11 requires an SDR to: (i) Verify the accuracy and completeness of swap data that the SDR receives from a SEF, DCM, or reporting counterparty, or third-party service providers acting on their behalf; and (ii) establish, maintain, and enforce policies and procedures reasonably designed to verify the accuracy and completeness of that swap data. In terms of implementation, § 49.11 requires an SDR to provide a mechanism that allows each reporting counterparty that is a user of the SDR to access all swap data maintained by the SDR for each open swap for which the reporting counterparty is serving as the reporting counterparty. Under companion provisions in § 45.14, a reporting counterparty is required to perform verifications of the relevant

[344] *See* 17 CFR 43.3(e)(1), (3), and (4); 17 CFR 45.14(c).

[345] Joint SDR at 8 n. 28.

[346] Joint SDR at 8 n. 28.

[347] Joint SDR at 9.

[348] 17 CFR 49.10 (SDR ''shall accept and promptly record all swap data. . . .''). *See also* § 43.3(e)(1), (3), and (4); 17 CFR 45.14(c).

[349] *See generally* 85 FR 21516, *et seq.* (Apr. 17, 2020); 85 FR 21578, *et seq.* (Apr. 17, 2020).

swap data at specified intervals, using the mechanism provided by an SDR under § 49.11, and to correct any errors discovered.

The Commission anticipates that the final rule will provide benefits, as compared to the current regulation, by improving the quality of data received and maintained by SDRs. The final rule is expected to lead to swap data errors being discovered and corrected more frequently and earlier than is often the case under the current regulations. Existing Commission regulations and SDRs rules and policies allow counterparties to presume data is accurate when it may not be. The absence of an affirmative verification requirement has also resulted in counterparties not discovering errors, including many obvious errors, and therefore not correcting the errors, for extended periods.

The new requirements in final § 49.11 will also impose costs. As discussed in more detail below, commenters provided qualitative comments on the Commission's consideration of the costs and benefits of proposed § 49.11, but did not provide quantitative information. As final § 49.11 grants SDRs the flexibility to devise their own processes to allow reporting counterparties to access swap data for verification, it is difficult to determine the amount of hours and effort SDRs will need to comply with § 49.11. Based on comments, the Commission believes that SDRs will be able to leverage current technological systems to provide access to reporting counterparties to verify data under § 49.11.[350] In the absence of information from commenters, the Commission estimates that it will take each SDR up to 500 hours to build, test, and implement verification systems that are of their own design.[351] The Commission estimates that SDRs will expend 50 hours or fewer annually to maintain systems and revise policies and procedures. The Commission monetizes the hours by multiplying by a wage rate of $48 to $101.[352] The Commission estimates that the initial costs to an SDR of implementing § 49.11 will range between $24,000 and $50,500. The annual costs will range between $2,400 and $5,050.

Before adopting the verification requirements in final § 49.11, the Commission considered the two following requirements that were in the Proposal: (1) Requiring an SDR to establish, maintain, and enforce policies and procedures reasonably designed for the SDR to successfully receive verifications of data accuracy and notices of discrepancy from reporting counterparties [353] and (2) requiring SDRs to issue open swaps reports to reporting counterparties on a weekly or monthly basis, depending on the type of reporting counterparty involved.[354]

The Commission received numerous comments on these two requirements in response to the Commission's request for comment. ISDA/SIFMA suggested that the Commission issue a more principles-based verification process than the one described in proposed §§ 45.14(a) and 49.11(b).[355] ISDA/SIFMA recommended eliminating the requirement that reporting counterparties reconcile swaps data with SDR-issued open swaps reports as well as obligations that SDRs manage or monitor such reconciliations.[356] ISDA/SIFMA proposed a verification process that would require reporting counterparties, via required policies and procedures, ''to periodically reconcile the relevant SDR data with the data from their internal books and records for accuracy.'' [357] Reporting counterparties that are SDs, MSPs, or DCOs would be required to perform verifications monthly and all other reporting counterparties would be required to verify data quarterly.[358] The reporting counterparties would need to keep a record of verifications and make that information available to SDRs or the Commission upon request.[359] This approach would enable reporting counterparties to leverage their own data validation efforts and eliminate the burden of sending multiple notifications.[360]

As explained in section II.G above, the Commission is persuaded by comments that a more flexible verification process will have the same, if not better, effect on data quality as the proposed verification process. As final § 49.11 does not include the requirement for SDRs to distribute open swaps reports to reporting counterparties or to have policies and procedures to receive verifications of accuracy and notices of discrepancy from reporting counterparties, SDRs will have greater flexibility in managing their relationships with reporting counterparties than they were expected to have under the Proposal.

The differences between final § 49.11 and the Proposal also affect the Commission's cost considerations. In the Proposal, the Commission recognized that the SDRs would bear most of the costs associated with the proposed amendments to § 49.11.[361] The Commission stated that there would be initial costs from establishing systems to generate open swaps reports and to successfully distribute these reports to all reporting counterparties. There also would be recurring costs related to any needed adjustments to SDR systems over time and to accommodate the arrival or departure of reporting counterparties. The Commission also stated that an SDR's costs would be insignificant because an SDR would automate the verification process.[362]

Joint SDR disagreed with the Commission's cost assessments for proposed § 49.11.[363] Joint SDR commented that ''chasing reporting counterparties who have not provided verification of data accuracy or a notice of discrepancy in order to establish the SDR made a 'full, good-faith effort to comply' '' would require an expenditure of significant resources.[364] Joint SDR also highlighted that the ''cost of creating and maintaining a system to verify each message would be significant.'' [365] Joint SDR encouraged the Commission to recognize that any new message types impose development costs on SDRs, reporting counterparties, and all third-parties or vendors who build and maintain reporting systems.[366]

Other commenters characterized their objections to the proposed message-based verification process as a costly endeavor. FIA requested a more principles-based approach to verifying swaps under § 49.11, because they

[350] Joint SDR at 6 n. 28.

[351] In the Proposal, the Commission estimated burden hours based on proposed § 49.11. Because final § 49.11 is more flexible and does not require the creation of open swaps reports or the building of systems to send and receive messages with reporting counterparties, the Commission believes that SDRs and reporting counterparties will employ less onerous and more economical approaches to meeting their § 49.11 and § 45.14 obligations. Therefore, the Commission is using the estimated burden hours in the Proposal as upper limits on the number of hours entities will use to develop and maintain data verification systems.

[352] *See supra* note 344 (discussion of BLS wage estimates).

[353] Proposal at 84 FR 21051–55 (May 13, 2019).

[354] *Id.*

[355] ISDA/SIFMA at 45.

[356] *Id.*

[357] *Id.*

[358] *Id.*

[359] *Id.*

[360] *Id.*

[361] Proposal at 84 FR 21084 (May 13, 2019).

[362] Proposal at 84 FR 21084 (May 13, 2019) (''these changes would [not] be significant because, based on discussion with the SDRs and other market participants, the Commission believes SDRs would largely automate the verification process.'')

[363] Joint SDR at 2–3.

[364] Joint SDR at 3.

[365] Joint SDR at 6. *See also* ICE Clear at 3 (referencing Joint SDR).

[366] Joint SDR at 6 and n. 22.

believed the approach in proposed § 49.11 would create more burdens than benefits.[367] FIA added that ''verification requirements will have little marginal benefit relative to the increased costs on reporting counterparties, in particular those that are not registered [SDs].'' [368] ISDA/SIFMA stated that they believe the ''proposed prescriptive approach to verification would result in considerable costs for reporting parties to implement.'' [369] ICE Clear commented that the Commission failed to discuss how the additional verification and messaging costs ''would result in increased levels of data accuracy sufficient to warrant imposing the obligations.'' [370]

The Commission believes that the costs resulting from the verification process under § 49.11 as finalized will be less burdensome than the costs the Commission estimated in the Proposal. For instance, SDRs would have incurred costs to create and distribute weekly and monthly open swaps reports as the Commission initially proposed, but will not incur these costs under final § 49.11.[371] Under final § 49.11, SDRs and other entities will incur fewer costs because they will be able to employ different data-accuracy approaches that will not include the costs of building-out and maintaining message-based verification systems that rely on open swaps reports.

The Commission is not eliminating the overall verification requirement because it believes verifying data is crucial to ensure data quality. Data review and verification improves the reliability and usability of swap data, and more accurate swap data helps the Commission in monitoring risk; analyzing metrics for such indicators as volume, price, and liquidity; and developing policy. Thus, final § 49.11 will benefit the Commission and the public by improving the accuracy of data they will receive.

Besides considering proposed § 49.11, the Commission also considered and rejected the idea of maintaining current § 49.11. The Commission rejected this approach because of concerns about the quality of data received under current regulations, as swap data quality has not sufficiently improved under current regulations. As explained above, the presumption that reported swap data is accurate along with the absence of an affirmative verification requirement, have resulted in many instances of inaccurate or unusable swap data being provided to the Commission under current regulations and procedures. In the nine years since the Commission issued the data reporting regulations, it has become apparent that the current requirements are inadequate to ensure swap data accuracy and that processes like verification can improve the accuracy and completeness of data sets. Accurate data sets are crucial for overseeing modern markets and for understanding the structure and operations of the markets.

Notwithstanding the anticipated incremental costs of final § 49.11 and after considering alternatives, the Commission believes the amendments to § 49.11 are warranted in light of the anticipated benefits.

viii. § 49.12—Swap Data Repository Recordkeeping Requirements

The Commission is finalizing § 49.12 as proposed. Final § 49.12(a) requires an SDR to keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities relating to the business of the SDR, including, but not limited to, all SDR information and all SDR data reported to the SDR.

Final § 49.12(b)(1) requires an SDR to maintain all SDR information received by the SDR in the course of its business. Final § 49.12(b)(2) requires an SDR to maintain all SDR data and timestamps, and all messages to and from an SDR, related to SDR data reported to the SDR throughout the existence of the swap to which the SDR data relates and for five years following final termination of the swap, during which time the records must be readily accessible by the SDR and available to the Commission via real-time electronic access, and then for an additional period of at least ten years in archival storage from which such records are retrievable by the SDR within three business days.

Final § 49.12(c) requires an SDR to create and maintain records of errors related to SDR data validations and errors related to SDR data reporting. Final § 49.12(c)(1) requires an SDR to create and maintain an accurate record of all SDR data that fails to satisfy the SDR's data validation procedures. Final § 49.12(c)(2) requires an SDR to create and maintain an accurate record of all SDR data errors reported to the SDR and all corrections disseminated by the SDR pursuant to parts 43, 45, 46, and 49. SDRs must make the records available to the Commission on request.

Final § 49.12(d) contains the requirements of existing § 49.12(c) and provides that: (i) All records required to be kept pursuant to part 49 must be open to inspection upon request by any representative of the Commission or any representative of the U.S. Department of Justice; and (ii) an SDR must produce any record required to be kept, created, or maintained by the SDR in accordance with § 1.31.

The Commission did not receive any comments concerning its consideration of costs and benefits related to the recordkeeping requirements in proposed § 49.12.

The Commission continues to believe that the costs of amendments to § 49.12 will primarily be incurred by the SDRs as they make any needed adjustments to create and maintain all required records. The Commission believes these incremental costs will be limited, as the recordkeeping requirements in § 49.12 are largely the same as the requirements in existing § 49.12 and existing § 45.2(f) and (g).

The amendments to § 49.12 related to SDR information will also be substantially similar to the SEC's requirements for its SBSDRs.[372] The Commission expects that there will be substantial overlap in these requirements for SDRs that are also SBSDRs and these entities will be able to leverage resources to reduce any duplicative costs.

Joint SDR objected to the requirements moved to final § 49.12(b) that requires SDRs to retain data ''for a period of at least ten additional years in archival storage from which such records are retrievable by the swap data repository within three business days.'' [373] Joint SDR suggested that the Commission harmonize retention periods with that of Europe and other Commission-regulated entities.[374] Joint SDR pointed-out that the Commission collects its own data from SDRs so the Commission ''can itself retain relevant data in accordance with its own recordkeeping policies.'' [375]

The Commission recognizes that the ten-year archival storage is lengthy, but the Commission notes that this period is the current SDR retention periods for the same data under existing § 45.2(f) and (g) [376] and that the Commission has not proposed to modify this current requirement. The amendments to § 49.12(b) are part of the Commission's effort to better organize its own rules, not the result of the Commission changing a current requirement. As a

[367] *See* FIA May at 7–8; ISDA/SIFMA at 44–45.

[368] FIA May at 7.

[369] ISDA/SIFMA at 44.

[370] ICE Clear at 3.

[371] Proposal at 84 FR 21084 (May 13, 2019) (discussion of costs related to generating and distributing open swaps reports).

[372] *See* 17 CFR 240.13n–7 (detailing the SBSDR recordkeeping requirements).

[373] Final § 49.12(b); *See* Joint SDR at 11.

[374] Joint SDR at 11.

[375] *Id.*

[376] 17 CFR 45.2(f) and (g).

result, there are no new costs to SDRs associated with the retention period in final § 49.12(b). The Commission also continues to believe the ten-year period is reasonable. Archived data is important to regulatory oversight and the SDRs serve as the source of SDR data for the Commission. The Commission benefits from access to archived swap data, for the purpose of understanding trends in swaps markets, such as exposures, trades, and positions, and guarding against abusive practices.

The Commission believes that the amendments to § 49.12 will provide greater clarity to SDRs in regards to their recordkeeping responsibilities. The amendments also will help improve efforts to track data reporting errors, because the requirements for SDRs to maintain records of reporting errors will be clearer. Data recordkeeping should lead to better quality data by allowing an SDR and the Commission to look for patterns in records that may lead to adjustments to SDR systems or future adjustments to reporting policies. The availability of quality records is also crucial for the Commission to effectively perform its market surveillance and enforcement functions, which benefit the public by protecting market integrity and identifying risks within the swaps markets.

Notwithstanding the anticipated incremental costs of § 49.12, the Commission believes this change is warranted in light of the anticipated benefits.

ix. § 49.17—Access to SDR Data

The Commission is finalizing § 49.17 as proposed. Final § 49.17(b)(3) amends the definition of ''direct electronic access'' to mean an electronic system, platform, framework, or other technology that provides internet-based or other form of access to real-time SDR data that is acceptable to the Commission and also provides scheduled data transfers to Commission electronic systems.

Final § 49.17(c) requires an SDR to provide access to the Commission for all SDR data maintained by the SDR pursuant to the Commission's regulations. Final § 49.17(c)(1) requires an SDR to provide direct electronic access to the Commission or its designee in order for the Commission to carry out its legal and statutory responsibilities under the CEA and Commission regulations. Final § 49.17(c)(1) also requires an SDR to maintain all SDR data reported to the SDR in a format acceptable to the Commission, and transmit all SDR data requested by the Commission to the Commission as instructed by the Commission.

Final § 49.17(c)(1) amends the requirements of existing § 45.13(a) from maintaining and transmitting ''swap data'' to maintaining and transmitting ''SDR data,'' to make clear that an SDR must maintain all SDR data reported to the SDR in a format acceptable to the Commission and transmit all SDR data requested by the Commission, not just swap data.

Final § 49.17(c)(1) also modifies the requirements of existing § 45.13(a) from ''transmit all swap data requested by the Commission to the Commission in an electronic file in a format acceptable to the Commission'' to ''transmit all SDR data requested by the Commission to the Commission as instructed by the Commission,'' and explains what these instructions may include.

The Commission also is finalizing amendments to § 49.17(f) to replace the incorrect reference to § ''37.12(b)(7)'' at the end of paragraph (f)(2) with a correct reference to § ''39.12(b)(7)'' of the Commission's regulations, as there is no § 37.12(b)(7) in the Commission's regulations.

The Commission's amendments also include the movement of the delegation of authority in existing § 49.17(i) to final § 49.31(a)(7).

The Commission believes that § 49.17 will generate costs and benefits. In the Proposal, the Commission asked for public comment on its consideration of costs and benefits. DDR commented that an SDR cannot estimate costs of proposed § 49.17(c)(1) because the proposed rule provided ''no specificity as to the method, timing, format or transmission frequency for required transmission of SDR data requested by the Commission'' and left ''the requirements associated with both the provision of direct electronic access and the maintenance of SDR data to be determined by the Commission at a later date.'' [377] While the Commission agrees that costs may be difficult to determine, the Commission notes that no commenters provided information related to current costs associated with responding to the similar current requirements for scheduled data transfers. If the Commission possessed current financial and staffing outlays, the Commission could consider incremental increases or decreases that might result from finalizing § 49.17.

The Commission continues to believe that the costs imposed by the changes to § 49.17(c) will fall mainly on SDRs, because SDRs will incur costs to provide the Commission with direct electronic access to all SDR data and to provide access to SDR data as instructed. The costs associated with the use of the term ''direct electronic access'' in § 49.17(c) are negligible, as SDRs are currently required to provide the Commission with direct electronic access and the definition is being modified to allow SDRs more flexibility in providing the Commission with direct electronic access to SDR data, subject to the Commission's approval. The other amendments to § 49.17(c) grant the Commission greater flexibility to instruct SDRs on how to transfer SDR data to the Commission at the Commission's request. As mentioned above, the Commission currently works closely with SDRs to facilitate data transfers and implement technology changes. The Commission anticipates that because the rule changes reinforce the existing working relationships, there will be better communications between the Commission and SDRs that will help both parties devise efficient and cost-effective ways to facilitate the transfer of SDR data to the Commission. As explained in the Proposal, SDRs are already required to transmit data under existing § 49.17(b)(3) and (c)(1), and are required to transmit all swap data requested by the Commission to the Commission in an electronic file in a format acceptable to the Commission under existing § 45.13(a). It is also current market practice for SDRs to regularly provide SDR data to the Commission as instructed by Commission staff. The changes in final § 49.17 do not substantially change the current requirements or market practices.

The final changes to § 49.17(b)(3) that modify the definition of ''direct electronic access'' to allow for more technological flexibility will likely reduce future costs for SDRs because the amendment allows the Commission to consider any technology that may provide direct electronic access. This will allow the Commission to adapt to changing technology more quickly and may allow SDRs to save costs by having more efficient technology and processes approved in the future.

The Commission continues to believe that the amendments to § 49.17 will be beneficial to SDRs by including the data access requirements applicable to SDRs in one section and by more clearly stating the Commission's ability to instruct SDRs on all aspects of providing SDR data to the Commission.

Notwithstanding the anticipated incremental costs of § 49.12, the Commission believes the changes are warranted in light of the anticipated benefits.

[377] DDR at 5.

x. § 49.25—Financial Resources

The Commission is finalizing changes to § 49.25 as proposed, except for the proposed amendments to § 49.25(f)(3). The conforming changes to § 49.25 eliminate the reference to § 49.9 and to core principle obligations identified in § 49.19. Final § 49.25(a) refers to SDR obligations under ''this chapter,'' to be broadly interpreted as any regulatory or statutory obligation specified in part 49. The Commission considered these to be non-substantive changes that will not impact existing obligations on SDRs, and therefore have no cost-benefit implications. The Commission did not receive any comments on this point.

The Commission is not finalizing proposed amendments to § 49.25(f)(3) to extend the time SDRs have to submit their quarterly financial resources reports to 40 calendar days after the end of the SDR's first three fiscal quarters, and 90 days after the end of the SDR's fourth fiscal quarter, or a later time that the Commission permits upon request. As discussed above, the Commission has determined not to address the proposed changes to the filing deadline for the annual compliance report under § 49.22(f)(2) in this final rulemaking. Accordingly, the Commission is not adopting the related proposed amendment to § 49.25(f)(3).

xi. § 49.26—Disclosure Requirements of Swap Data Repositories

The Commission is finalizing § 49.26 as proposed. Final § 49.26 includes updates to the introductory paragraph of § 49.26 to reflect updates to the terms ''SDR data,'' ''registered swap data repository,'' and ''reporting entity'' in final § 49.2. The Commission is also finalizing updates to other defined terms used in the section to conform to the amendments to § 49.2. These non-substantive amendments do not change the requirements of § 49.26 and do not have cost-benefit implications.

The Commission also is finalizing § 49.26(j) as proposed. Final § 49.26(j) requires that the SDR disclosure document set forth the SDR's policies and procedures regarding the reporting of SDR data to the SDR, including the SDR data validation and swap data verification procedures implemented by the SDR, and the SDR's procedures for correcting SDR data errors and omissions (including the failure to report SDR data as required pursuant to the Commission's regulations).

The Commission requested public comments on its cost-benefit considerations related to § 49.26, but the Commission did not receive any comments.

The Commission believes that costs related to final § 49.26 will be limited and incremental given that current § 49.26 requires every SDR to issue disclosure documents.[378] Costs will likely entail the costs related to adding information required under final § 49.26(j) to the required SDR disclosure document and updating the document as needed. For example, there may be administrative and staff costs to revise current SDR disclosure documents to include the required information.

The Commission expects that the addition of final § 49.26(j) will benefit market participants by providing more instructive information regarding data reporting to SDR users. The availability of this information should improve data reporting, because SDR users will be able to align their data reporting systems with SDRs' data reporting systems before using the SDRs' services. SDR users will be able to prepare operations and train staff before reporting SDR data and, thereby, able reduce reporting errors and potential confusion.

Notwithstanding the anticipated incremental costs associated with § 49.26, the Commission believes this change is warranted in light of the anticipated benefits.

xii. § 49.28—Operating Hours of Swap Data Repositories

The Commission is finalizing § 49.28 as proposed. Final § 49.28 provides more detail on an SDR's responsibilities with respect to hours of operation. Final § 49.28(a) requires an SDR to have systems in place to continuously accept and promptly record all SDR data reported to the SDR, and, as applicable, publicly disseminate all swap transaction and pricing data reported to the SDR pursuant to part 43. Final § 49.28(a)(1) allows an SDR to establish normal closing hours to perform system maintenance when, in the SDR's reasonable estimation, the SDR typically receives the least amount of SDR data, and requires the SDR to provide reasonable advance notice of its normal closing hours to market participants and the public.

Final § 49.28(a)(2) allows an SDR to declare, on an ad hoc basis, special closing hours to perform system maintenance that cannot wait until normal closing hours. Final § 49.28(a)(2) requires an SDR to schedule special closing hours during periods when, in the SDR's reasonable estimation while considering the circumstances that prompt the need for the special closing hours, the special closing hours will be least disruptive to the SDR's data reporting responsibilities. Final § 49.28(a)(2) also requires the SDR to provide reasonable advance notice of the special closing hours to market participants and the public whenever possible, and, if advance notice is not reasonably possible, to give notice to the public as soon as is reasonably possible after declaring special closing hours.

Final § 49.28(b) requires an SDR to comply with the requirements under part 40 of the Commission's regulations when adopting or amending normal closing hours or special closing hours.[379]

Final § 49.28(c) requires an SDR to have the capability to accept and hold in queue any and all SDR data reported to the SDR during normal closing hours and special closing hours[380] Final § 49.28(c)(1) requires an SDR, on reopening from normal or special closing hours, to promptly process all SDR data received during the closing hours and, pursuant to part 43, publicly disseminate swap transaction and pricing data reported to the SDR that was held in queue during the closing hours.[381] Final § 49.28(c)(2) requires an SDR to immediately issue notice to all SEFs, DCMs, reporting counterparties, and the public in the event that the SDR is unable to receive and hold in queue any SDR data reported during normal closing hours or special closing hours. Final § 49.28(c)(2) also requires an SDR to issue notice to all SEFs, DCMs, reporting counterparties, and the public that the SDR has resumed normal operations immediately on reopening. Final § 49.28(c)(2) requires a SEF, DCM, or reporting counterparty that was not able to report SDR data to an SDR because of the SDR's inability to receive and hold in queue SDR data to report the SDR data to the SDR immediately after receiving such notice that the SDR has resumed normal operations.[382]

[378] *See* 17 CFR 49.26(a) through (i).

[379] This requirement already applies to SDRs pursuant to current § 43.3(f)(3). *See* 17 CFR 43.3(f)(3).

[380] Final § 49.28(c) expands the similar existing requirements for swap transaction and pricing data in current § 43.3(g) to all SDR data and largely follows the SBSDR requirements to receive and hold in queue information regarding security-based swaps.

[381] Final § 49.28(c)(1) expands the similar existing requirements for the SDRs to disseminate swap transaction and pricing data pursuant to current § 43.3(g)(1) to also include the prompt processing of all other SDR data received and held in queue during closing hours. The requirements also largely follow the SBSDR requirements for disseminating transaction reports after reopening following closing hours.

[382] Final § 49.28(c)(2) expands the similar existing requirements for swap transaction and pricing data in current § 43.3(g)(2) to all SDR data and is largely consistent with the SBSDR

Continued

The Commission requested public comment on its consideration of costs and benefit related to § 49.28 but did not receive any.

The Commission continues to believe that the final requirements, which are largely based on existing rule text found in current § 43.3(f) and (g), will have limited cost implications for SDRs. There may be costs associated with any needed modification to SDR systems to accommodate all SDR data during closing hours, as opposed to only swap transaction and pricing data. These costs will be incremental because all SDRs currently have policies, procedures, and systems in place to accommodate all SDR data during closing hours under the current requirements.

The Commission also still believes that SDRs, market participants, and the public will benefit from final § 49.28 because the requirements for setting closing hours and handling SDR data during closing hours will be clearer. Final § 49.28 removes discrepancies between current requirements for SDRs and SBSDRs related to closing hours, which will allow SDRs that are also registered as SBSDRs to comply with one consistent requirement.

Notwithstanding the anticipated incremental costs related to § 49.28, the Commission believes the addition of § 49.28 is warranted in light of the anticipated benefits.

xiii. § 49.29—Information Relating to Swap Data Repository Compliance

The Commission is finalizing new § 49.29 as proposed, which requires an SDR to respond to Commission information requests regarding, among other things, its business as an SDR and its compliance with SDR regulatory duties and core principles.

Final § 49.29(a) requires an SDR, upon request of the Commission, to file certain information related to its business as an SDR or other such information as the Commission determines to be necessary or appropriate for the Commission to perform its regulatory duties. An SDR must provide the requested information in the form and manner and within the time specified by the Commission in its request.

Final § 49.29(b) requires an SDR, upon the request of the Commission, to demonstrate compliance with its obligations under the CEA and Commission regulations, as specified in the request. An SDR must provide the requested information in the form and manner and within the time specified by the Commission in its request. Final § 49.29 is based on similar existing Commission requirements applicable to SEFs and DCMs.[383]

The costs associated with responding to requests for information include the staff hours required to prepare and submit materials related to the Commission's requests. These costs will vary among SDRs depending upon the nature and frequency of Commission inquiries. The Commission expects these requests to be limited in both size and scope, which will likely mitigate the associated costs for SDRs. While final § 49.29 allows the Commission to make requests on an ad hoc basis, the Commission expects that the need for these requests will decrease over time as SDR data quality and SDR compliance with Commission regulations improve.[384]

DDR commented that because proposed § 49.29 provided ''no detail as to the potential scope of a request or to the form, manner and timing associated with satisfying the request'' an SDR could not assess accurately costs associated with the rule.[385] While the Commission agrees that costs are difficult to accurately determine, the Commission notes that no commenters provided current costs associated with responding to requests for information, as currently SDRs routinely provide the same information to the Commission on request. If the Commission possessed current cost information related to responding to requests, the Commission could consider incremental increases or decreases that might result from finalizing § 49.29 as proposed. Without that information as a reference, the Commission continues to believe that there will be an incremental cost for each response. Yet, the Commission also believes that that costs will be mitigated by the fact that current practice is for SDRs to provide similar information to the Commission on request and that the SDRs do so regularly. In addition, SDRs will be required to adhere to form and manner specifications established pursuant to final § 49.30. The Commission expects that clearly defining the form and manner for each response will further mitigate the cost burden to SDRs that may arise from any uncertainty as to the information to be provided.

Benefits attributed to final § 49.29 include improving the Commission's oversight of SDRs due to Commission inquiries. The Commission expects that this oversight will lead to improved data quality and SDR compliance with Commission regulations. Better data quality will help improve the Commission's ability to fulfill its regulatory responsibilities and help to increase the Commission's understanding of the swaps market. These improvements are expected to benefit the public because accurate and complete SDR data reporting improves the Commission's analyses and oversight of the swaps markets, and increases market integrity due to the Commission's improved ability to detect and investigate noncompliance issues and oversee their correction.

The Commission also continues to believe that final § 49.29 will help the Commission to obtain the information it needs to perform its regulatory functions more effectively, as opposed to requiring SDRs to supply information on a set schedule, such as under the current requirement for annual Form SDR updates in § 49.3(a)(5). This will reduce the burden on SDRs, as the SDRs will no longer need to expend resources to prepare annual filings.

Notwithstanding the anticipated incremental costs related to § 49.29, the Commission believes the addition of § 49.29 is warranted in light of the anticipated benefits.

xiii. § 49.30—Form and Manner of Reporting and Submitting Information to the Commission

The Commission is finalizing new § 49.30 as proposed to address the form and manner of information the Commission requests from SDRs.

Final § 49.30 establishes the broad parameters of the ''form and manner'' requirements found in part 49. The form and manner requirement in § 49.30 will not supplement or expand upon existing substantive provisions of part 49, but instead, will allow the Commission to specify how information reported by SDRs should be formatted and delivered to the Commission. Final § 49.30 provides that an SDR must submit any information required under part 49, within the time specified, using the format, coding structure, and electronic data transmission procedures approved in writing by the Commission.

The Commission continues to believe that the form and manner requirements will have costs associated with conforming reports and information to Commission specifications. For instance, there may be costs associated with staff hours and technology used to format reports. DDR commented that because proposed § 49.30 was vague, an

requirements to receive and hold in queue information regarding security-based swaps.

[383] *See, e.g.,* 17 CFR 37.5 and 38.5.

[384] The Commission currently exercises similar authority fewer than ten times per year in total with other registered entities, such as SEFs, DCMs, and DCOs.

[385] DDR at 7.

SDR could not assess accurately costs associated with the rule.[386] While the Commission agrees that costs are difficult to determine, the Commission notes that no commenters provided current reporting costs or projections for staffing and systems costs, which the Commission could use to consider incremental increases or decreases that might result from finalizing § 49.30 as proposed.

The Commission continues to believe that, in practice, the incremental costs of § 49.30 will be limited, because SDRs have ample experience working with Commission staff to deliver data, reports, and other information in the form and manner requested by Commission staff. The Commission believes that this experience will significantly mitigate the costs of similar activities under this requirement. The Commission also still believes that the Commission will benefit through increased standardization of information provided by SDRs, thereby aiding the Commission in the performance of its regulatory obligations by ensuring the provided information is in useable formats and delivered by usable methods. The ability to standardize the form and manner of information provided to the Commission will also help SDRs to efficiently fulfill their obligations to provide information to the Commission.

Notwithstanding the anticipated incremental costs related to § 49.30, the Commission believes the addition of § 49.30 is warranted in light of the anticipated benefits.

5. Costs and Benefits of Amendments to Part 45

i. § 45.2—Swap Recordkeeping

The Commission is moving existing § 45.2(f) and (g) (SDR recordkeeping and SDR records retention, respectively) to final § 49.12. As such, all costs and benefits associated with this change are discussed in the section, above, that discusses the amendments to § 49.12.

ii. § 45.14—Correcting Errors and Omissions in Swap Data and Verification of Swap Data Accuracy

The Commission is adopting proposed § 45.14, with modifications, to improve the requirements to correct data errors and to verify data. Currently, the Commission requires error corrections but it does not directly require reporting counterparties to verify data. In the Proposal, the Commission outlined error correction and verification processes that included specific actions and timelines for those actions. In response to comments on the Proposal, the Commission is modifying final § 45.14 so that the error-correction and verification processes for reporting counterparties are less burdensome and more flexible than the processes set forth in the Proposal. The Commission will discuss the final error-correction process first, and then the final verification process.

Final § 45.14(a) sets forth requirements for correcting swap data errors. Final § 45.14(a) requires a SEF, DCM, or reporting counterparty to correct swap data errors as soon as technologically practicable, but no later than seven business days, after discovery. Final § 45.14(a) requires a SEF, DCM, or reporting counterparty to correct errors and omissions for open swaps and dead swaps, but § 45.14(a)(3) provides that the error correction requirement does not apply to swaps for which the applicable record retention period under § 45.2 has expired. Final § 45.14(a)(2) requires a non-reporting counterparty that becomes aware of an error to notify the reporting counterparty of the error as soon as technologically practicable, but no later than three business days, after discovery. If a non-reporting counterparty does not know the identity of the reporting counterparty, the non-reporting counterparty must notify the SEF or DCM where the swap was executed of the error as soon as technologically practicable, but no later than three business days, following the discovery.

Final § 45.14(a) differs from current § 45.14, because it provides more parameters for SEFs, DCMs, and reporting counterparties correcting errors and sets timelines for correcting errors or issuing error notices to the Commission. Current § 45.14(a) requires each registered entity or swap counterparty to report discovered data errors and omissions as soon as technologically practicable, but there is no deadline for making a correction.[387] Current § 45.14(b) requires a non-reporting counterparty to promptly notify the reporting counterparty of any errors or omissions, but the rule does not define promptly.[388] Proposed § 45.14(b) would have required a SEF, DCM, or reporting counterparty to correct errors or notify the Director of DMO within three business days of discovery of errors, regardless of the state of the swap.

In final § 45.14(a), the Commission establishes a seven-day correction period in response to comments that the proposed three-day period to correct or notify would not be practicable.[389] One commenter asserted that the Commission's proposed rule was a ''one size fits all'' approach that failed to account for ''different errors and omission scenarios and levels of materiality'' with an impractical error remediation period that would result in an excessive volume of notifications being sent to the director of DMO.[390] The proposed three-day period was based on the Commission's preliminary belief that the costs related to correcting errors and omissions or drafting remediation plans and sending notices would not impose an undue burden on reporting counterparties. Commenters stated that the requirements of proposed § 45.14(b), such as the notification requirement, would consume significant resources, even for immaterial errors, that would take away resources needed to actually correct errors.[391] Commenters also explained that the proposed three-day deadline would be burdensome because the process for identifying errors and then resolving such issues often takes more than three business days.[392] The Commission is persuaded by comments that the three-day period, as proposed, would hamper the correction of errors.

The Commission believes there will be costs associated with correcting errors under the revised seven-business day correction period. Market participants correcting errors will need to expend technological and staff resources to identify the causes of data errors and resources to correct errors. The amount of resources used will likely be dictated by the complexity of the error. The Commission notes that these costs will be minimal, compared to current requirements, because the current requirements would necessitate the same cause identification and error correction. The seven-day deadline in final § 45.14, however, will require

[386] DDR at 7.

[387] 17 CFR 45.14(a).

[388] 17 CFR 45.14(b).

[389] ISDA/SIFMA at 46. FIA May at 8–9; ICE Clear at 3.

[390] ISDA/SIFMA at 45–46. *See also* FIA May at 8 (''Verification of swap data and/or remediation of known errors or omission is not a ''one-size-fits-all' task'').

[391] ISDA/SIFMA at 46. *See also* GFMA at 6, 12 (timeframe should be in business days); CEWG at 5–6 (For a non-registrant reporting counterparty, it would be difficult to address a reporting error while simultaneously commit resources to file a report with the Commission).

[392] FIA May at 8 (''Members report that these reviews routinely take significantly more than three business days to determine scope, let alone to outline a remediation plan to a regulator.''); ISDA/SIFMA at 45–46 (three days would often not be enough time to fine the causes and scope of errors and omissions and submit a report); GFMA at 13 (proposed verification process would impose significant headcount costs).

some reporting counterparties to allocate resources differently to meet the deadline, because the current error-correction rule has no time deadline.[393]

The Commission believes that market participants will benefit from the seven-day correction period because it eliminates any uncertainty about the time period in which market participants must correct errors before notifying the Commission of an issue. A time period also helps market participants manage time in terms of scheduling and assigning resources to correct errors. The Commission believes seven business days is sufficient time to complete the steps needed to identify, investigate, and rectify most errors or omissions. The Commission also believes that the seven-day period, as compared to the absence of a deadline in current § 45.14, will not negatively affect the Commission's regulatory duties, including its ability to monitor swaps markets. Under the current error correction requirements, counterparties have neglected to inform SDRs of errors or omissions for extended periods, which has meant that SDRs have transmitted inaccurate data to the Commission and the Commission may have relied on inaccurate data while performing its regulatory responsibilities.

The Commission is also modifying, in final § 45.14, the proposed requirement for a reporting counterparty to produce remediation plans and issue notices to the Commission, and for a non-reporting counterparty to notify a reporting counterparty, SEF, or DCM of errors, as applicable.[394] Current § 45.14 does not require market participants to issue any error notices or submit a remediation plan, if one exists, to the Commission. Final § 45.14 requires SEF, DCM, or reporting counterparties to notify the Commission of any error that cannot be corrected within seven business days of discovery. The notice must include an initial assessment of the scope of the error and an initial remediation plan, if one exists. This notification must be made within twelve hours of the SEF's, DCM's, or reporting counterparty's determination that it will fail to timely correct the error.

The Commission believes that the final § 45.14 requirement to issue error notices will generate costs. Market participants will need to expend technological and staff resources to develop and maintain notification systems. SEF's, DCM's, and reporting counterparties will incur additional costs to develop systems to assess the scope of an error and to submit initial remediation plans, if they decide to use such plans. For SEFs, DCMs, and reporting counterparties that already send the Commission error-correction notices and remediation plans, the costs will be incremental.[395]

The Commission believes that error correction notices are beneficial because they will help alert the Commission to data that is unreliable and to reporting issues. Notices also will help the Commission monitor whether market participants are complying with Commission regulations. If a market participant creates an initial remediation plan, it will be useful to the market participants and the Commission because such plans help with tracking errors, identifying data issues, discovering recurring errors, and preventing errors from reoccurring. The Commission also believes that the inclusion of the technical specification and validation requirements for swap data in parallel Commission rulemaking[396] will help reduce certain types of swap data reporting errors, and reduce the need for market participants to correct those types of errors and, as a result, the corresponding costs incurred by market participants to correct swap data errors will likely decrease over time. Finally, the Commission believes that the error correction process becomes less burdensome and less disruptive when market participants remedy data errors as soon as possible and in an organized manner.

The Commission also believes that the final § 45.14 error correction process will improve data accuracy and will enable the Commission to better monitor risk and identify issues in the swaps markets. As discussed above, the Commission currently issues a weekly swaps report and quarterly entity-netted notional reports using swaps data.[397] Using swap data, the weekly swaps report has the capacity to illustrate trends in exposures, trades, and positions, and the entity-netted notional reports measure the transfer of risk in swaps markets. Both reports give the Commission and the public greater insight into trading behavior, liquidity, pricing, various types of risk, and how swaps markets work in general—all factors important in developing policy and allocating oversight resources. More accurate swap data will increase the usefulness of these reports.

The Commission is requiring error corrections for all swaps that are within their respective records retention periods. In a change from the Proposal, and is response to comments received, the Commission is finalizing a limit on the SEFs', DCMs', and reporting counterparties' obligations to correct errors in swap data that confines the error correction requirements to errors discovered during the relevant recordkeeping periods for the relevant swaps under § 45.2. The Commission recognizes the comments that argued that correcting swaps that are outside of their record retention periods is burdensome and impractical. ISDA/SIFMA explained that as dead swaps ''no longer pose risks to U.S. markets, it is unclear how correcting any errors would enhance the Commission's ability to monitor risk.'' [398] ISDA/SIFMA also remarked that there would be costs incurred by SDRs and reporting counterparties that are associated with correcting dead swaps, such as maintaining and storing data and building validations that can accommodate the reporting of dead swaps.[399]

The Commission acknowledges that the burden shouldered by market participants to expend resources to correct older data and to maintain legacy formats will affect costs and complexity of compliance.[400] However, there is value in correcting dead swaps, as the Commission is charged with ensuring market integrity and guarding against fraud and manipulation, among its other regulatory responsibilities, which includes the use of data for dead swaps. With accurate data, including for dead swaps, the Commission will be able to better analyze years of market activity, study market events, perform back-testing, and, ultimately, use the swap data to inform policy.[401] The

[393] *See generally* 17 CFR 45.14.

[394] Proposal at 84 FR 21069–70 (May 13, 2019) (discussion of proposed § 45.14(b)(1)(ii) and the current practices for remediation plans).

[395] Proposal at 84 FR 20170 (May 13, 2019).

[396] *See generally* 85 FR 21578, *et seq.* (Apr. 17, 2020).

[397] The weekly swaps report is available at: *https://www.cftc.gov/MarketReports/SwapsReports/index.htm.* ENNs reports for different asset classes are available at: *https://www.cftc.gov/About/EconomicAnalysis/ReportsOCE/index.htm.*

[398] ISDA/SIFMA at 47.

[399] *Id.*

[400] *Id.* at 46–47. *See also* FIA May at 9.

[401] For example, since January 2013, the Commission has produced weekly swaps data, and since early 2018, the Commission has issued quarterly, ENNs reports. Over time, Commission staff will be able to produce studies using historical swaps data, similar to the papers about futures trading. *See, e.g.,* ''Commodity Index Trading and Hedging Costs,'' Celso Brunetti and David Reiffen, August 2014, Journal of Financial Markets, vol. 21, pp. 153–180, *available at: https://doi.org/10.1016/j.finmar.2014.08.001* (authors used 10 years of futures data, 2003–2012; ''The Lifecycle of Exchange-traded Derivatives,'' Grant Cavanaugh and Michael Penick, July 2014, Journal of Commodity Markets, vol. 10, pp. 47–68, *available at https://doi.org/10.1016/j.jcomm.2018.05.007*

correction of dead swaps also provides a strong incentive for market participants to properly design their reporting systems, to perform thorough verification, and to promptly correct errors, to avoid or mitigate the cost of correcting data errors, which will improve data quality.

In final § 45.14(b), the Commission is requiring reporting counterparties to verify data. Currently, there are no specific verification requirements for reporting counterparties. The Commission is adopting verification requirements in final § 45.14(b) that differ from the process described in the Proposal.

Proposed § 45.14(a) outlined a verification process that involved an exchange of open swaps reports and messaging between SDRs and reporting counterparties. Proposed § 45.14(a) would have required reporting counterparties to reconcile open swaps reports with their internal records for the swap data and to submit to an SDR a verification of the accuracy or notice of discrepancy for the relevant swap data within a 48- or 96-hour period, as applicable,[402] after receipt of open swaps reports from the SDR. Proposed 49.11 would have required an SDR to distribute open swaps reports for verification by reporting counterparties who are SDs, MSPs or DCOs on a weekly basis and to other reporting counterparties on a monthly basis. By not adopting certain elements in proposed § 49.11—that is, the messaging process based on open swaps reports issued by SDRs—SDRs and reporting counterparties will have more flexibility (as compared to the Proposal) in determining how reporting counterparties verify data and correct errors pursuant to § 45.14.

Final § 45.14(b) modifies the proposed verification process. Final § 45.14(b)(1) requires a reporting counterparty to utilize the mechanism provided by an SDR pursuant to final § 49.11 to access and verify swap data by comparing its internal records for swap data with the relevant swap data maintained by the SDR. Under final § 45.14(b)(2), a reporting counterparty must conform to the relevant SDR's policies and procedures for verification. In final § 45.14(b)(4), the Commission is setting the verification frequency at every thirty calendar days for reporting counterparties that are SDs, MSPs, or DCOs, and at every quarter for other reporting counterparties. Final § 45.14(b)(5) requires a reporting counterparty to maintain a verification log, wherein the reporting counterparty records the verifications it performed, errors discovered during the verification processes, and corrections made. The reporting counterparty must provide the verification log to the Commission on request.

The Commission understands that the costs of verification processes under final § 45.14 will involve time and personnel resources for reporting counterparties. A reporting counterparty may be required to expend resources to develop processes to access swap data through one or more SDR mechanisms and to compare swap data maintained by SDRs with its internal data and records for open swaps. The absence of a verification process under the Commission's current rules has been costly in terms of the harmful effect erroneous and incomplete swaps data submissions have had on the Commission's regulatory efforts, especially when data errors that could have been discovered through verification are not discovered and not corrected.

The Commission believes there may be recurring costs associated with performing monthly and quarterly verifications and with preparing verification logs. The Commission proposed more frequent verifications than are included in the final requirement, and some commenters suggested that the Commission reduce the frequency of the verification process and focus on key economic fields for trades to alleviate the costs and the challenges of verification.[403] A number of commenters believed that the Commission's technical specifications and validation requirements proposed from other Roadmap rules would mean that data is reliable enough for verification to be performed less frequently than proposed.[404] The Commission agrees with these comments, and has reduced the frequency of verifications from the proposed weekly/monthly to monthly/quarterly, as recommended by commenters.

The Commission believes that the final frequency of verifications will still support the Commission's objectives for high-quality data without overburdening reporting counterparties and SDRs.[405] Monthly and quarterly verifications, depending on the type of reporting counterparty, will also require the use of resources, such as personnel and time, but the Commission believes that reporting counterparties' verification processes will become more efficient and, in some cases, automated as experience and technology develops. Also, as commenters suggested, it is likely that the Commission's enhanced validation and technical specifications will produce more accurate and reliable data, in certain respects, which, in turn, will reduce the reduce the amount of time needed to verify data. Validations and standardized data fields would help eliminate inappropriately blank data fields, though they would not eliminate the reporting of incorrect but plausible swap data, meaning that verification is still a necessity. Reducing or eliminating the number of inappropriately blank data fields will, however reduce the number of errors to be discovered in verification and the number of errors to be corrected.

The Commission also believes that § 45.14 encourages accountability, because reporting counterparties must record their data verification efforts. Under the current regulations, there is little accountability for counterparties that do not participate in the confirmation process.

The Commission believes that verification processes that lead to accurate data are vital to meaningful regulation and essential to fulfilling the purposes of CEA section 21. With more accurate data, the Commission can better identify discrepancies in swaps markets, determine whether market participants are complying with Commission regulations, and guard against abusive practices. Accurate data also benefits the public, because it is used to inform the Commission's policy decisions that help support well-functioning markets.

For proposed § 45.14, like proposed § 49.11, commenters provided qualitative comments in response to the Commission's consideration of costs and benefits. Commenters did not provide quantitative information.

Based on the Commission's familiarity with reporting counterparty operations and the currently collected data, the Commission recognizes there will be monetary costs for reporting counterparties to comply with the error-correction and verification requirements

(authors studied over 50 years of futures data from 1954 to the 2000s).

[402] Under the Proposal, SDs, MSPs and DCOs are subject to a shorter 48-hour time frame for verification.

[403] *See, e.g.,* GFMA at 13.

[404] *See* ICE Clear at 3 (''By focusing on obtaining a critical set of data elements, utilizing existing and future upfront data validations, and leveraging existing requirements to correct errors and omissions, the Commission has crafted a reporting framework that should substantially enhance the accuracy, reliability and utility of swap data.'')

[405] ISDA/SIFMA at 45 (ISDA/SIFMA suggested monthly verifications for reporting counterparties that are SDs, MSPs, or DCOs, and quarterly verifications for all other reporting counterparties).

in § 45.14. For the error-correction process, the Commission estimates that SEFs, DCMs, and reporting counterparties will each spend about 30 hours per year correcting data previously submitted to SDRs, providing notices to the Commission, and submitting remediation plans, if such plans exist.[406] Those hours will not be new time commitments because reporting counterparties are currently required to correct errors. The Commission monetizes the hours by multiplying by a wage rate of $48 to $101.[407] Accordingly, the Commission estimates that each reporting counterparty will expend between $1,440 and $3,030 annually to implement § 45.14(a), and each non-reporting counterparty will expend between $48 and $101.

The Commission estimates that the hours needed for reporting counterparties to meet their verification obligations under the final rules will be less than the hours estimated to be required under the Proposal, as a result of the technical specifications and validation requirements from other Roadmap rulemakings, which the Commission expects will reduce errors in the first instance, and because the verification process under final § 45.14(b) will be less time-consuming than the requirements under proposed §§ 45.14(a) and 49.11. The Commission understands that the hours and rates will vary based on many factors, including each reporting counterparty's expertise in data reporting and operational size. The Commission estimates that the initial efforts to implement § 45.14(b) will require 100 hours on average, meaning each reporting counterparty will expend up to 100 hours a year to establish systems to verify data and prepare verification logs. The Commission estimates these efforts to cost between $4,800 to $10,100, which are the sums of the hours multiplied by a wage rate of $48 to $101.[408] The Commission estimates that reporting counterparties will expend up to two hours every 30 days to verify data, or 24 hours annually. The annual costs to verify data every 30 days for some reporting counterparties will range between $1,152 and $2,424. The annual costs to expend up to two hours every quarter to verify data for other reporting counterparties will range between $384 and $808.

Besides considering proposed § 45.14, the Commission considered and rejected the idea of maintaining current § 45.14. The Commission rejected this approach because it has become evident that mandates to correct errors and verification processes improve data quality, and that current requirements have proven inadequate for providing the Commission with the level of data quality that it requires to perform its regulatory functions. As explained above, the current regulations for confirmation and error correction have resulted in the Commission receiving data that is presumed accurate, when this is often not the case. The Commission also has observed that the absence of a verification requirement has resulted in counterparties neglecting to inform SDRs of errors, or otherwise not discovering even glaring errors in swap data, often for long periods of time. This leaves the Commission with flawed data, which hinders the Commission's ability to understand the nature of swaps, price fluctuations, and markets generally, and hampers the Commission's ability to perform its regulatory functions. Thus, the Commission believes the alternative of retaining current § 45.14 would undermine the Commission's regulatory efforts and hinder the Commission's ability to make informed decisions using accurate data.

Notwithstanding the anticipated incremental costs related to final § 45.14 and after considering alternative approaches, the Commission believes the amendments to § 45.14 are warranted in light of the anticipated benefits.

6. Costs and Benefits of Amendments to Part 43

§ 43.3(e)—Error Correction

The Commission is amending the error correction requirements of existing § 43.3(e) to conform to the error correction requirements in § 45.14. The amendments to § 43.3(e) create regulatory consistency and reduce any confusion around error-correction requirements for data under Part 43 and swap data required under Part 45.

Final § 43.3(e)(1) requires any SEF, DCM, or reporting counterparty that by any means becomes aware of any errors in swap transaction and pricing data previously-reported, or not properly reported, to an SDR by the SEF, DCM, or reporting counterparty to submit corrected swap transaction and pricing data to the SDR regardless of the state of the swap, including swaps that have terminated, matured, or are otherwise no longer open. Final § 43.3(e)(1)(i) requires a SEF, DCM, or reporting counterparty to correct swap transaction and pricing data as soon as technologically practicable following discovery of the errors, but no later than seven business days following the discovery of the error. Under final § 43.3(e)(1)(ii), if a SEF, DCM, or reporting counterparty is unable to correct the errors within seven business days following discovery of the errors, the SEF, DCM, or reporting counterparty must inform the Director of DMO, or his or her designee, of such errors or omissions and provide an initial assessment of the scope of the errors or omissions and an initial remediation plan for correcting the errors, if one exists, within 12 hours of determining that the correction cannot be made within the required time frame. Final § 43.3(e)(1)(iii) requires that a SEF, DCM, or reporting counterparty conform to an SDR's policies and procedures for corrections of errors in previously-reported swap transaction and pricing data and reporting of omitted swap transaction and pricing data.

Final § 43.3(e)(2) applies to a non-reporting counterparty that becomes aware of any errors in swap transaction and pricing data. Final § 43.3(e)(2) requires a non-reporting counterparty to inform the reporting counterparty for the swap of the error, but does not require the non-reporting counterparty to correct the error. A non-reporting counterparty has three business days following the discovery of the errors or omissions to notify the reporting counterparty of the error, instead of the seven business days provided for corrections under final § 43.3(e)(1). If a non-reporting counterparty does not know the identity of the reporting counterparty, the non-reporting counterparty must notify the SEF or DCM where the swap was executed of the errors and omissions no later than three business days after the discovery.

The Commission is moving all of the requirements of existing § 43.3(f) and (g) to new § 49.28. As such, all costs and benefits associated with this change are discussed above in section discussing § 49.28.

The costs related to final § 43.3(e)(1) are similar to the costs to correct errors under final § 45.14(a)(1), as the final rules to each section are intended to be consistent. Final § 43.3(e) will impose costs on SEFs, DCMs, and reporting counterparties for correcting errors and submitting remediation plans, if they exist, to the Director of DMO within a seven-day period. Market participants are also currently required to correct errors under existing § 43.3(e), so costs associated with § 43.3(e) are only those

[406] Proposal at 84 FR 21076 (May 13, 2019).

[407] *See supra* note 344 (discussion of BLS wage estimates).

[408] *See supra* note 344 (discussion of BLS wage estimates).

that result from the modified requirements as compared to the existing requirements, such as the requirement for notices. Costs to correct errors and issue error notices with initial remediation plans, if they exist, will be mitigated by the fact that the duties under § 43.3(e) are similar to duties in final § 45.14. The Commission also believes that the costs related to remediation plans will be incremental because reporting counterparties typically provide a remediation plan to the Commission as part of current practice. The seven-day deadline will require some reporting counterparties to allocate resources differently to meet the deadline because the current rule does not have a specific time deadline.[409] The Commission also believes that the inclusion of the technical specification and validation requirements for swap transaction and pricing data in parallel Commission rulemaking[410] will help reduce certain types of swap transaction and pricing data reporting errors, and, therefore, reduce the need for market participants to correct those types of errors and, as a result, the corresponding costs incurred by market participants to correct swap transaction and pricing data errors will likely decrease over time.

Non-reporting counterparties also may incur additional costs related to the requirements in § 43.3(e)(2). Non-reporting counterparties may expend resources to make the required notification within the three-day period under final § 43.3(e)(2). Under current § 43.3(e)(1)(i), non-reporting counterparties must act ''promptly'' so the three-day deadline under the final rule may require non-reporting counterparties to allocate resources differently to meet the deadline. The additional requirement in final § 43.3(e)(2) for a non-reporting counterparty to inform a SEF or DCM of an error if the identity of the reporting counterparty is not known is intended to accommodate non-reporting counterparties in fulfilling their role in the data correction process for swaps executed anonymously. The Commission expects that non-reporting counterparties will not incur many costs to notify a SEF or DCM of errors and omissions beyond the cost currently incurred when notifying reporting counterparties.

As discussed in the section regarding the benefits of final § 45.14, the Commission believes consistent error correction requirements for swap data and swap transaction and pricing data will help ensure that the Commission has access to accurate and complete swap transaction and pricing data in order to fulfill its various regulatory responsibilities. Accurate swap transaction and pricing data helps the Commission to monitor and surveil market activity and risks within the swaps markets. Accurate and complete swap transaction and pricing data is also beneficial to market participants and the public, who rely on the data in their swaps-related decision-making. Inaccurate or incomplete swap transaction and pricing data can create market volatility. Additionally, the Commission believes that accurate swap transaction and pricing data is necessary for effective risk management for swap counterparties, and the correction requirements under the final rule will help ensure that swap counterparties have access to accurate and complete swap transaction and pricing data.

SDRs and counterparties also benefit from consistent regulations. The final rule establishes a swap data error-correction framework for reporting counterparties in § 45.14. The requirements in final § 43.3(e) are consistent with the requirements in final § 45.14(a). Both of these rules complement amendments to Part 49 that require SDRs to provide reporting counterparties with access to swaps data reporting systems to identify errors and make corrections. The Commission believes that inconsistent requirements may lead to confusion and unnecessary efforts by covered entities. By ensuring that obligations in final § 43.3(e) are consistent with the obligations to § 45.14, these issues should be avoided. Finally, the Commission believes its ability to monitor swaps markets is not compromised by the three-day or seven-day correction and notification periods in final § 43.3(e). While incorrect data might affect market analysis in the short-term, there is greater value in possessing accurate data for the life of a swap that can provide insight into market activity for months and years; support a point-in-time examination of the data, and enable back-testing.

The Commission recognizes there will be monetary costs for reporting counterparties and non-reporting counterparties to comply with the error-correction and notification requirements in § 43.3(e). For the error-correction and remediation process, the Commission estimates that 1,729 SEFs, DCMs, and reporting counterparties will each spend about 30 hours a year correcting swap transaction and pricing data, providing notices to the Commission and submitting remediation plans, if such plans exist.[411] Those hours will not be new time commitments because reporting counterparties are currently required to correct errors. Because the Commission believes that error notifications by non-reporting counterparties will be infrequent, it estimates that non-reporting counterparties will expend no more than one hour issuing error notices. The Commission monetizes the hours by multiplying by a wage rate of $48 to $101.[412] Accordingly, the Commission estimates that each reporting counterparty will expend between $1,440 and $3,030 annually to implement § 43.3(e), and each non-reporting counterparty will expend between $48 and $101 annually.

While the Commission does anticipate incremental costs associated with § 43.3(e), the Commission believes the amendments to § 43.3(e) are warranted in light of the anticipated benefits related to error-correction processes that lead to accurate data.

7. Section 15(a) Factors

The Dodd-Frank Act sought to promote the financial stability of the United States, in part, by improving financial system accountability and transparency. More specifically, Title VII of the Dodd-Frank Act directs the Commission to promulgate regulations to increase swaps market transparency and thereby reduce the potential for counterparty and systemic risk.[413] Transaction-based reporting is a fundamental component of the legislation's objectives to increase transparency, reduce risk, and promote market integrity within the financial system generally, and the swaps market in particular. SEFs, DCMs, and reporting counterparties that submit data to SDRs are central to achieving the legislation's objectives related to swap reporting.

Section 15(a) of the Act requires the Commission to consider the costs and benefits of the amendments to parts 43, 45, and 49 with respect to the following factors:

- Protection of market participants and the public;
- Efficiency, competitiveness, and financial integrity of markets;
- Price discovery;

[409] *See generally* 17 CFR 43.3(e).

[410] *See generally* 85 FR 21516, *et seq.* (Apr. 17, 2020).

[411] Proposal at 84 FR 21076–77 (May 13, 2019).

[412] *See supra* note 344 (discussion of BLS wage estimates).

[413] *See* Congressional Research Service Report for Congress, The Dodd-Frank Wall Street Reform and Consumer Protection Act: Title VII, Derivatives, by Mark Jickling and Kathleen Ann Ruane (August 30, 2010); Department of the Treasury, Financial Regulatory Reform: A New Foundation: Rebuilding Financial Supervision and Regulation 1 (June 17, 2009) at 47–48.

• Sound risk management practices; and

• Other public interest considerations.

A discussion of these amendments in light of section 15(a) factors is set out immediately below.

i. Protection of Market Participants and the Public

In the Part 49 Adopting Release, the Commission noted that it believed that the registration and regulation of SDRs will serve to better protect market participants by providing the Commission and other regulators with important oversight tools to monitor, measure, and comprehend the swaps markets. Inaccurate and incomplete data reporting hinders the Commission's ability to oversee the swaps market. The final rules adopted in this release mostly focus on ensuring that SDRs and reporting counterparties verify and correct errors or omissions in data reported to SDRs and on streamlining and simplifying the requirements for SDRs. Both error-correction and verification processes are steps in a series of data checks or techniques needed to build accurate data sets. Regardless of whether verification is done automatically or manually, the accuracy of SDR data should improve under these final regulations because inaccuracies will be removed.

Overall, the Commission believes that the adoption of all the amendments to parts 43, 45, and 49 will improve the quality of the data reported, increase transparency, and enhance the Commission's ability to fulfill its regulatory responsibilities, including its market surveillance and enforcement capabilities. In some cases, as discussed above, the final regulations are expected to be more flexible as compared to the requirements in the Proposal. The Commission does not believe that this increased flexibility will encumber the benefits from better quality data. Rather, the Commission believes that monitoring of potential risks to financial stability will be more effective with more accurate data. More accurate data will therefore lead to improved protection of market participants and the public.

ii. Efficiency, Competitiveness, and Financial Integrity of Markets

The Commission believes that the adoption of the amendments to parts 43, 45, and 49, together with the swap data recordkeeping and reporting requirements in parts 43 and 45, will provide a robust source of information on swaps markets that is expected to promote increased efficiency and competition. Under the final Roadmap regulations, parts 43, 45, and 49 will work together to establish a data validation and verification system for SDRs and reporting counterparties. The result is a data reporting system that fulfills the CEA's mandate that the Commission prescribe data collection and maintenance standards for SDRs, and, ultimately, supports the collection of accurate and complete data.

The Commission believes that accurate swap transaction and pricing data will lead to greater efficiencies for market participants executing swap transactions due to a better understanding of their overall positions within the context of the broader market. This improved understanding will be facilitated by two distinct channels. First, amendments adopted in this final rulemaking are expected to result in improved swap transaction and pricing data being made available to the public, which will improve the ability of market participants to monitor real-time activity by other participants and to respond as they see fit. Second, amendments that result in improved swap data will improve the Commission's ability to monitor the swaps markets for abusive practices and improve the Commission's ability to create policies that ensure the integrity of the swaps markets. This improvement will be facilitated by the Commission's improved oversight and enforcement capabilities and the reports and studies published as part of the Commission's research and information programs.

In particular, the amendments to §§ 45.14, 49.2, 49.10, 49.11, 49.12, and 49.26 will help improve the financial integrity of markets. For example, the verification and correction of swap data will improve the accuracy and completeness of swap data available to the Commission. The verification and correction processes also will assist the Commission with, among other things, improving monitoring of risk exposures of individual counterparties, monitoring concentrations of risk exposure, and evaluating systemic risk. The efficient oversight and accurate data reporting enabled by these amendments will improve the financial integrity of the swaps markets.

In the Part 49 Adopting Release, the Commission expected that the introduction of SDRs would further automate the reporting of swap data. The Commission expected that automation would benefit market participants and reduce transactional risks through the SDRs and other service providers offering important ancillary services, such as confirmation and matching services, valuation, pricing, reconciliation, position limits management, and dispute resolution. These benefits did follow and have enhanced the efficiency, competitiveness, and financial integrity of markets.[414] The Commission believes that the amendments in this release will help to further enhance these benefits.

iii. Price Discovery

The CEA requires that swap transaction and pricing data be made publicly available. The CEA and its existing regulations in part 43 also require swap transaction and pricing data to be available to the public in real-time. Combined, parts 43 and 49 achieve the statutory objective of providing transparency and enhanced price discovery to swap markets in a timely manner. The amendments to §§ 43.3, 49.2, 49.10, 49.11, 49.12, and 49.26 improve the fulfillment of these objectives. The amendments, both directly and indirectly, upgrade the quality of real-time public reporting of swap transaction and pricing data by improving the accuracy of information that is reported to the SDRs and disseminated to the public.

As explained above, many of the final rules adopted in this release focus on a system for verifying swap data reported to and maintained by SDRs, who are also charged with disseminating such data to the Commission. The value of the swap data to the Commission depends on its accuracy and completeness. Swap data that contains errors or missing information has limited value because the Commission cannot rely on it to monitor risk and pricing, measure volume and liquidity, or inform policy.

Similarly, the Commission believes that inaccurate and incomplete swap transaction and pricing data hinders the public's use of the data, which harms transparency and price discovery. The Commission is aware of at least three publicly-available studies that support this point. The studies examined data and remarked on incomplete, inaccurate, and unreliable data. The first study analyzed the potential impact of the Dodd-Frank Act on OTC transaction costs and liquidity using real-time CDS trade data. The study found that more than 5,000 reports had missing data and more than 15,000 reports included a price of zero, leaving a usable sample of 180,149 reports.[415] The second study reported a number of data fields that

[414] *See* Part 49 Adopting Release at 54573.

[415] Y.C. Loon, Z. (Ken) Zhong, ''Does Dodd-Frank affect OTC transaction costs and liquidity? Evidence from real-time trade reports,'' *Journal of Financial Economics* (2016), *available at http://dx.doi.org/10.1016/j.jfineco.2016.01.019.*

were routinely null or missing, making it difficult to analyze swap market volumes.[416] The third study assessed the size of the agricultural swaps market and described problems in identifying the underlying commodity as well as other errors in the reported data that made some data unusable, including, for example, swaps with a reported notional quantity roughly equal to the size of the entire U.S. soybean crop.[417] The Commission expects the final rules will result in more accurate and complete data, which will improve market participants' ability to analyze swap transaction and pricing data. This, in turn, should improve transparency and price discovery.

iv. Sound Risk Management Practices

In the Part 49 Adopting Release, the Commission stated that part 49 and part 45 will strengthen the risk management practices of the swaps market.[418] Prior to the adoption of the Dodd-Frank Act, participants in the swaps markets operated without obligations to disclose transactions to regulators or to the public. The Dodd-Frank Act specifically changed the transparency of the swaps market with the adoption of CEA section 21 and the establishment of SDRs as the entities to which swap data and swap transaction and pricing data are reported and maintained for use by regulators or disseminated to the public. The Commission believes that the improved reporting of data to SDRs will serve to improve risk management practices by market participants. To the extent that better swap transaction and pricing data improves the ability of market participants to gauge their risks in the context of the overall market, risk management practices should improve. Earlier and more-informed discussions between relevant market participants and regulators regarding systemic risk, facilitated by accurate swap data, will also lead to improved risk management outcomes. Market participants should also see improvements in their risk management practices, as improved swap data allows for more accurate and timely market analyses that are publicly disseminated by the Commission.

The Commission believes that the amendments to parts 43, 45, and 49 will improve the quality of SDR data reported to SDRs and, hence, improve the Commission's ability to monitor the swaps market, react to potential market emergencies, and fulfill its regulatory responsibilities generally. The amendments adopted in this final rulemaking place different obligations on SDRs and reporting counterparties to verify accuracy and completeness of SDR data. The Commission believes that access for regulators to accurate and reliable SDR data is essential for appropriate risk management and is especially important for regulators' ability to monitor the swaps market for systemic risk. Moreover, the Commission expects efforts to improve data quality will increase market participants' confidence in SDR data and therefore their confidence in any subsequent analyses based on the data.

v. Other Public Interest Considerations

The Commission believes that the increased transparency resulting from improvements to the SDR data via the amendments to parts 43, 45, and 49 has other public interest considerations including: Creating greater understanding for the public, market participants, and the Commission of the interaction between the swaps market, other financial markets, and the overall economy; improving regulatory oversight and enforcement capabilities; and generating more information for regulators so that they may establish more effective public policies to reduce overall systemic risk.

D. Antitrust Considerations

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of the CEA, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of the CEA.[419] The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition.

The Commission requested comments on whether the Proposal may have the potential to be inconsistent with the anti-trust laws or anti-competitive in nature. The Commission has considered this final rule to determine whether it is anticompetitive and has identified no anticompetitive effects.

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

List of Subjects

17 CFR Part 43

Real-time public swap reporting.

17 CFR Part 45

Data recordkeeping requirements, Data reporting requirements, Swaps.

17 CFR Part 49

Registration and regulatory requirements, Swap data repositories.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR chapter I as follows:

PART 43—REAL-TIME PUBLIC REPORTING

■ 1. The authority citation for part 43 continues to read as follows:

Authority: 7 U.S.C. 2(a), 12a(5) and 24a, as amended by Pub. L. 111–203, 124 Stat. 1376 (2010).

■ 2. Amend § 43.3 by revising paragraph (e) to read as follows:

§ 43.3 Method and timing for real-time public reporting.

* * * * *

(e) *Correction of errors*—(1) *Swap execution facilities, designated contract markets, and reporting counterparties.* Any swap execution facility, designated contract market, or reporting counterparty that by any means becomes aware of any error relating to swap transaction and pricing data that it was required to report under this part shall correct the error. To correct an error, the swap execution facility, designated contract market, or reporting counterparty shall submit complete and accurate swap transaction and pricing data to the swap data repository that maintains the swap transaction and pricing data for the relevant swap, or completely and accurately report swap transaction and pricing data for a swap that was not previously reported to a swap data repository as required under this part, as applicable. Except as otherwise provided in this section, the requirement to correct any error applies regardless of the state of the swap that is the subject of the swap transaction and pricing data, including a swap that has terminated, matured, or otherwise is no longer considered to be an open swap.

[416] *See* Financial Stability Report, Office of Financial Research (Dec. 15, 2015) at 84–85, *available at https://financialresearch.gov/financial-stability-reports/files/OFR_2015-Financial-Stability-Report_12-15-2015.pdf.*

[417] Peterson, P.E. 2014. ''How Large is the Agricultural Swaps Market?'' Proceedings of the NCCC–134 Conference on Applied Commodity Price Analysis, Forecasting, and Market Risk Management. St. Louis, MO, *available at http://www.farmdoc.illinois.edu/nccc134.*

[418] *See* Part 49 Adopting Release at 54574.

[419] 7 U.S.C. 19(b).

(i) *Timing requirement for correcting errors.* The swap execution facility, designated contract market, or reporting counterparty shall correct any error as soon as technologically practicable after discovery of the error. In all cases, errors shall be corrected within seven business days after discovery. Any error that a reporting counterparty discovers or could have discovered during the verification process required under § 45.14(b) of this chapter is considered discovered for the purposes of this section as of the moment the reporting counterparty began the verification process during which the error was first discovered or discoverable.

(ii) *Notification of failure to timely correct.* If the swap execution facility, designated contract market, or reporting counterparty will, for any reason, fail to timely correct an error, the swap execution facility, designated contract market, or reporting counterparty shall notify the Director of the Division of Market Oversight, or such other employee or employees of the Commission as the Director may designate from time to time. The notification shall be in the form and manner, and according to the instructions, specified by the Director of the Division of Market Oversight, or such other employee or employees of the Commission as the Director may designate from time to time. Unless otherwise instructed by the Director of the Division of Market Oversight, or such other employee or employees of the Commission as the Director may designate from time to time, the notification shall include an initial assessment of the scope of the error or errors that were discovered, and shall include any initial remediation plan for correcting the error or errors, if an initial remediation plan exists. This notification shall be made within 12 hours of the swap execution facility's, designated contract market's, or reporting counterparty's determination that it will fail to timely correct the error.

(iii) *Form and manner for error correction.* In order to satisfy the requirements of this section, a swap execution facility, designated contract market, or reporting counterparty shall conform to a swap data repository's policies and procedures created pursuant to § 49.10 of this chapter for correction of errors.

(2) *Non-reporting counterparties.* Any non-reporting counterparty that by any means becomes aware of any error in the swap transaction and pricing data for a swap to which it is the non-reporting counterparty, shall notify the reporting counterparty for the swap of the error as soon as technologically practicable after discovery, but not later than three business days following discovery of the error. If the non-reporting counterparty does not know the identity of the reporting counterparty, the non-reporting counterparty shall notify the swap execution facility or designated contract market where the swap was executed of the error as soon as technologically practicable after discovery, but no later than three business days following the discovery. Such notice from the non-reporting counterparty to the swap execution facility, designated contract market, or reporting counterparty constitutes discovery under this section.

(3) *Exception.* The requirements to correct errors set forth in paragraph (e) of this section only apply to errors in swap transaction and pricing data relating to swaps for which the record retention period under § 45.2 of this chapter has not expired as of the time the error is discovered. Errors in swap transaction and pricing data relating to swaps for which the record retention periods under § 45.2 of this chapter have expired at the time that the errors are discovered are not subject to the requirements to correct errors set forth in paragraph (e) of this section.

(4) *Error defined*—(i) *Errors.* For the purposes of this part, there is an error when swap transaction and pricing data is not completely and accurately reported. This includes, but is not limited to, the following circumstances:

(A) Any of the swap transaction and pricing data for a swap reported to a swap data repository is incorrect or any of the swap transaction and pricing data that is maintained by a swap data repository differs from any of the relevant swap transaction and pricing data contained in the books and records of a party to the swap.

(B) Any of the swap transaction and pricing data for a swap that is required to be reported to a swap data repository or to be maintained by a swap data repository is not reported to a swap data repository or is not maintained by the swap data repository as required by this part.

(C) None of the swap transaction and pricing data for a swap that is required to be reported to a swap data repository or to be maintained by a swap data repository is reported to a swap data repository or is maintained by a swap data repository.

(D) Any of the swap transaction and pricing data for a swap that is no longer an open swap is maintained by the swap data repository as if the swap is still an open swap.

(ii) *Presumption.* For the purposes of this section, there is a presumption that an error exists if the swap data or the swap transaction and pricing data that is maintained and disseminated by an SDR for a swap is not complete and accurate. This includes, but is not limited to, the swap data that the SDR makes available to the reporting counterparty for verification under § 49.11 of this chapter.

* * * * *

PART 45—SWAP DATA RECORDKEEPING AND REPORTING REQUIREMENTS

■ 3. The authority citation for part 45 continues to read as follows:

Authority: 7 U.S.C. 6r, 7, 7a–1, 7b–3, 12a, and 24a, as amended by Title VII of the Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111–203, 124 Stat. 1376 (2010), unless otherwise noted.

■ 4. In § 45.1(a), add a definition for the term ''Open swap'' in alphabetical order to read as follows:

§ 45.1 Definitions.

(a) * * *

Open swap means an executed swap transaction that has not reached maturity or expiration, and has not been fully exercised, closed out, or terminated.

* * * * *

§ 45.2 [Amended]

■ 5. In § 45.2, remove and reserve paragraphs (f) and (g).

■ 6. Revise § 45.14 to read as follows:

§ 45.14 Correcting errors in swap data and verification of swap data accuracy.

(a) *Correction of errors*—(1) *Swap execution facilities, designated contract markets, and reporting counterparties.* Any swap execution facility, designated contract market, or reporting counterparty that by any means becomes aware of any error relating to swap data that it was required to report under this part shall correct the error. To correct an error, the swap execution facility, designated contract market, or reporting counterparty shall submit complete and accurate swap data to the swap data repository that maintains the swap data for the relevant swap, or completely and accurately report swap data for a swap that was not previously reported to a swap data repository as required under this part, as applicable. Except as otherwise provided in this section, the requirement to correct any error applies regardless of the state of the swap that is the subject of the swap data, including a swap that has

terminated, matured, or otherwise is no longer considered to be an open swap.

(i) *Timing requirement for correcting errors.* The swap execution facility, designated contract market, or reporting counterparty shall correct any error as soon as technologically practicable after discovery of the error. In all cases, errors shall be corrected within seven business days after discovery. Any error that a reporting counterparty discovers or could have discovered during the verification process required under paragraph (b) of this section is considered discovered for the purposes of this section as of the moment the reporting counterparty began the verification process during which the error was first discovered or discoverable.

(ii) *Notification of failure to timely correct.* If the swap execution facility, designated contract market, or reporting counterparty will, for any reason, fail to timely correct an error, the swap execution facility, designated contract market, or reporting counterparty shall notify the Director of the Division of Market Oversight, or such other employee or employees of the Commission as the Director may designate from time to time. The notification shall be in the form and manner, and according to the instructions, specified by the Director of the Division of Market Oversight, or such other employee or employees of the Commission as the Director may designate from time to time. Unless otherwise instructed by the Director of the Division of Market Oversight, or such other employee or employees of the Commission as the Director may designate from time to time, the notification shall include an initial assessment of the scope of the error or errors that were discovered, and shall include any initial remediation plan for correcting the error or errors, if an initial remediation plan exists. This notification shall be made within 12 hours of the swap execution facility's, designated contract market's, or reporting counterparty's determination that it will fail to timely correct the error.

(iii) *Form and manner for error correction.* In order to satisfy the requirements of this section, a swap execution facility, designated contract market, or reporting counterparty shall conform to a swap data repository's policies and procedures created pursuant to § 49.10 of this chapter for correction of errors.

(2) *Non-reporting counterparties.* Any non-reporting counterparty that by any means becomes aware of any error in the swap data for a swap to which it is the non-reporting counterparty, shall notify the reporting counterparty for the swap of the error as soon as technologically practicable after discovery, but not later than three business days following discovery of the error. If the non-reporting counterparty does not know the identity of the reporting counterparty, the non-reporting counterparty shall notify the swap execution facility or designated contract market where the swap was executed of the error as soon as technologically practicable after discovery, but no later than three business days following the discovery. Such notice from the non-reporting counterparty to the swap execution facility, designated contract market, or reporting counterparty constitutes discovery under this section.

(3) *Exception.* The requirements to correct errors set forth in paragraph (a) of this section only apply to errors in swap data relating to swaps for which the record retention period under § 45.2 has not expired as of the time the error is discovered. Errors in swap data relating to swaps for which the record retention periods under § 45.2 have expired at the time that the errors are discovered are not subject to the requirements to correct errors set forth in paragraph (a) of this section.

(b) *Verification that swap data is complete and accurate.* Each reporting counterparty shall verify that there are no errors in the swap data for all open swaps that the reporting counterparty reported, or was required to report, to a swap data repository under the requirements of this part, in accordance with this paragraph (b).

(1) *Method of verification.* Each reporting counterparty shall utilize the mechanism for verification that each swap data repository to which the reporting counterparty reports swap data adopts under § 49.11 of this chapter. Each reporting counterparty shall utilize the relevant mechanism(s) to compare all swap data for each open swap for which it serves as the reporting counterparty maintained by the relevant swap data repository or repositories with all swap data contained in the reporting counterparty's internal books and records for each swap, to verify that there are no errors in the relevant swap data maintained by the swap data repository. Notwithstanding the foregoing, a reporting counterparty is not required to verify the accuracy and completeness of any swap data to which the reporting counterparty is not permitted access under the Act or Commission regulations, including, but not limited to, § 49.17 of this chapter.

(2) *Verification policies and procedures.* In performing verification as required by this paragraph, each reporting counterparty shall conform to each relevant swap data repository's verification policies and procedures created pursuant to § 49.11 of this chapter. If a reporting counterparty utilizes a third-party service provider to perform verification, the reporting counterparty shall conform to each relevant swap data repository's third-party service provider verification policies and procedures created pursuant to § 49.11 of this chapter and shall require the third-party service provider to conform to the same policies and procedures while performing verification on behalf of the reporting counterparty.

(3) *Correcting errors.* Any and all errors discovered during the verification process shall be corrected in accordance with paragraph (a)(1) of this section.

(4) *Frequency.* Each reporting counterparty shall perform verification at a minimum:

(i) If the reporting counterparty is a swap dealer, major swap participant, or derivatives clearing organization, once every thirty calendar days; or

(ii) If the reporting counterparty is not a swap dealer, major swap participant, or a derivatives clearing organization, once every calendar quarter, provided that there are at least two calendar months between verifications.

(5) *Verification log.* Each reporting counterparty shall keep a log of each verification that it performs. For each verification, the log shall include all errors discovered during the verification, and the corrections performed under paragraph (a) of this section. This requirement is in addition to any other applicable reporting counterparty recordkeeping requirement.

(c) *Error defined*—(1) *Errors.* For the purposes of this part, there is an error when swap data is not completely and accurately reported. This includes, but is not limited to, the following circumstances:

(i) Any of the swap data for a swap reported to a swap data repository is incorrect or any of the swap data that is maintained by a swap data repository differs from any of the relevant swap data contained in the books and records of a party to the swap.

(ii) Any of the swap data for a swap that is required to be reported to a swap data repository or to be maintained by a swap data repository is not reported to a swap data repository or is not maintained by the swap data repository as required by this part.

(iii) None of the swap data for a swap that is required to be reported to a swap data repository or to be maintained by a swap data repository is reported to a swap data repository or is maintained by a swap data repository.

(iv) Any of the swap data for a swap that is no longer an open swap is maintained by the swap data repository as if the swap is still an open swap.

(2) *Presumption.* For the purposes of this section, there is a presumption that an error exists if the swap data that is maintained and disseminated by an SDR for a swap is not complete and accurate. This includes, but is not limited to, the swap data that the SDR makes available to the reporting counterparty for verification under § 49.11 of this chapter.

PART 49—SWAP DATA REPOSITORIES

■ 7. The authority citation for part 49 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2(a), 6r, 12a, and 24a, as amended by Title VII of the Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111–203, 124 Stat. 1376 (Jul. 21, 2010), unless otherwise noted.

■ 8. Amend § 49.2 by:
■ a. In paragraph (a)—
■ i. Revising the definition of ''Affiliate'';
■ ii. Adding in alphabetical order a definition for ''As soon as technologically practicable'';
■ iii. Revising the definitions of ''Asset class,'' ''Commercial use,'' ''Control,'' ''Foreign regulator,'' ''Independent perspective,'' ''Market participant,'' and ''Non-affiliated third party'';
■ iv. Adding in alphabetical order a definition for ''Open swap'';
■ v. Revising the definitions of ''Person associated with a swap data repository'' and ''Position'';
■ vi. Removing the definition of ''Registered swap data repository'';
■ vii. Adding in alphabetical order a definition for ''Reporting counterparty'';
■ viii. Removing the definition of ''Reporting entity'';
■ ix. Adding in alphabetical order a definition for ''SDR data'';
■ x. Revising the definitions of ''SDR Information,'' ''Section 8 material,'' and ''Swap data'';
■ xi. Adding in alphabetical order a definition for ''Swap transaction and pricing data''; and
■ b. Revising paragraph (b).

The revisions and additions read as follows:

§ 49.2 Definitions.

(a) * * *

Affiliate means a person that directly, or indirectly, controls, is controlled by, or is under common control with, the swap data repository.

As soon as technologically practicable means as soon as possible, taking into consideration the prevalence, implementation, and use of technology by comparable market participants.

Asset class means a broad category of commodities including, without limitation, any ''excluded commodity'' as defined in section 1a(19) of the Act, with common characteristics underlying a swap. The asset classes include interest rate, foreign exchange, credit, equity, other commodity, and such other asset classes as may be determined by the Commission.

Commercial use means the use of SDR data held and maintained by a swap data repository for a profit or business purposes. A swap data repository's use of SDR data for regulatory purposes and/or to perform its regulatory responsibilities would not be considered a commercial use regardless of whether the swap data repository charges a fee for reporting such SDR data.

Control (including the terms ''*controlled by*'' and ''*under common control with*'') means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

* * * * *

Foreign regulator means a foreign futures authority as defined in section 1a(26) of the Act, foreign financial supervisors, foreign central banks, foreign ministries, and other foreign authorities.

Independent perspective means a viewpoint that is impartial regarding competitive, commercial, or industry concerns and contemplates the effect of a decision on all constituencies involved.

Market participant means any person participating in the swap market, including, but not limited to, designated contract markets, derivatives clearing organizations, swap execution facilities, swap dealers, major swap participants, and any other counterparty to a swap transaction.

Non-affiliated third party means any person except:

(1) The swap data repository;

(2) The swap data repository's affiliate; or

(3) A person jointly employed by a swap data repository and any entity that is not the swap data repository's affiliate (the term ''non-affiliated third party'' includes such entity that jointly employs the person).

Open swap means an executed swap transaction that has not reached maturity or expiration, and has not been fully exercised, closed out, or terminated.

Person associated with a swap data repository means:

(1) Any partner, officer, or director of such swap data repository (or any person occupying a similar status or performing similar functions);

(2) Any person directly or indirectly controlling, controlled by, or under common control with such swap data repository; or

(3) Any person employed by such swap data repository, including a jointly employed person.

Position means the gross and net notional amounts of open swap transactions aggregated by one or more attributes, including, but not limited to, the:

(1) Underlying instrument;

(2) Index, or reference entity;

(3) Counterparty;

(4) Asset class;

(5) Long risk of the underlying instrument, index, or reference entity; and

(6) Short risk of the underlying instrument, index, or reference entity.

Reporting counterparty means the counterparty required to report SDR data pursuant to part 43, 45, or 46 of this chapter.

SDR data means the specific data elements and information required to be reported to a swap data repository or disseminated by a swap data repository pursuant to two or more of parts 43, 45, 46, and/or 49 of this chapter, as applicable in the context.

SDR information means any information that the swap data repository receives or maintains related to the business of the swap data repository that is not SDR data.

Section 8 material means the business transactions, SDR data, or market positions of any person and trade secrets or names of customers.

Swap data means the specific data elements and information required to be reported to a swap data repository pursuant to part 45 of this chapter or made available to the Commission pursuant to this part, as applicable.

Swap transaction and pricing data means the specific data elements and information required to be reported to a swap data repository or publicly disseminated by a swap data repository pursuant to part 43 of this chapter, as applicable.

(b) *Other defined terms.* Terms not defined in this part have the meanings assigned to the terms in § 1.3 of this chapter.

■ 9. In § 49.3:
■ a. Revise paragraph (a)(5);
■ b. Remove the phrase ''swap transaction data'' from paragraph (d) and add in its place ''SDR data''; and
■ c. Remove the reference ''§ 40.1(e)'' from paragraph (d) and add in its place ''§ 40.1''.

The revision reads as follows:

§ 49.3 Procedures for registration.

(a) * * *

(5) *Amendments.* If any information reported on Form SDR or in any amendment thereto is or becomes inaccurate for any reason, whether before or after the application for registration has been granted under this paragraph (a), the swap data repository shall promptly file an amendment on Form SDR updating such information.

* * * * *

■ 10. Revise the paragraph heading for § 49.4(c) to read as follows:

§ 49.4 Withdrawal from registration.

* * * * *

(c) *Revocation of registration for false application.* * * *

* * * * *

■ 11. Revise § 49.5 to read as follows:

§ 49.5 Equity interest transfers.

(a) *Equity interest transfer notification.* A swap data repository shall file with the Commission a notification of each transaction involving the direct or indirect transfer of ten percent or more of the equity interest in the swap data repository. The Commission may, upon receiving such notification, request that the swap data repository provide supporting documentation of the transaction.

(b) *Timing of notification.* The equity interest transfer notice described in paragraph (a) of this section shall be filed electronically with the Secretary of the Commission at its Washington, DC headquarters at *submissions@cftc.gov* and the Division of Market Oversight at *DMOSubmissions@cftc.gov,* at the earliest possible time but in no event later than the open of business ten business days following the date upon which a firm obligation is made to transfer, directly or indirectly, ten percent or more of the equity interest in the swap data repository.

(c) *Certification.* Upon a transfer, whether directly or indirectly, of an equity interest of ten percent or more in a swap data repository, the swap data repository shall file electronically with the Secretary of the Commission at its Washington, DC headquarters at *submissions@cftc.gov* and the Division of Market Oversight at *DMOSubmissions@cftc.gov,* a certification that the swap data repository meets all of the requirements of section 21 of the Act and the Commission regulations in 17 CFR chapter I, no later than two business days following the date on which the equity interest of ten percent or more was acquired.

■ 12. Revise § 49.6 to read as follows:

§ 49.6 Request for transfer of registration.

(a) *Request for approval.* A swap data repository seeking to transfer its registration from its current legal entity to a new legal entity as a result of a corporate change shall file a request for approval to transfer such registration with the Secretary of the Commission in the form and manner specified by the Commission.

(b) *Timing for filing a request for transfer of registration.* A swap data repository shall file a request for transfer of registration as soon as practicable prior to the anticipated corporate change.

(c) *Required information.* The request for transfer of registration shall include the following:

(1) The underlying documentation that governs the corporate change;

(2) A description of the corporate change, including the reason for the change and its impact on the swap data repository, including the swap data repository's governance and operations, and its impact on the rights and obligations of market participants;

(3) A discussion of the transferee's ability to comply with the Act, including the core principles applicable to swap data repositories and the Commission's regulations;

(4) The governance documents adopted by the transferee, including a copy of any constitution; articles or certificate of incorporation, organization, formation, or association with all amendments thereto; partnership or limited liability agreements; and any existing bylaws, operating agreement, or rules or instruments corresponding thereto;

(5) The transferee's rules marked to show changes from the current rules of the swap data repository; and

(6) A representation by the transferee that it:

(i) Will be the surviving entity and successor-in-interest to the transferor swap data repository and will retain and assume the assets and liabilities of the transferor, except if otherwise indicated in the request;

(ii) Will assume responsibility for complying with all applicable provisions of the Act and the Commission's regulations; and

(iii) Will notify market participants of all changes to the transferor's rulebook prior to the transfer, including those changes that may affect the rights and obligations of market participants, and will further notify market participants of the concurrent transfer of the registration to the transferee upon Commission approval and issuance of an order permitting the transfer.

(d) *Commission determination.* Upon review of a request for transfer of registration, the Commission, as soon as practicable, shall issue an order either approving or denying the request for transfer of registration.

■ 13. Revise § 49.9 to read as follows:

§ 49.9 Open swaps reports provided to the Commission.

Each swap data repository shall provide reports of open swaps to the Commission in accordance with this section.

(a) *Content of the open swaps report.* In order to satisfy the requirements of this section, each swap data repository shall provide the Commission with open swaps reports that contain an accurate reflection, as of the time the swap data repository compiles the open swaps report, of the swap data maintained by the swap data repository for every swap data field required to be reported for swaps pursuant to part 45 of this chapter for every open swap. The report shall be organized by the unique identifier created pursuant to § 45.5 of this chapter that is associated with each open swap.

(b) *Transmission of the open swaps report.* Each swap data repository shall transmit all open swaps reports to the Commission as instructed by the Commission. Such instructions may include, but are not limited to, the method, timing, and frequency of transmission, as well as the format of the swap data to be transmitted.

■ 14. In § 49.10, add paragraph (e) to read as follows:

§ 49.10 Acceptance of data.

* * * * *

(e) *Error corrections*—(1) *Accepting corrections.* A swap data repository shall accept error corrections for SDR data. Error corrections include corrections to errors and omissions in SDR data previously reported to the swap data repository pursuant to part 43, 45, or 46 of this chapter, as well as omissions in reporting SDR data for swaps that were not previously reported to a swap data repository as required under part 43, 45, or 46 of this chapter. The requirement to accept error corrections applies for all swaps, regardless of the state of the swap that

is the subject of the SDR data. This includes swaps that have terminated, matured, or are otherwise no longer considered to be open swaps, provided that the record retention period under § 49.12(b)(2) has not expired as of the time the error correction is reported.

(2) *Recording corrections.* A swap data repository shall record the corrections, as soon as technologically practicable after the swap data repository accepts the error correction.

(3) *Dissemination.* A swap data repository shall disseminate corrected SDR data to the public and the Commission, as applicable, in accordance with this chapter, as soon as technologically practicable after the swap data repository records the corrected SDR data.

(4) *Policies and procedures.* A swap data repository shall establish, maintain, and enforce policies and procedures designed for the swap data repository to accept error corrections, to record the error corrections as soon as technologically practicable after the swap data repository accepts the error correction, and to disseminate corrected SDR data to the public and to the Commission, as applicable, in accordance with this chapter.

* * * * *

■ 15. Revise § 49.11 to read as follows:

§ 49.11 Verification of swap data accuracy.

(a) *General requirement.* Each swap data repository shall verify the accuracy and completeness of swap data that it receives from swap execution facilities, designated contract markets, reporting counterparties, or third-party service providers acting on their behalf, in accordance with paragraph (b) of this section.

(b) *Verifying swap data accuracy and completeness*—(1) *Swap data access.* Each swap data repository shall provide a mechanism that allows each reporting counterparty that is a user of the swap data repository to access all swap data maintained by the swap data repository for each open swap for which the reporting counterparty is serving as the reporting counterparty, as specified in paragraph (b)(2) of this section. This mechanism shall allow sufficient access, provide sufficient information, and be in a form and manner to enable each reporting counterparty to perform swap data verification as required under § 45.14 of this chapter.

(2) *Scope of swap data access.* The swap data accessible through the mechanism provided by each swap data repository shall accurately reflect the most current swap data maintained by the swap data repository, as of the time the reporting counterparty accesses the swap data using the provided mechanism, for each data field that the reporting counterparty was required to report for each relevant open swap pursuant to part 45 of this chapter, except as provided in paragraph (b)(3) of this section. The swap data accessible through the mechanism provided by each swap data repository shall include sufficient information to allow reporting counterparties to successfully perform the swap data verification required under § 45.14 of this chapter.

(3) *Confidentiality.* The swap data access each swap data repository shall provide pursuant to this section is subject to all applicable confidentiality requirements of the Act and this chapter, including, but not limited to, § 49.17. The swap data accessible to any reporting counterparty shall not include any swap data that the relevant reporting counterparty is prohibited to access under any Commission regulation.

(4) *Frequency of swap data access.* Each swap data repository shall allow each reporting counterparty that is a user of the relevant swap data repository to utilize the mechanism as required under this section with at least sufficient frequency to allow each relevant reporting counterparty to perform the swap data verification required under § 45.14 of this chapter.

(5) *Third-party service providers.* If a reporting counterparty informs a swap data repository that the reporting counterparty will utilize a third-party service provider to perform verification as required pursuant to § 45.14 of this chapter, the swap data repository will satisfy its requirements under this section by providing the third-party service provider with the same access to the mechanism and the relevant swap data for the reporting counterparty under this section, as if the third-party service provider was the reporting counterparty. The access for the third-party service provider shall be in addition to the access for the reporting counterparty required under this section. The access for the third-party service provider under this paragraph shall continue until the reporting counterparty informs the swap data repository that the third-party service provider should no longer have access on behalf of the reporting counterparty. The policies and procedures each swap data repository adopts under paragraph (c) of this section shall include instructions detailing how each reporting counterparty can successfully inform the swap data repository regarding a third-party service provider.

(c) *Policies and procedures*—(1) *Contents.* Each swap data repository shall establish, maintain, and enforce policies and procedures designed to ensure compliance with the requirements of this section. Such policies and procedures shall include, but are not limited to, instructions detailing how each reporting counterparty, or third-party service provider acting on behalf of a reporting counterparty, can successfully utilize the mechanism provided pursuant to this section to perform each reporting counterparty's verification responsibilities under § 45.14 of this chapter.

(2) *Amendments.* Each swap data repository shall comply with the requirements under part 40 of this chapter in adopting or amending the policies and procedures required by this section.

■ 16. Revise § 49.12 to read as follows:

§ 49.12 Swap data repository recordkeeping requirements.

(a) *General requirement.* A swap data repository shall keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities relating to the business of the swap data repository, including, but not limited to, all SDR information and all SDR data that is reported to the swap data repository pursuant to this chapter.

(b) *Maintenance of records.* A swap data repository shall maintain all records required to be kept by this section in accordance with this paragraph (b).

(1) A swap data repository shall maintain all SDR information, including, but not limited to, all documents, policies, and procedures required by the Act and the Commission's regulations, correspondence, memoranda, papers, books, notices, accounts, and other such records made or received by the swap data repository in the course of its business. All SDR information shall be maintained in accordance with § 1.31 of this chapter.

(2) A swap data repository shall maintain all SDR data and timestamps reported to or created by the swap data repository pursuant to this chapter, and all messages related to such reporting, throughout the existence of the swap that is the subject of the SDR data and for five years following final termination of the swap, during which time the records shall be readily accessible by the swap data repository and available to the Commission via real-time electronic access, and for a period of at least ten additional years in archival storage from which such records are

retrievable by the swap data repository within three business days.

(c) *Records of data errors and omissions.* A swap data repository shall create and maintain records of data validation errors and SDR data reporting errors and omissions in accordance with this paragraph (c).

(1) A swap data repository shall create and maintain an accurate record of all reported SDR data that fails to satisfy the swap data repository's data validation procedures including, but not limited to, all SDR data reported to the swap data repository that fails to satisfy the data validation procedures, all data validation errors, and all related messages and timestamps. A swap data repository shall make these records available to the Commission on request.

(2) A swap data repository shall create and maintain an accurate record of all SDR data errors and omissions reported to the swap data repository and all corrections disseminated by the swap data repository pursuant to parts 43, 45, and 46 of this chapter and this part. A swap data repository shall make these records available to the Commission on request.

(d) *Availability of records.* All records required to be kept pursuant to this part shall be open to inspection upon request by any representative of the Commission or the United States Department of Justice in accordance with the provisions of § 1.31 of this chapter. A swap data repository required to keep, create, or maintain records pursuant to this section shall provide such records in accordance with the provisions of § 1.31 of this chapter, unless otherwise provided in this part.

(e) A swap data repository shall establish policies and procedures to calculate positions for position limits and any other purpose as required by the Commission, for all persons with swaps that have not expired maintained by the swap data repository.

■ 17. Revise paragraph (a) and the paragraph (b) heading in § 49.13 to read as follows:

§ 49.13 Monitoring, screening and analyzing swap data.

(a) *Duty to monitor, screen and analyze SDR data.* A swap data repository shall monitor, screen, and analyze all relevant SDR data in its possession in such a manner as the Commission may require. A swap data repository shall routinely monitor, screen, and analyze SDR data for the purpose of any standing swap surveillance objectives that the Commission may establish as well as perform specific monitoring, screening, and analysis tasks based on ad hoc requests by the Commission.

(b) *Capacity to monitor, screen and analyze SDR data.* * * *

■ 18. Revise § 49.15 to read as follows:

§ 49.15 Real-time public reporting by swap data repositories.

(a) *Scope.* The provisions of this section apply to the real-time public reporting of swap transaction and pricing data submitted to a swap data repository pursuant to part 43 of this chapter.

(b) *Systems to accept and disseminate data in connection with real-time public reporting.* A swap data repository shall establish such electronic systems as are necessary to accept and publicly disseminate swap transaction and pricing data submitted to the swap data repository pursuant to part 43 of this chapter in order to meet the real-time public reporting obligations of part 43 of this chapter. Any electronic system established for this purpose shall be capable of accepting and ensuring the public dissemination of all data fields required by part 43 this chapter.

(c) *Duty to notify the Commission of untimely data.* A swap data repository shall notify the Commission of any swap transaction for which the real-time swap data was not received by the swap data repository in accordance with part 43 of this chapter.

■ 19. Revise § 49.16 to read as follows:

§ 49.16 Privacy and confidentiality requirements of swap data repositories.

(a) Each swap data repository shall:

(1) Establish, maintain, and enforce written policies and procedures reasonably designed to protect the privacy and confidentiality of any and all SDR information and all SDR data that is not swap transaction and pricing data disseminated under part 43 of this chapter. Such policies and procedures shall include, but are not limited to, policies and procedures to protect the privacy and confidentiality of any and all SDR information and all SDR data (except for swap transaction and pricing data disseminated under part 43 of this chapter) that the swap data repository shares with affiliates and non-affiliated third parties; and

(2) Establish and maintain safeguards, policies, and procedures reasonably designed to prevent the misappropriation or misuse, directly or indirectly, of:

(i) Section 8 material;

(ii) Other SDR information or SDR data; and/or

(iii) Intellectual property, such as trading strategies or portfolio positions, by the swap data repository or any person associated with a swap data repository. Such safeguards, policies, and procedures shall include, but are not limited to:

(A) Limiting access to such section 8 material, other SDR information or SDR data, and intellectual property;

(B) Standards controlling persons associated with a swap data repository trading for their personal benefit or the benefit of others; and

(C) Adequate oversight to ensure compliance with this paragraph (a)(2).

(b) A swap data repository shall not, as a condition of accepting SDR data from any swap execution facility, designated contract market, or reporting counterparty, require the waiver of any privacy rights by such swap execution facility, designated contract market, or reporting counterparty.

(c) Subject to section 8 of the Act, a swap data repository may disclose aggregated SDR data on a voluntary basis or as requested, in the form and manner prescribed by the Commission.

■ 20. Amend § 49.17 by:

■ a. Revising paragraph (b)(3);

■ b. Adding paragraph (c) introductory text;

■ c. Revising paragraph (c)(1), the headings to paragraphs (d)(1) and (5), and paragraph (f)(2);

■ d. Removing paragraph (i); and

■ e. In the table below, for each paragraph indicated in the left column, remove the text indicated in the middle column from wherever it appears, and add in its place the text indicated in the right column:

Paragraphs	Remove	Add
(a)	swap data	SDR data.
(a)	Section 8 of the Act	section 8 of the Act
(b)(1) heading	*Domestic Regulator*	*domestic regulator*
(b)(1) introductory text	*Appropriate Domestic Regulator*	*appropriate domestic regulator*
(b)(2) heading	*Foreign Regulator*	*foreign regulator*
(b)(2)	*Appropriate Foreign Regulator*	*appropriate foreign regulator*

Paragraphs	Remove	Add
(b)(2)	those Foreign Regulators	those foreign regulators
(c)(2)	analyzing of swap data	analyzing of SDR data
(c)(2)	transfer of data	transfer of SDR data
(c)(3)	swap data provided	SDR data provided
(c)(3)	authorizedusers	authorized users
(d)(1)(i)	Appropriate Domestic Regulator	appropriate domestic regulator
(d)(1)(i)	Appropriate Foreign Regulator	appropriate foreign regulator
(d)(1)(ii)	Appropriate Domestic Regulators and Appropriate Foreign Regulators seeking.	Appropriate domestic regulators and appropriate foreign regulators seeking
(d)(1)(ii)	applicable to Appropriate Domestic Regulators and Appropriate Foreign Regulators.	applicable to appropriate domestic regulators and appropriate foreign regulators
(d)(3) heading	*Foreign Regulator*	*Foreign regulator*
(d)(3)	Foreign Regulator	foreign regulator.
(d)(3)	Foreign Regulator's	foreign regulator's
(d)(4) heading	*requests for data access*	*requests for swap data access*
(d)(4)(i)	Appropriate Domestic Regulator or Appropriate Foreign Regulator.	appropriate domestic regulator or appropriate foreign regulator
(d)(4)(i)	Appropriate Domestic Regulator's or Appropriate Foreign Regulator's.	appropriate domestic regulator's or appropriate foreign regulator's
(d)(4)(iii)	Appropriate Domestic Regulator or Appropriate Foreign Regulator.	appropriate domestic regulator or appropriate foreign regulator
(d)(4)(iii)	Appropriate Domestic Regulator's or Appropriate Foreign Regulator's.	appropriate domestic regulator's or appropriate foreign regulator's
(d)(5)(i) through (iii)	Appropriate Domestic Regulator or Appropriate Foreign Regulator.	appropriate domestic regulator or appropriate foreign regulator
(d)(6) heading	*Arrangement*	*arrangement*
(d)(6)	Appropriate Domestic Regulator or Appropriate Foreign Regulator.	appropriate domestic regulator or appropriate foreign regulator
(e) introductory text, (e)(1), and (e)(2).	swap data and SDR Information	SDR data and SDR information
(e)(2)	swap data or SDR Information	SDR data or SDR information
(f)(1)	swap data maintained	SDR data maintained
(g) heading	Commercial uses of data	Commercial uses of SDR data
(g) introductory text	Swap data accepted	SDR data accepted
(g)(1)	swap data required	SDR data required
(g)(2)(A)	The swap dealer, counterparty, or any other registered entity.	The swap execution facility, designated contract market, or reporting counterparty
(g)(2)(A)	swap data maintained	SDR data maintained
(g)(2)(B)	swap transaction data	SDR data
(g)(2)(B)	reporting party	swap execution facility, designated contract market, or reporting counterparty
(g)(2)(B)	any reported data	any reported SDR data
(g)(3)	real-time swap data	swap transaction and pricing data
(h)(3) introductory text	CEA section 21(c)(7)	section 21(c)(7) of the Act
(h)(4)	Appropriate Domestic Regulator or Appropriate Foreign Regulator.	appropriate domestic regulator or appropriate foreign regulator

The revisions and addition read as follows:

§ 49.17 Access to SDR data.

* * * * *

(b) * * *

(3) *Direct electronic access.* For the purposes of this section, the term ''*direct electronic access*'' shall mean an electronic system, platform, framework, or other technology that provides internet-based or other form of access to real-time SDR data that is acceptable to the Commission and also provides scheduled data transfers to Commission electronic systems.

(c) *Commission access.* A swap data repository shall provide access to the Commission for all SDR data maintained by the swap data repository pursuant to this chapter in accordance with this paragraph (c).

(1) *Direct electronic access requirements.* A swap data repository shall provide direct electronic access to the Commission or the Commission's designee, including another registered entity, in order for the Commission to carry out its legal and statutory responsibilities under the Act and the Commission's regulations in 17 CFR chapter I. A swap data repository shall maintain all SDR data reported to the swap data repository in a format acceptable to the Commission, and shall transmit all SDR data requested by the Commission to the Commission as instructed by the Commission. Such instructions may include, but are not limited to, the method, timing, and frequency of transmission, as well as the format and scope of the SDR data to be transmitted.

* * * * *

(d) * * *

(1) *General procedure for gaining access to swap data repository data.* * * *

* * * * *

(5) *Timing, limitation, suspension, or revocation of swap data access.* * * *

(f) * * *

(2) *Exception.* SDR data and SDR information related to a particular swap transaction that is maintained by the swap data repository may be accessed by either counterparty to that particular swap. However, the SDR data and SDR information maintained by the swap data repository that may be accessed by either counterparty to a particular swap shall not include the identity or the legal entity identifier (as such term is used in part 45 of this chapter) of the other counterparty to the swap, or the other counterparty's clearing member

for the swap, if the swap is executed anonymously on a swap execution facility or designated contract market, and cleared in accordance with §§ 1.74, 23.610, and 39.12(b)(7) of this chapter.

* * * * *

§ 49.18 [Amended]

■ 21. Amend § 49.18 by:

■ a. Removing from paragraphs (a) and (d) the words ''Appropriate Domestic Regulator or Appropriate Foreign Regulator'' and ''Appropriate Domestic Regulator's or Appropriate Foreign Regulator's'' wherever they appear, and add in their places ''appropriate domestic regulator or appropriate foreign regulator'' and ''appropriate domestic regulator's or appropriate foreign regulator's'', respectively; and

■ b. Removing paragraph (e).

§ 49.19 [Amended]

■ 22. In § 49.19(a), remove the word ''paragraph'' from wherever it appears and add in its place the word ''section''.

■ 23. Amend § 49.20 by:

■ a. Revising paragraphs (b)(2)(v), (b)(2)(vii), and (c)(1)(ii)(B); and

■ b. In the table below, for each paragraph indicated in the left column, removing the text indicated in the middle column from wherever it appears, and adding in its place the text indicated in the right column:

Paragraph	Remove	Add
(b) heading	*Governance Arrangements*	*governance arrangements*
(c)(1)(i) introductory text	Regulation	section
(c)(1)(i)(A)(*2*)	Independent Perspective	independent perspective
(c)(1)(i)(B)	Independent Perspective	independent perspective
(c)(5)	Regulation	section

The revisions read as follows:

§ 49.20 Governance arrangements (Core Principle 2).

* * * * *

(b) * * *

(2) * * *

(v) A description of the manner in which the board of directors, as well as any committee referenced in paragraph (b)(2)(ii) of this section, considers an independent perspective in its decision-making process, as § 49.2(a) defines such term;

* * * * *

(vii) Summaries of significant decisions impacting the public interest, the rationale for such decisions, and the process for reaching such decisions. Such significant decisions shall include decisions relating to pricing of repository services, offering of ancillary services, access to SDR data, and use of section 8 material, SDR information, and intellectual property (as referenced in § 49.16). Such summaries of significant decisions shall not require the swap data repository to disclose section 8 material or, where appropriate, information that the swap data repository received on a confidential basis from a swap execution facility, designated contract market, or reporting counterparty.

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(B) A description of the relationship, if any, between such members and the swap data repository or any swap execution facility, designated contract market, or reporting counterparty user thereof (or, in each case, affiliates thereof, as § 49.2(a) defines such term); and

* * * * *

■ 24. Amend § 49.22 by:

■ a. In the table below, for each paragraph indicated in the left column, removing the text indicated in the middle column from wherever it appears, and adding in its place the text indicated in the right column:

Paragraph	Remove	Add
(a) heading	*Board of Directors*	*board of directors*
(b)(1) heading	*Compliance Officer*	*compliance officer*
(b)(2) heading	*Chief Compliance Officer*	*chief compliance officer*
(b)(2)(i)	Sections	section
(d)(1)	Section	section
(d)(4)	Section	section
(e)(2) introductory text and (e)(2)(i).	Section	section
(f)(3)	(e)(67)	(e)(6)
(g)(1)(iii)(A)	Created, sent or received in connection with the annual compliance report and.	Created, sent, or received in connection with the annual compliance report; and

■ b. Revising the paragraph (c)(1) heading, the paragraph (f) heading, and paragraph (f)(2) to read as follows:

§ 49.22 Chief compliance officer.

* * * * *

(c) * * *

(1) *Appointment and compensation of chief compliance officer determined by board of directors.* * * *

* * * * *

(f) *Submission of annual compliance report to the Commission.* * * *

(2) The annual compliance report shall be provided electronically to the Commission not more than 60 days after the end of the swap data repository's fiscal year.

* * * * *

§ 49.23 [Amended]

■ 25. Amend § 49.23 by:

■ a. Removing from paragraph (a) the words ''swap transaction data'' and adding in their place ''SDR data''; and

■ b. Removing from the heading of paragraph (e) the word ''commission'' and adding in its place ''Commission''.

■ 26. Amend § 49.24 by:

■ a. Revising paragraph (d); and

■ b. In the table below, for each paragraph indicated in the left column, removing the text indicated in the middle column from wherever it

appears, and adding in its place the text indicated in the right column:

Paragraphs	Remove	Add
(a) introductory text	all swap data in its custody	all SDR data in its custody
(e)(3)(i)	dissemination of swap data	dissemination of SDR data
(e)(3)(ii)	normal swap data	normal SDR data
(f)(2)	all swap data contained	all SDR data contained
(i) introductory text and (i)(5)	§§ 1.31 and 45.2	§ 1.31
(j)(1) definitions of ''Controls'' and ''Enterprise technology risk assessment''.	data and information	SDR data and SDR information
(j)(1) definition of ''Security incident''.	or integrity of data	, or integrity of SDR data
(k)(1) and (2)	report swap data	report SDR data
(l)(3)	any data related to	any SDR data related to
(m)	Board of Directors	board of directors

The revision reads as follows:

§ 49.24 System safeguards.

* * * * *

(d) A swap data repository shall maintain a business continuity-disaster recovery plan and business continuity-disaster recovery resources, emergency procedures, and backup facilities sufficient to enable timely recovery and resumption of its operations and resumption of its ongoing fulfillment of its duties and obligations as a swap data repository following any disruption of its operations. Such duties and obligations include, without limitation, the duties set forth in §§ 49.10 through 49.18, § 49.23, and the core principles set forth in §§ 49.19 through 49.21 and §§ 49.25 through 49.27, and maintenance of a comprehensive audit trail. The swap data repository's business continuity-disaster recovery plan and resources generally should enable resumption of the swap data repository's operations and resumption of ongoing fulfillment of the swap data repository's duties and obligation during the next business day following the disruption. A swap data repository shall update its business continuity-disaster recovery plan and emergency procedures at a frequency determined by an appropriate risk analysis, but at a minimum no less frequently than annually.

* * * * *

■ 27. In § 49.25, revise paragraph (a)(1) to read as follows:

§ 49.25 Financial resources.

(a) * * * (1) A swap data repository shall maintain sufficient financial resources to perform its statutory and regulatory duties set forth in this chapter.

* * * * *

■ 28. Amend § 49.26 by:

■ a. Revising the introductory text;

■ b. In the table below, for each paragraph indicated in the left column, removing the text indicated in the middle column from wherever it appears, and adding in its place the text indicated in the right column:

Paragraph	Remove	Add
(a)	swap data maintained	SDR data maintained.
(c)	safeguarding of swap data	safeguarding of SDR data.
(d)	any and all swap data	any and all SDR data.
(d)	reporting entity	swap execution facility, designated contract market, or reporting counterparty.
(e)	swap data that it receives	SDR data that it receives.
(e)	market participant, any registered entity, or any other person;	swap execution facility, designated contract market, or reporting counterparty;
(h)	rebates; and	rebates;
(i)	arrangements.	arrangements; and.

■ c. Adding paragraph (j).

The revisions and additions read as follows:

§ 49.26 Disclosure requirements of swap data repositories.

Before accepting any SDR data from a swap execution facility, designated contract market, or reporting counterparty; or upon a swap execution facility's, designated contract market's, or reporting counterparty's request; a swap data repository shall furnish to the swap execution facility, designated contract market, or reporting counterparty a disclosure document that contains the following written information, which shall reasonably enable the swap execution facility, designated contract market, or reporting counterparty to identify and evaluate accurately the risks and costs associated with using the services of the swap data repository:

* * * * *

(j) The swap data repository's policies and procedures regarding the reporting of SDR data to the swap data repository, including the swap data repository's SDR data validation procedures, swap data verification procedures, and procedures for correcting SDR data errors and omissions.

§ 49.27 [Amended]

■ 29. Amend § 49.27 by removing the term ''Regulation'' from paragraph (a)(2) and add in its place the term ''section'', and by removing ''reporting of swap data'' from paragraph (b)(1) and adding in its place ''reporting of SDR data''.

■ 30. Add § 49.28 to read as follows:

§ 49.28 Operating hours of swap data repositories.

(a) Except as otherwise provided in this paragraph (a), a swap data

repository shall have systems in place to continuously accept and promptly record all SDR data reported to the swap data repository as required in this chapter and, as applicable, publicly disseminate all swap transaction and pricing data reported to the swap data repository as required in part 43 of this chapter.

(1) A swap data repository may establish normal closing hours to perform system maintenance during periods when, in the reasonable estimation of the swap data repository, the swap data repository typically receives the least amount of SDR data. A swap data repository shall provide reasonable advance notice of its normal closing hours to market participants and to the public.

(2) A swap data repository may declare, on an ad hoc basis, special closing hours to perform system maintenance that cannot wait until normal closing hours. A swap data repository shall schedule special closing hours during periods when, in the reasonable estimation of the swap data repository in the context of the circumstances prompting the special closing hours, the special closing hours will be the least disruptive to the swap data repository's SDR data reporting responsibilities. A swap data repository shall provide reasonable advance notice of its special closing hours to market participants and to the public whenever possible, and, if advance notice is not reasonably possible, shall provide notice of its special closing hours to market participants and to the public as soon as reasonably possible after declaring special closing hours.

(b) A swap data repository shall comply with the requirements under part 40 of this chapter in adopting or amending normal closing hours and special closing hours.

(c) During normal closing hours and special closing hours, a swap data repository shall have the capability to accept and hold in queue any and all SDR data reported to the swap data repository during the normal closing hours or special closing hours.

(1) Upon reopening after normal closing hours or special closing hours, a swap data repository shall promptly process all SDR data received during normal closing hours or special closing hours, as required pursuant to this chapter, and, pursuant to part 43 of this chapter, publicly disseminate all swap transaction and pricing data reported to the swap data repository that was held in queue during the normal closing hours or special closing hours.

(2) If at any time during normal closing hours or special closing hours a swap data repository is unable to receive and hold in queue any SDR data reported pursuant to this chapter, then the swap data repository shall immediately issue notice to all swap execution facilities, designated contract markets, reporting counterparties, and the public that it is unable to receive and hold in queue SDR data. Immediately upon reopening, the swap data repository shall issue notice to all swap execution facilities, designated contract markets, reporting counterparties, and the public that it has resumed normal operations. Any swap execution facility, designated contract market, or reporting counterparty that was obligated to report SDR data pursuant to this chapter to the swap data repository, but could not do so because of the swap data repository's inability to receive and hold in queue SDR data, shall report the SDR data to the swap data repository immediately after receiving such notice.

■ 31. Add § 49.29 to read as follows:

§ 49.29 Information relating to swap data repository compliance.

(a) *Requests for information.* Upon the Commission's request, a swap data repository shall file with the Commission information related to its business as a swap data repository and such information as the Commission determines to be necessary or appropriate for the Commission to perform the duties of the Commission under the Act and regulations in 17 CFR chapter I. The swap data repository shall file the information requested in the form and manner and within the time period the Commission specifies in the request.

(b) *Demonstration of compliance.* Upon the Commission's request, a swap data repository shall file with the Commission a written demonstration, containing supporting data, information, and documents, that it is in compliance with its obligations under the Act and the Commission's regulations in 17 CFR chapter I, as the Commission specifies in the request. The swap data repository shall file the written demonstration in the form and manner and within the time period the Commission specifies in the request.

■ 32. Add § 49.30 to read as follows:

§ 49.30 Form and manner of reporting and submitting information to the Commission.

Unless otherwise instructed by the Commission, a swap data repository shall submit SDR data reports and any other information required under this part to the Commission, within the time specified, using the format, coding structure, and electronic data transmission procedures approved in writing by the Commission.

■ 33. Add § 49.31 to read as follows:

§ 49.31 Delegation of authority to the Director of the Division of Market Oversight relating to certain part 49 matters.

(a) The Commission hereby delegates, until such time as the Commission orders otherwise, the following functions to the Director of the Division of Market Oversight and to such members of the Commission staff acting under his or her direction as he or she may designate from time to time:

(1) All functions reserved to the Commission in § 49.5.

(2) All functions reserved to the Commission in § 49.9.

(3) All functions reserved to the Commission in § 49.10.

(4) All functions reserved to the Commission in § 49.12.

(5) All functions reserved to the Commission in § 49.13.

(6) All functions reserved to the Commission in § 49.16.

(7) All functions reserved to the Commission in § 49.17.

(8) All functions reserved to the Commission in § 49.18.

(9) All functions reserved to the Commission in § 49.22.

(10) All functions reserved to the Commission in § 49.23.

(11) All functions reserved to the Commission in § 49.24.

(12) All functions reserved to the Commission in § 49.25.

(13) All functions reserved to the Commission in § 49.29.

(14) All functions reserved to the Commission in § 49.30.

(b) The Director of the Division of Market Oversight may submit to the Commission for its consideration any matter that has been delegated under paragraph (a) of this section.

(c) Nothing in this section may prohibit the Commission, at its election, from exercising the authority delegated in this section.

■ 34. Revise appendix A to part 49 to read as follows:

Appendix A to Part 49—Form SDR

COMMODITY FUTURES TRADING COMMISSION FORM SDR

SWAP DATA REPOSITORY APPLICATION OR AMENDMENT TO APPLICATION FOR REGISTRATION

REGISTRATION INSTRUCTIONS

Intentional misstatements or omissions of material fact may constitute federal criminal violations (7 U.S.C. 13 and 18 U.S.C. 1001) or grounds for disqualification from registration.

DEFINITIONS

Unless the context requires otherwise, all terms used in this Form SDR have the same meaning as in the Commodity Exchange Act, as amended (''Act''), and in the General Rules and Regulations of the Commodity Futures Trading Commission (''Commission'') thereunder (17 CFR chapter I).

For the purposes of this Form SDR, the term ''Applicant'' shall include any applicant for registration as a swap data repository or any applicant amending a pending application.

GENERAL INSTRUCTIONS

1. This Form SDR, which includes instructions, a Cover Sheet, and required Exhibits (together ''Form SDR''), is to be filed with the Commission by all Applicants, pursuant to section 21 of the Act and the Commission's regulations thereunder. Upon the filing of an application for registration in accordance with the instructions provided herein, the Commission will publish notice of the filing and afford interested persons an opportunity to submit written comments concerning such application. No application for registration shall be effective unless the Commission, by order, grants such registration.

2. Individuals' names, except the executing signature, shall be given in full (Last Name, First Name, Middle Name).

3. Signatures on all copies of the Form SDR filed with the Commission can be executed electronically. If this Form SDR is filed by a corporation, it shall be signed in the name of the corporation by a principal officer duly authorized; if filed by a limited liability company, it shall be signed in the name of the limited liability company by a manager or member duly authorized to sign on the limited liability company's behalf; if filed by a partnership, it shall be signed in the name of the partnership by a general partner duly authorized; if filed by an unincorporated organization or association that is not a partnership, it shall be signed in the name of such organization or association by the managing agent, *i.e.,* a duly authorized person who directs manages or who participates in the directing or managing of its affairs.

4. If this Form SDR is being filed as an application for registration, all applicable items must be answered in full. If any item is inapplicable, indicate by ''none,'' ''not applicable,'' or ''N/A,'' as appropriate.

5. Under section 21 of the Act and the Commission's regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this Form SDR from any Applicant seeking registration as a swap data repository. Disclosure by the Applicant of the information specified in this Form SDR is mandatory prior to the start of the processing of an application for registration as a swap data repository. The information provided in this Form SDR will be used for the principal purpose of determining whether the Commission should grant or deny registration to an Applicant. The Commission may determine that additional information is required from an Applicant in order to process its application. A Form SDR that is not prepared and executed in compliance with applicable requirements and instructions may be returned as not acceptable for filing. Acceptance of this Form SDR, however, shall not constitute a finding that the Form SDR has been filed as required or that the information submitted is true, current, or complete.

6. Except in cases where confidential treatment is requested by the Applicant and granted by the Commission pursuant to the Freedom of Information Act and Commission Regulation § 145.9, information supplied on this Form SDR will be included in the public files of the Commission and will be available for inspection by any interested person. The Applicant must identify with particularity the information in these exhibits that will be subject to a request for confidential treatment and supporting documentation for such request pursuant to Commission Regulations § 40.8 and § 145.9.

APPLICATION AMENDMENTS

1. An Applicant amending a pending application for registration as a swap data repository shall file an amended Form SDR electronically with the Secretary of the Commission in the manner specified by the Commission.

2. When filing this Form SDR for purposes of amending a pending application, an Applicant must re-file the entire Cover Sheet, amended if necessary, include an executing signature, and attach thereto revised Exhibits or other materials marked to show any amendments. The submission of an amendment to a pending application represents that all unamended items and Exhibits remain true, current, and complete as previously filed.

WHERE TO FILE

This Form SDR shall be filed electronically with the Secretary of the Commission in the manner specified by the Commission.

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

FORM SDR

SWAP DATA REPOSITORY
APPLICATION OR AMENDMENT TO APPLICATION FOR REGISTRATION

COVER SHEET

_____

Exact name of Applicant as specified in charter

_____

Address of principal executive offices

☐ If this is an **APPLICATION** for registration, complete in full and check here.

☐ If this is an **APPLICATION FOR PROVISIONAL REGISTRATION**, complete in full and check here.

☐ If this is an **AMENDMENT** to an application or to an effective registration, complete in full, list all items that are amended and check here.

_____

_____

_____

_____

GENERAL INFORMATION

1. Name under which business is or will be conducted, if different than name specified above:

_____

2. If name of business is being amended, state previous business name:

_____

3. Contact information, including mailing address if different than address specified above:

_____
Number and Street

_____
City State Country Zip Code

_____
Main Phone Number Fax

_____
Website URL E-mail Address

4. List of principal office(s) and address(es) where swap data repositories activities are or will be conducted:

Office	**Address**

5. If the Applicant is a successor to a swap data repository, please complete the following:

a. Date of succession

_____

b. Full name and address of predecessor registrant

_____
Name

_____
Number and Street

_____
City State Country Zip Code

Phone Number Fax Number E-mail Address

6. Furnish a description of the function(s) that the Applicant performs or proposes to perform:

_____

_____

_____

Please indicate which asset class(es) the Applicant intends to serve:

- ☐ Interest Rate
- ☐ Equity
- ☐ Credit
- ☐ Foreign Currency
- ☐ Commodity (Specify) _____
- ☐ Other (Specify) _____

BUSINESS ORGANIZATION

7. Applicant is a:

- ☐ Corporation
- ☐ Partnership
- ☐ Limited Liability Company
- ☐ Other (Specify) _____

8. Date of incorporation or formation: _____

9. State of incorporation or jurisdiction of organization:

_____

List all other jurisdictions in which Applicant is qualified to do business (including non-US jurisdictions):

_____

_____

10. List all other regulatory licenses or registrations of Applicant (or exemptions from any licensing requirement), including with non-US regulators:

_____

_____

11. Date of fiscal year end: _____

12. Applicant agrees and consents that the notice of any proceeding before the Commission in connection with its application may be given by sending such notice by certified mail to the person named below at the address given.

_____

Print Name and Title

_____

Number and Street

_____

City State Zip Code

_____ _____ _____

Phone Number Fax Number E-mail Address

SIGNATURES

13. The Applicant had duly caused this application or amendment to be signed on its behalf by the undersigned, hereunto duly authorized, this _____ day of _____, 20_____. The Applicant and the undersigned represent hereby that all information contained herein is true, current, and complete. It is understood that all required items and Exhibits are considered integral parts of this Form SDR and that the submission of any amendment represents that all unamended items and Exhibits remain true, current, and complete as previously filed.

_____

Name of Applicant

_____

Signature of Duly Authorized Person

_____

Print Name and Title of Signatory

BILLING CODE 6351–01–C

EXHIBITS INSTRUCTIONS

The following Exhibits must be included as part of Form SDR and filed with the Commission by each Applicant seeking registration as a swap data repository pursuant to section 21 of the Act and the Commission's regulations thereunder. Such Exhibits must be labeled according to the items specified in this Form SDR. If any Exhibit is inapplicable, please specify the Exhibit letter and indicate by ''none,'' ''not applicable,'' or ''N/A,'' as appropriate. The Applicant must identify with particularity the information in these Exhibits that will be subject to a request for confidential treatment and supporting documentation for such request pursuant to Commission Regulations § 40.8 and § 145.9.

If the Applicant is a newly formed enterprise and does not have the financial statements required pursuant to Items 27 and 28 of this form, the Applicant should provide pro forma financial statements for the most recent six months or since inception, whichever is less.

EXHIBITS I—BUSINESS ORGANIZATION

14. Attach as Exhibit A, any person who owns ten (10) percent or more of Applicant's equity or possesses voting power of any class, either directly or indirectly, through agreement or otherwise, in any other manner, may control or direct the management or policies of Applicant. ''Control'' for this purpose is defined in Commission Regulation § 49.2(a).

State in Exhibit A the full name and address of each such person and attach a copy of the agreement or, if there is none written, describe the agreement or basis upon which such person exercises or may exercise such control or direction.

15. Attach as Exhibit B, a narrative that sets forth the fitness standards for the board of directors and its composition including the number or percentage of public directors.

Attach a list of the present officers, directors (including an identification of the public directors), governors (and, if the

Applicant is not a corporation, the members of all standing committees grouped by committee), or persons performing functions similar to any of the foregoing, of the swap data repository or of the entity identified in Item 16 that performs the swap data repository activities of the Applicant, indicating for each:

a. Name

b. Title

c. Date of commencement and, if appropriate, termination of present term of position

d. Length of time each present officer, director, or governor has held the same position

e. Brief account of the business experience of each officer and director over the last five (5) years

f. Any other business affiliations in the securities industry or OTC derivatives industry

g. A description of:

(1) any order of the Commission with respect to such person pursuant to section 5e of the Act;

(2) any conviction or injunction within the past 10 years;

(3) any disciplinary action with respect to such person within the last five (5) years;

(4) any disqualification under sections 8b and 8d of the Act;

(5) any disciplinary action under section 8c of the Act; and

(6) any violation pursuant to section 9 of the Act.

h. For directors, list any committees on which the director serves and any compensation received by virtue of their directorship.

16. Attach as Exhibit C, the following information about the chief compliance officer who has been appointed by the board of directors of the swap data repository or a person or group performing a function similar to such board of directors:

a. Name

b. Title

c. Dates of commencement and termination of present term of office or position

d. Length of time the chief compliance officer has held the same office or position

e. Brief account of the business experience of the chief compliance officer over the last five (5) years

f. Any other business affiliations in the derivatives/securities industry or swap data repository industry

g. A description of:

(1) any order of the Commission with respect to such person pursuant to section 5e of the Act;

(2) any conviction or injunction within the past 10 years;

(3) any disciplinary action with respect to such person within the last five (5) years;

(4) any disqualification under sections 8b and 8d of the Act;

(5) any disciplinary action under section 8c of the Act; and

(6) any violation pursuant to section 9 of the Act.

17. Attach as Exhibit D, a copy of documents relating to the governance arrangements of the Applicant, including, but not limited to:

a. The nomination and selection process of the members on the Applicant's board of directors, a person or group performing a function similar to a board of directors (collectively, ''board''), or any committee that has the authority to act on behalf of the board, the responsibilities of each of the board and such committee, and the composition of each board and such committee;

b. a description of the manner in which the composition of the board allows the Applicant to comply with applicable core principles, regulations, as well as the rules of the Applicant; and

c. a description of the procedures to remove a member of the board of directors, where the conduct of such member is likely to be prejudicial to the sound and prudent management of the swap data repository.

18. Attach as Exhibit E, a narrative or graphic description of the organizational structure of the Applicant. Note: If the swap data repository activities are conducted primarily by a division, subdivision, or other segregable entity within the Applicant's corporation or organization, describe the relationship of such entity within the overall organizational structure and attach as Exhibit E only such description as applies to the segregable entity. Additionally, provide any relevant jurisdictional information, including any and all jurisdictions in which the Applicant or any affiliated entity is doing business and registration status, including pending application (*e.g.,* country, regulator, registration category, date of registration). In addition, include a description of the lines of responsibility and accountability for each operational unit of the Applicant to (i) any committee thereof and/or (ii) the board.

19. Attach as Exhibit F, a copy of the conflicts of interest policies and procedures implemented by the Applicant to minimize conflicts of interest in the decision-making process of the swap data repository and to establish a process for the resolution of any such conflicts of interest.

20. Attach as Exhibit G, a list of all affiliates of the swap data repository and indicate the general nature of the affiliation. Provide a copy of any agreements entered into or to be entered by the swap data repository, including partnerships or joint ventures, or its participants, that will enable the Applicant to comply with the registration requirements and core principles specified in section 21 of the Act. With regard to an affiliate that is a parent company of the Applicant, if such parent controls the Applicant, an Applicant must provide (i) the board composition of the parent, including public directors, and (ii) all ownership information requested in Exhibit A for the parent. ''Control'' for this purpose is defined in Commission Regulation § 49.2(a).

21. Attach as Exhibit H, a copy of the constitution; articles of incorporation or association with all amendments thereto; existing by-laws, rules, or instruments corresponding thereto, of the Applicant. The Applicant shall also provide a certificate of good standing dated within one week of the date of the application.

22. Where the Applicant is a foreign entity seeking registration or filing an amendment to an existing registration, attach as Exhibit I, an opinion of counsel that the swap data repository, as a matter of law, is able to provide the Commission with prompt access to the books and records of such swap data repository and that the swap data repository can submit to onsite inspection and examination by the Commission.

23. Where the Applicant is a foreign entity seeking registration, attach as Exhibit I–1, a form that designates and authorizes an agent in the United States, other than a Commission official, to accept any notice or service of process, pleadings, or other documents in any action or proceedings brought against the swap data repository to enforce the Act and the regulations thereunder.

24. Attach as Exhibit J, a current copy of the Applicant's rules, as defined in Commission Regulation § 40.1, consisting of all the rules necessary to carry out the duties as a swap data repository.

25. Attach as Exhibit K, a description of the Applicant's internal disciplinary and enforcement protocols, tools, and procedures. Include the procedures for dispute resolution.

26. Attach as Exhibit L, a brief description of any material pending legal proceeding(s), other than ordinary and routine litigation incidental to the business, to which the Applicant or any of its affiliates is a party or to which any of its or their property is the subject. Include the name of the court or agency in which the proceeding(s) are pending, the date(s) instituted, and the principal parties thereto, a description of the factual basis alleged to underlie the proceeding(s) and the relief sought. Include similar information as to any such proceeding(s) known to be contemplated by the governmental agencies.

EXHIBITS II—FINANCIAL INFORMATION

27. Attach as Exhibit M, a balance sheet, statement of income and expenses, statement of sources and application of revenues, and all notes or schedules thereto, as of the most recent fiscal year of the Applicant. If a balance sheet and statements certified by an independent public accountant are available, such balance sheet and statement shall be submitted as Exhibit M.

28. Attach as Exhibit N, a balance sheet and an income and expense statement for each affiliate of the swap data repository that also engages in swap data repository activities as of the end of the most recent fiscal year of each such affiliate.

29. Attach as Exhibit O, the following:

a. A complete list of all dues, fees, and other charges imposed, or to be imposed, by or on behalf of Applicant for its swap data repository services and identify the service or services provided for each such due, fee, or other charge.

b. Furnish a description of the basis and methods used in determining the level and structure of the dues, fees, and other charges listed in paragraph a of this item.

c. If the Applicant differentiates, or proposes to differentiate, among its customers, or classes of customers in the amount of any dues, fees, or other charges imposed for the same or similar services, so

state and indicate the amount of each differential. In addition, identify and describe any differences in the cost of providing such services, and any other factors, that account for such differentiations.

EXHIBITS III—OPERATIONAL CAPABILITY

30. Attach as Exhibit P, copies of all material contracts with any swap execution facility, designated contract market, clearing agency, central counterparty, or third party service provider. To the extent that form contracts are used by the Applicant, submit a sample of each type of form contract used. In addition, include a list of swap execution facilities, designated contract markets, clearing agencies, central counterparties, and third party service providers with whom the Applicant has entered into material contracts. Where swap data repository functions are performed by a third-party, attach any agreements between or among the Applicant and such third party, and identify the services that will be provided.

31. Attach as Exhibit Q, any technical manuals, other guides or instructions for users of, or participants in, the market.

32. Attach as Exhibit R, a description of system test procedures, test conducted or test results that will enable the Applicant to comply, or demonstrate the Applicant's ability to comply, with the core principles for swap data repositories.

33. Attach as Exhibit S, a description in narrative form, or by the inclusion of functional specifications, of each service or function performed as a swap data repository. Include in Exhibit S a description of all procedures utilized for the collection, processing, distribution, publication, and retention (*e.g.,* magnetic tape) of information with respect to transactions or positions in, or the terms and conditions of, swaps entered into by market participants.

34. Attach as Exhibit T, a list of all computer hardware utilized by the Applicant to perform swap data repository functions, indicating where such equipment (terminals and other access devices) is physically located.

35. Attach as Exhibit U, a description of the personnel qualifications for each category of professional employees employed by the swap data repository or the division, subdivision, or other segregable entity within the swap data repository as described in Item 16.

36. Attach as Exhibit V, a description of the measures or procedures implemented by Applicant to provide for the security of any system employed to perform the functions of a swap data repository. Include a general description of any physical and operational safeguards designed to prevent unauthorized access (whether by input or retrieval) to the system. Describe any circumstances within the past year in which the described security measures or safeguards failed to prevent any such unauthorized access to the system and any measures taken to prevent a reoccurrence. Describe any measures used to verify the accuracy of information received or disseminated by the system.

37. Attach as Exhibit W, copies of emergency policies and procedures and Applicant's business continuity-disaster recovery plan. Include a general description of any business continuity-disaster recovery resources, emergency procedures, and backup facilities sufficient to enable timely recovery and resumption of its operations and resumption of its ongoing fulfillment of its duties and obligations as a swap data repository following any disruption of its operations.

38. Where swap data repository functions are performed by automated facilities or systems, attach as Exhibit X a description of all backup systems or subsystems that are designed to prevent interruptions in the performance of any swap data repository function as a result of technical malfunctions or otherwise in the system itself, in any permitted input or output system connection, or as a result of any independent source. Include a narrative description of each type of interruption that has lasted for more than two minutes and has occurred within the six (6) months preceding the date of the filing, including the date of each interruption, the cause, and duration. Also state the total number of interruptions that have lasted two minutes or less.

39. Attach as Exhibit Y, the following:

a. For each of the swap data repository functions:

(1) Quantify in appropriate units of measure the limits on the swap data repository's capacity to receive (or collect), process, store, or display (or disseminate for display or other use) the data elements included within each function (*e.g.,* number of inquiries from remote terminals);

(2) identify the factors (mechanical, electronic, or other) that account for the current limitations reported in answer to (1) on the swap data repository's capacity to receive (or collect), process, store, or display (or disseminate for display or other use) the data elements included within each function.

b. If the Applicant is able to employ, or presently employs, the central processing units of its system(s) for any use other than for performing the functions of a swap data repository, state the priorities of assignment of capacity between such functions and such other uses, and state the methods used or able to be used to divert capacity between such functions and such other uses.

EXHIBITS IV—ACCESS TO SERVICES

40. Attach as Exhibit Z, the following:

a. As to each swap data repository service that the Applicant provides, state the number of persons who presently utilize, or who have notified the Applicant of their intention to utilize, the services of the swap data repository.

b. For each instance during the past year in which any person has been prohibited or limited in respect of access to services offered by the Applicant as a swap data repository, indicate the name of each such person and the reason for the prohibition or limitation.

c. Define the data elements for purposes of the swap data repository's real-time public reporting obligation. Appendix A to Part 43 of the Commission's Regulations (Data Elements and Form for Real-Time Reporting for Particular Markets and Contracts) sets forth the specific data elements for real-time public reporting.

41. Attach as Exhibit AA, copies of any agreements governing the terms by which information may be shared by the swap data repository, including with market participants. To the extent that form contracts are used by the Applicant, submit a sample of each type of form contract used.

42. Attach as Exhibit BB, a description of any specifications, qualifications, or other criteria that limit, are interpreted to limit, or have the effect of limiting access to or use of any swap data repository services furnished by the Applicant and state the reasons for imposing such specifications, qualifications, or other criteria, including whether such specifications, qualifications, or other criteria are imposed.

43. Attach as Exhibit CC, any specifications, qualifications, or other criteria required of participants who utilize the services of the Applicant for collection, processing, preparing for distribution, or public dissemination by the Applicant.

44. Attach as Exhibit DD, any specifications, qualifications, or other criteria required of any person, including, but not limited to, regulators, market participants, market infrastructures, venues from which data could be submitted to the Applicant, and third party service providers who request access to data maintained by the Applicant.

45. Attach as Exhibit EE, policies and procedures implemented by the Applicant to review any prohibition or limitation of any person with respect to access to services offered or data maintained by the Applicant and to grant such person access to such services or data if such person has been discriminated against unfairly.

EXHIBITS V—OTHER POLICIES AND PROCEDURES

46. Attach as Exhibit FF, a narrative and supporting documents that may be provided under other Exhibits herein, that describes the manner in which the Applicant is able to comply with each core principle and other requirements pursuant to Commission Regulation § 49.19.

47. Attach as Exhibit GG, policies and procedures implemented by the Applicant to protect the privacy of any and all SDR data, section 8 material, and SDR information that the swap data repository receives from reporting entities.

48. Attach as Exhibit HH, a description of safeguards, policies, and procedures implemented by the Applicant to prevent the misappropriation or misuse of (a) any confidential information received by the Applicant, including, but not limited to, SDR data, section 8 material, and SDR information, about a market participant or any of its customers; and/or (b) intellectual property by Applicant or any person associated with the Applicant for their personal benefit or the benefit of others.

49. Attach as Exhibit II, policies and procedures implemented by the Applicant regarding its use of the SDR data, section 8 material, and SDR information that it receives from a market participant, any registered entity, or any person for non-commercial and/or commercial purposes.

50. Attach as Exhibit JJ, procedures and a description of facilities of the Applicant for effectively resolving disputes over the accuracy of the SDR data and positions that are maintained by the swap data repository.

51. Attach as Exhibit KK, policies and procedures relating to the Applicant's calculation of positions.

52. Attach as Exhibit LL, policies and procedures that are reasonably designed to prevent any provision in a valid swap from being invalidated or modified through the procedures or operations of the Applicant.

53. Attach as Exhibit MM, Applicant's policies and procedures that ensure that the SDR data that are maintained by the Applicant continues to be maintained after the Applicant withdraws from registration as a swap data repository, which shall include procedures for transferring the SDR data to the Commission or its designee (including another swap data repository).

■ 35. Revise appendix B to part 49 to read as follows:

Appendix B to Part 49—Confidentiality Arrangement for Appropriate Domestic Regulators and Appropriate Foreign Regulators To Obtain Access To Swap Data Maintained by Swap Data Repositories Pursuant to §§ 49.17(d)(6) and 49.18(a)

CONFIDENTIALITY ARRANGEMENT BETWEEN THE U.S. COMMODITY FUTURES TRADING COMMISSION AND [*NAME OF FOREIGN/DOMESTIC REGULATOR*] CONCERNING ACCESS TO SWAP DATA HELD AND MAINTAINED BY SWAP DATA REPOSITORIES

The U.S. Commodity Futures Trading Commission (''CFTC'') and the [*name of foreign/domestic regulator* (''ABC'')] (each an ''Authority'' and collectively the ''Authorities'') have entered into this Confidentiality Arrangement (''Arrangement'') in connection with [whichever is applicable] [CFTC Regulation 49.17(b)(1)[(i)–(vi)]/the determination order issued by the CFTC to [ABC] (''Order'')] and any request for swap data by [ABC] to any swap data repository (''SDR'') registered or provisionally registered with the CFTC.

Article One: General Provisions

1. ABC is permitted to request and receive swap data directly from an SDR (''Swap Data'') on the terms and subject to the conditions of this Arrangement.

2. This Arrangement is entered into to fulfill the requirements under Section 21(d) of the Commodity Exchange Act (''Act'') and CFTC Regulation 49.18. Upon receipt by an SDR, this Arrangement will satisfy the requirement for a written agreement pursuant to Section 21(d) of the Act and CFTC Regulation 49.17(d)(6). This Arrangement does not apply to information that is [reported to an SDR pursuant to [ABC]'s regulatory regime where the SDR also is registered with [ABC] pursuant to separate statutory authority, even if such information also is reported pursuant to the Act and CFTC regulations][reported to an SDR pursuant to [ABC]'s regulatory regime where the SDR also is registered with, or recognized or otherwise authorized by, [ABC], which has supervisory authority over the repository pursuant to foreign law and/or regulation, even if such information also is reported pursuant to the Act and CFTC regulations.] [1]

3. This Arrangement is not intended to limit or condition the discretion of an Authority in any way in the discharge of its regulatory responsibilities or to prejudice the individual responsibilities or autonomy of any Authority.

4. This Arrangement does not alter the terms and conditions of any existing arrangements.

Article Two: Confidentiality of Swap Data

5. ABC will be acting within the scope of its jurisdiction in requesting Swap Data and employs procedures to maintain the confidentiality of Swap Data and any information and analyses derived therefrom (collectively, the ''Confidential Information''). ABC undertakes to notify the CFTC and each relevant SDR promptly of any change to ABC's scope of jurisdiction.

6. ABC undertakes to treat Confidential Information as confidential and will employ safeguards that:

a. To the maximum extent practicable, identify the Confidential Information and maintain it separately from other data and information;

b. Protect the Confidential Information from misappropriation and misuse;

c. Ensure that only authorized ABC personnel with a need to access particular Confidential Information to perform their job functions related to such Confidential Information have access thereto, and that such access is permitted only to the extent necessary to perform their job functions related to such particular Confidential Information;

d. Prevent the disclosure of aggregated Confidential Information; provided, however, that ABC is permitted to disclose any sufficiently aggregated Confidential Information that is anonymized to prevent identification, through disaggregation or otherwise, of a market participant's business transactions, trade data, market positions, customers, or counterparties;

e. Prohibit use of the Confidential Information by ABC personnel for any improper purpose, including in connection with trading for their personal benefit or for the benefit of others or with respect to any commercial or business purpose; and

f. Include a process for monitoring compliance with the confidentiality safeguards described herein and for promptly notifying the CFTC, and each SDR from which ABC has received Swap Data, of any violation of such safeguards or failure to fulfill the terms of this Arrangement.

7. Except as provided in Paragraphs 6.d. and 8, ABC will not onward share or otherwise disclose any Confidential Information.

8. ABC undertakes that:

a. If a department, central bank, or agency of the Government of the United States, it will not disclose Confidential Information except in an action or proceeding under the laws of the United States to which it, the CFTC, or the United States is a party;

b. If a department or agency of a State or political subdivision thereof, it will not disclose Confidential Information except in connection with an adjudicatory action or proceeding brought under the Act or the laws of [*name of either the State or the State and political subdivision*] to which it is a party; or

c. If a foreign futures authority or a department, central bank, ministry, or agency of a foreign government or subdivision thereof, or any other Foreign Regulator, as defined in Commission Regulation 49.2(a)(5), it will not disclose Confidential Information except in connection with an adjudicatory action or proceeding brought under the laws of [*name of country, political subdivision, or (if a supranational organization) supranational lawmaking body*] to which it is a party.

9. Prior to complying with any legally enforceable demand for Confidential Information, ABC will notify the CFTC of such demand in writing, assert all available appropriate legal exemptions or privileges with respect to such Confidential Information, and use its best efforts to protect

[1] The first bracketed phrase will be used for ADRs; the second will be used for AFRs. The inapplicable phrase will be deleted.

the confidentiality of the Confidential Information.

10. ABC acknowledges that, if it does not fulfill the terms of this Arrangement, the CFTC may direct any SDR to suspend or revoke ABC's access to Swap Data.

11. ABC will comply with all applicable security-related requirements imposed by an SDR in connection with access to Swap Data maintained by the SDR, as such requirements may be revised from time to time.

12. ABC will promptly destroy all Confidential Information for which it no longer has a need or which no longer falls within the scope of its jurisdiction, and will certify to the CFTC, upon request, that ABC has destroyed such Confidential Information.

Article Three: Administrative Provisions

13. This Arrangement may be amended with the written consent of the Authorities.

14. The text of this Arrangement will be executed in English, and may be made available to the public.

15. On the date this Arrangement is signed by the Authorities, it will become effective and may be provided to any SDR that holds and maintains Swap Data that falls within the scope of ABC's jurisdiction.

16. This Arrangement will expire 30 days after any Authority gives written notice to the other Authority of its intention to terminate the Arrangement. In the event of termination of this Arrangement, Confidential Information will continue to remain confidential and will continue to be covered by this Arrangement.

This Arrangement is executed in duplicate, this ____day of ____.

[*name of Chairman*]
Chairman,
U.S. Commodity Futures Trading Commission

[*name of signatory*]
[*title*]
[*name of foreign/domestic regulator*]
[Exhibit A: Description of Scope of Jurisdiction. If ABC is not enumerated in Commission Regulations 49.17(b)(1)(i)–(vi), it must attach the Determination Order received from the Commission pursuant to Commission Regulation 49.17(h). If ABC is enumerated in Commission Regulations 49.17(b)(1)(i)–(vi), it must attach a sufficiently detailed description of the scope of ABC's jurisdiction as it relates to Swap Data maintained by SDRs. In both cases, the description of the scope of jurisdiction must include elements allowing SDRs to establish, without undue obstacles, objective parameters for determining whether a particular Swap Data request falls within such scope of jurisdiction. Such elements could include legal entity identifiers of all jurisdictional entities and could also include unique product identifiers of all jurisdictional products or, if no CFTC-approved unique product identifier and product classification system is yet available, the internal product identifier or product description used by an SDR from which Swap Data is to be sought.]

■ 36. Further amend part 49 by removing all references to ''registered swap data repository'', ''Registered Swap Data Repository'', and ''registered swap data repositories'', and adding in their place ''swap data repository'', ''Swap Data Repository'', and ''swap data repositories'', respectively, wherever they appear.

Issued in Washington, DC, on September 24, 2020, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

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

Appendices to Amendments to Regulations Relating to Certain Swap Data Repository and Data Reporting Requirements—Commission Voting Summary, Chairman's Statement, and Commissioners' Statements

Appendix 1—Commission Voting Summary

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

Appendix 2—Statement of Chairman Heath P. Tarbert

I am pleased to support today's final swap data reporting rules under Parts 43, 45, and 49 of the CFTC's regulations, which are foundational to effective oversight of the derivatives markets. As I noted when these rules were proposed in February, ''[d]ata is the lifeblood of our markets.'' [1] Little did I know just how timely that statement would prove to be.

COVID–19 Crisis and Beyond

In the month following our data rule proposals, historic volatility caused by the coronavirus pandemic rocketed through our derivatives markets, affecting nearly every asset class.[2] I said at the time that while our margin rules acted as ''shock absorbers'' to cushion the impact of volatility, the Commission was also considering data rules that would expand our insight into potential systemic risk. In particular, the data rules ''would for the first time require the reporting of margin and collateral data for uncleared swaps . . . significantly strengthen[ing] the CFTC's ability to monitor for systemic risk'' in those markets.[3] Today we complete those rules, shoring up the data-based reporting systems that can help us identify—and quickly respond to—emerging systemic threats.

But data reporting is not just about mitigating systemic risk. Vibrant derivatives markets must be open and free, meaning transparency is a critical component of any reporting system. Price discovery requires robust public reporting that supplies market participants with the information they need to price trades, hedge risk, and supply liquidity. Today we double down on transparency, ensuring that public reporting of swap transactions is even more accurate and timely. In particular, our final rules adjust certain aspects of the Part 43 proposal's block-trade [4] reporting rules to improve transparency in our markets. These changes have been carefully considered to enhance clarity, one of the CFTC's core values. [5]

Promoting clarity in our markets also demands that we, as an agency, have clear goals in mind. Today's final swap data reporting rules reflect a hard look at the data we need and the data we collect, building on insights gleaned from our own analysis as well as feedback from market participants. The key point is that more data does not necessarily mean better information. Instead, the core of an effective data reporting system is focus.

As Aesop reminds us, ''Beware lest you lose the substance by grasping at the shadow.'' [6] Today's final swap data reporting rules place substance first, carefully tailoring our requirements to reach the data that really matters, while removing unnecessary burdens on our market participants. As Bill Gates once remarked, ''My success, part of it certainly, is that I have focused in on a few things.'' [7] So too are the final swap data reporting rules limited in number. The Part 45 Technical Specification, for example, streamlines hundreds of different data fields currently required by swap data repositories into 128 that truly advance the CFTC's regulatory goals. This focus will simplify the data reporting process without undermining its effectiveness, thus fulfilling the CFTC's strategic goal of enhancing the regulatory experience for market participants at home and abroad.[8]

That last point is worth highlighting: our final swap data reporting rules account for market participants both within and outside the United States. A diversity of market participants, some of whom reside beyond our borders and are accountable to foreign regulatory regimes, contribute to vibrant derivatives markets. But before today, inconsistent international rules meant some swap dealers were left to navigate what I have called ''a byzantine maze of disparate data fields and reporting timetables'' for the very same swap.[9] While perfect alignment

[1] Statement of Chairman Heath P. Tarbert in Support of Proposed Rules on Swap Data Reporting (Feb. 20, 2020), *https://www.cftc.gov/PressRoom/SpeechesTestimony/tabertstatement022020* (hereinafter, Tarbert, Proposal Statement).

[2] See Heath P. Tarbert, Volatility Ain't What it Used to Be, Wall Street Journal (Mar. 23, 2020), *https://www.wsj.com/articles/volatility-aint-what-it-used-to-be-11585004897?mod=searchresults&page=1&pos=1* (hereinafter Tarbert, Volatility).

[3] *Id.*

[4] The final rule's definition of ''block trade'' is provided in regulation 43.2.

[5] See CFTC Core Values, *https://www.cftc.gov/About/Mission/index.htm.*

[6] Aesop, ''The Dog and the Shadow,'' The Harvard Classics, *https://www.bartleby.com/17/1/3.html.*

[7] ABC News, One-on-One with Bills Gates (Feb. 21, 2008), *https://abcnews.go.com/WNT/CEOProfiles/story?id=506354&page=1.*

[8] See CFTC Strategic Plan 2020–2024, at 4 (discussing Strategic Goal 3), *https://www.cftc.gov/media/3871/CFTC2020_2024StrategicPlan/download.*

[9] Tarbert, Proposal Statement, *supra* note 1.

may not be possible or even desirable, the final rules significantly harmonize reportable data fields, compliance timetables, and implementation requirements to advance our global markets. Doing so brings us closer to realizing the CFTC's vision of being the global standard for sound derivatives regulation.[10]

Overview of the Swap Data Reporting Rules

It is important to understand the specific function of each of the three swap data reporting rules, which together form the CFTC's reporting system. First, Part 43 relates to the *real-time public reporting* of swap pricing and transaction data, which appears on the ''public tape.'' Swap dealers and other reporting parties supply Part 43 data to swap data repositories (SDRs), which then make the data public. Part 43 includes provisions relating to the treatment and public reporting of large notional trades (blocks), as well as the ''capping'' of swap trades that reach a certain notional amount.

Second, Part 45 relates to the *regulatory reporting* of swap data to the CFTC by swap dealers and other covered entities. Part 45 data provides the CFTC with insight into the swaps markets to assist with regulatory oversight. A Technical Specification available on the CFTC's website [11] includes data elements that are unique to CFTC reporting, as well as certain ''Critical Data Elements,'' which reflect longstanding efforts by the CFTC and other regulators to develop global guidance for swap data reporting.[12]

Finally, Part 49 requires *data verification* to help ensure that the data reported to SDRs and the CFTC in Parts 43 and 45 is accurate. The final Part 49 rule will provide enhanced and streamlined oversight of SDRs and data reporting generally. In particular, Part 49 will now require SDRs to have a mechanism by which reporting counterparties can access and verify the data for their open swaps held at the SDR. A reporting counterparty must compare the SDR data with the counterparty's own books and records, correcting any data errors with the SDR.

Systemic Risk Mitigation

Today's final swap data reporting rules are designed to fulfill our agency's first Strategic Goal: To strengthen the resilience and integrity of our derivatives markets while fostering the vibrancy.[13] The Part 45 rule requires swap dealers to report uncleared margin data for the first time, enhancing the CFTC's ability to ''to monitor systemic risk accurately and to act quickly if cracks begin to appear in the system.'' [14] As Justice Brandeis famously wrote in advocating for transparency in organizations, ''sunlight is the best disinfectant.'' [15] So too it is for financial markets: the better visibility the CFTC has into the uncleared swaps markets, the more effectively it can address what until now has been ''a black box of potential systemic risk.'' [16]

Doubling Down on Transparency

Justice Brandeis's words also resonate across other areas of the final swap data reporting rules. The final swap data reporting rules enhance transparency to the public of pricing and trade data.

1. Blocks and Caps

A critical aspect of the final Part 43 rule is the issue of block trades and dissemination delays. When the Part 43 proposal was issued, I noted that ''[o]ne of the issues we are looking at closely is whether a 48-hour delay for block trade reporting is appropriate.'' [17] I encouraged market participants to ''provide comment letters and feedback concerning the treatment of block delays.'' [18] Market participants responded with extensive feedback, much of which advocated for shorter delays in making block trade data publicly available. I agree with this view, and support a key change in the final Part 43 rule. Rather than apply the proposal's uniform 48-hour dissemination delay on block trade reporting, the final rule returns to bespoke public reporting timeframes that consider liquidity, market depth, and other factors unique to specific categories of swaps. The result is shorter reporting delays for most block trades.

The final Part 43 rule also changes the threshold for block trade treatment, raising the amount needed from a 50% to 67% notional calculation. It also increases the threshold for capping large notional trades from 67% to 75%. These changes will enhance market transparency by applying a stricter standard for blocks and caps, thereby enhancing public access to swap trading data. At the same time, the rule reflects serious consideration of how these thresholds are calculated, particularly for block trades. In excluding certain option trades and CDS trades around the roll months from the 67% notional threshold for blocks, the final rule helps ensure that dissemination delays have their desired effect of preventing front-running and similar disruptive activity.

2. Post-Priced and Prime-Broker Swaps

The swaps market is highly complex, reflecting a nearly endless array of transaction structures. Part 43 takes these differences into account in setting forth the public reporting requirements for price and transaction data. For example, post-priced swaps are valued after an event occurs, such as the ringing of the daily closing bell in an equity market. As it stands today, post-priced swaps often appear on the public tape with no corresponding pricing data—rendering the data largely unusable. The final Part 43 rule addresses this data quality issue and improves price discovery by requiring post-priced swaps to appear on the public tape after pricing occurs.

The final Part 43 rule also resolves an issue involving the reporting of prime-brokerage swaps. The current rule requires that offsetting swaps executed with prime brokers—in addition to the initial swap reflecting the actual terms of trade—be reported on the public tape. This duplicative reporting obfuscates public pricing data by including prime-broker costs and fees that are unrelated to the terms of the swap. As I explained when the rule was proposed, cluttering the public tape with duplicative or confusing data can impair price discovery.[19] The final Part 43 rule addresses this issue by requiring that only the initial ''trigger'' swap be reported, thereby improving public price information.

3. Verification and Error Correction

Data is only as useful as it is accurate. The final Part 49 rule establishes an efficient framework for verifying SDR data accuracy and correcting errors, which serves both regulatory oversight and public price discovery purposes.

Improving the Regulatory Experience

Today's final swap data reporting rules improve the regulatory experience for market participants at home and abroad in several key ways, advancing the CFTC's third Strategic Goal.[20] Key examples are set forth below.

1. Streamlined Data Fields

As I stated at the proposal stage, ''[s]implicity should be a central goal of our swap data reporting rules.'' [21] This sentiment still holds true, and a key improvement to our final Part 45 Technical Specification is the streamlining of reportable data fields. The current system has proven unworkable, leaving swap dealers and other market participants to wander alone in the digital wilderness, with little guidance about the data elements that the CFTC actually needs. This uncertainty has led to ''a proliferation of reportable data fields'' required by SDRs that ''exceed what market participants can readily provide and what the [CFTC] can realistically use.'' [22]

We resolve this situation today by replacing the sprawling mass of disparate SDR fields—sometimes running into the hundreds or thousands—with 128 that are important to the CFTC's oversight of the swaps markets. These fields reflect an honest look at the data we are collecting and the data we can use, ensuring that our market participants are not burdened with swap

[10] See CFTC Vision Statement, available at *https://www.cftc.gov/About/AboutTheCommission#:~:text=CFTC%20Vision%20Statement,standard%20for%20sound%20derivatives%20regulation.*

[11] See CFTC, Technical Specification Document, *https://www.cftc.gov/media/3496/DMO_Part43_45TechnicalSpecification022020/download.*

[12] Since November 2014, the CFTC and regulators in other jurisdictions have collaborated through the Committee on Payments and Market Infrastructures (''CPMI'') and the International Organization of Securities Commissions (''IOSCO'') working group for the harmonization of key over-the-counter (''OTC'') derivatives data elements (''Harmonisation Group''). The Harmonisation Group developed global guidance for key OTC derivatives data elements, including the Unique Transaction Identifier, the Unique Product Identifier, and critical data elements other than UTI and UPI.

[13] See CFTC Strategic Plan, *supra* note 7, at 5.

[14] Tarbert, Proposal Statement, *supra* note 1, note 2.

[15] Hon. Louis D. Brandeis, Other People's Money 62 (National Home Library Foundation ed. 1933).

[16] Tarbert, Proposal Statement, *supra* note 1.

[17] Tarbert, Proposal Statement, *supra* note 1, note 14.

[18] *Id.*

[19] Tarbert, Proposal Statement, *supra* note 1.

[20] CFTC Strategic Plan, *supra* note 7, at 7.

[21] Tarbert, Proposal Statement, supra note 1.

[22] *Id.*

reporting obligations that do not advance our statutory mandates.

2. Regulatory Harmonization

The swaps markets are integrated and global; our data rules must follow suit.[23] To that end, the final Part 45 rule takes a sensible approach to aligning the CFTC's data reporting fields with the standards set by international efforts. Swap data reporting is an area where harmonization simply makes sense. The costs of failing to harmonize are high, as swap dealers and other reporting parties must provide entirely different data sets to multiple regulators for the very same swap.[24] A better approach is to conform swap data reporting requirements where possible.

Data harmonization is not just good for market participants: it also advances the CFTC's vision of being the global standard for sound derivatives regulation.[25] The CFTC has a long history of leading international harmonization efforts in data reporting, including by serving as a co-chair of the Committee on Payments and Infrastructures and the International Organization of Securities Commissioners (CPMI–IOSCO) working group on critical data elements (CDE) in swap reporting.[26] I am pleased to support a final Part 45 rule that advances these efforts by incorporating CDE fields that serve our regulatory goals.

In addition to certain CDE fields, the final Part 45 rule also adopts other important features of the CPMI–IOSCO Technical Guidance, such as the use of a Unique Transaction Identifier (UTI) system in place of today's Unique Swap Identifier (USI) system. This change will bring the CFTC's swap data reporting system in closer alignment with those of other regulators, leading to better data sharing and lower burdens on market participants.

Last, the costs of altering data reporting systems makes implementation timeframes especially important. To that effect, the CFTC has worked with ESMA to bring our jurisdictions' swap data reporting compliance timetables into closer harmony, easing transitions to new reporting systems.

3. Verification and Error Correction

The final Part 49 rule has changed since the proposal stage to facilitate easier verification of SDR data by swap dealers. Based on feedback we received, the final rule now requires SDRs to provide a mechanism for swap dealers and other reporting counterparties to access the SDR's data for their open swaps to verify accuracy and address errors. This approach replaces a message-based system for error identification and correction, which would have produced significant implementation costs without improving error remediation. The final rule achieves the goal—data accuracy—with fewer costs and burdens.[27]

4. Relief for End Users

I have long said that if our derivatives markets are not working for agriculture, then they are not working at all.[28] While swaps are often the purview of large financial institutions, they also provide critical risk-management functions for end users like farmers, ranchers, and manufacturers. Our final Part 45 rule removes the requirement that end users report swap valuation data, and it provides them with a longer ''T+2'' timeframe to report the data that is required. I am pleased to support these changes to end-user reporting, which will help ensure that our derivatives markets work for all Americans, advancing another CFTC strategic goal.[29]

Conclusion

The derivatives markets run on data. They will be even more reliant on it in the future, as digitization continues to sweep through society and industry. I am pleased to support the final rules under Parts 43, 45, and 49, which will help ensure that the CFTC's swap data reporting systems are effective, efficient, and built to last.

Appendix 3—Supporting Statement of Commissioner Brian Quintenz

The Commodity Exchange Act (CEA) specifically directs the Commission to ensure that real-time public reporting requirements for swap transactions (i) do not identify the participants; (ii) specify the criteria for what constitutes a block trade and the appropriate time delay for reporting such block trades, and (iii) take into account whether public disclosure will materially reduce market liquidity.[1] The Commission has long recognized the intrinsic tension between the policy goals of enhanced transparency versus market liquidity. In fact, in 2013, the Commission noted that the optimal point in this interplay between enhanced swap transaction transparency and the potential that, in certain circumstances, this enhanced transparency could reduce market liquidity ''defies precision.''[2] I agree with the Commission that the ideal balance between transparency and liquidity is difficult to ascertain and necessarily requires not only robust data but also the exercise of reasoned judgement, particularly in the swaps marketplace with a finite number of institutional investors trading hundreds of thousands of products, often by appointment.

Unfortunately, I fear the balance struck in this rule misses that mark. The final rule before us today clearly favors transparency over market liquidity, with the sacrifice of the latter being particularly more acute given the nature of the swaps market. In this final rule, the Commission asserts that the increased transparency resulting from higher block trade thresholds and cap sizes will lead to increased competition, stimulate more trading, and enhance liquidity and pricing. That is wishful thinking, which is no basis upon which to predicate a final rule. As numerous commenters pointed out, this increased transparency comes directly at the expense of market liquidity, competitive pricing for end-users, and the ability of dealers to efficiently hedge their large swap transactions. While the Commission hopes the 67% block calculation will bring about the ample benefits it cites, I think the exact opposite is the most probable outcome. I remain unconvinced that the move from the 50% notional amount calculation for block sizes to the 67% notional amount calculation is necessary or appropriate. Unfortunately, the decision to retain the 67% calculation, which was adopted in 2013 but never implemented, was not seriously reconsidered in this rule.

Instead, in the final rule, the Commission asserts that it ''extensively analyzed the costs and benefits of the 50-percent threshold and 67-percent threshold when it adopted the phased-in approach'' in 2013. Respectfully, I believe that statement drastically inflates the Commission's prior analysis. I have no doubt the Commission ''analyzed'' the costs and benefits in 2013 to the best of its ability. However, the reality is that in 2013, as the Commission acknowledged in its own cost-benefit analysis, ''in a number of instances, the Commission lacks the data and information required to precisely estimate costs, *owing to the fact that these markets do not yet exist or are not yet fully developed*.''[3] In 2013, the Commission was just standing up its SEF trading regime, had not yet implemented its trade execution mandate, and had adopted interim time delays for all swaps—meaning that, in 2013 when it first adopted this proposal, no swap transaction data was publicly disseminated in real time. Seven years later, the Commission has a robust, competitive SEF trading framework and a successful real-time reporting regime that results in 87% of IRS trades and 82% of CDS trades being reported in real time. In light of the sea change that has occurred since 2013, I believe the Commission should have undertaken a comprehensive review of whether the transition to a 67% block trade threshold was appropriate.

In my opinion, the fact that currently 87% of IRS and 82% of CDS trades are reported in real time is evidence that the transparency policy goals underlying the real-time reporting requirements have already been achieved. In 2013, the Commission, quoting directly from the Congressional Record,

[23] *See* Tarbert, Proposal Statement, *supra* note 1.

[24] *See id.*

[25] *See* CFTC Vision Statement, *https://www.cftc.gov/About/AboutTheCommission#:~:text=CFTC%20Vision%20Statement,standard%20for%20sound%20derivatives%20regulation.*

[26] The CFTC also co-chaired the Financial Stability Board's working group on UTI and UPI governance.

[27] Limiting error correction to open swaps—versus all swaps that a reporting counterparty may have entered into at any point in time—is also a sensible approach to addressing risk in the markets. The final Part 49 rule limits error correction to errors discovered prior to the expiration of the five-year recordkeeping period in regulation 45.2, ensuring that market participants are not tasked with addressing old or closed transactions that pose no active risk.

[28] Opening Statement of Chairman Heath P. Tarbert Before the April 22 Agricultural Advisory Committee Meeting (April 22, 2020), *https://www.cftc.gov/PressRoom/SpeechesTestimony/tarbertstatement042220.*

[29] CFTC Strategic Plan, *supra* note 7, at 6.

[1] CEA Section 2(a)(13)(E).

[2] Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades, 78 FR 32866, 32917 (May 31, 2013).

[3] *Id.*

noted that when it considered the benefits and effects of enhanced market transparency, the ''guiding principle in setting appropriate block trade levels [is that] the *vast majority of swap transactions* should be exposed to the public market through exchange trading.'' [4] The current block sizes have resulted *in exactly that—the vast majority of trades being reported in real time.* The final rule, acknowledging these impressively high percentages, nevertheless concludes that because less than half of total IRS and CDS *notional* amounts is reported in real time, additional trades should be forced into real-time reporting. I reach the exact opposite conclusion. By my logic, the 13% of IRS and 18% of CDS trades that currently receive a time delay represent roughly *half of notional* for those asset classes. In other words, these trades are *huge.* In my view, these trades are exactly the type of outsized transactions that Congress appropriately decided should receive a delay from real-time reporting.

Despite my reservations, I am voting for the real-time reporting rule before the Commission today for several reasons. First, I worked hard to ensure that this final rule contains many significant improvements from the initial draft we were first presented, as well as the original proposal which I supported. For example, in order to make sure the CDS swap categories are representative, the Commission established additional categories for CDS with optionality. In addition, the Commission is also providing guidance that certain risk-reduction exercises, which are not arm's length transactions, are not publicly reportable swap transactions, and therefore should be excluded from the block size calculations.

Second, while most of the changes to the part 43 rules will have a compliance period of 18 months, compliance with the new block and cap sizes will not be not be required until one year later, providing market participants with a 30-month compliance period and the Commission with an extra 12 months to revisit this issue with actual data analysis, as good government and well-reasoned public policy demands. This means that when any final block and cap sizes go into effect for the amended swap categories, it will be with the benefit of cleaner, more precise data resulting from our part 43 final rule improvements adopted today. It is my firm expectation that DMO staff will review the revised block trade sizes, in light of the new data, at that time to ensure they are appropriately calibrated for each swap category. In addition, as required by the rule, DMO will publish the revised block trade and cap sizes the month before they go effective. I am hopeful that with the benefit of time, cleaner data and public comment, the Commission can, if necessary, re-calibrate the minimum block sizes to ensure they strike the appropriate balance built into our statute between the liquidity needs of the market and transparency. To the extent market participants also have concerns about maintaining the current time delays for block trades given the move to the 67% calculation, I encourage them to reach out to DMO and my fellow Commissioners during the intervening 30-month window. That time frame is more than enough to further refine the reporting delays, as necessary, for the new swap categories based on sound data.

[4] *Id.* at 32870 n.41 (quoting from the Congressional Record—Senate, S5902, S5922 (July 15, 2010) (emphasis added)).

Appendix 4—Concurring Statement of Commissioner Rostin Behnam

I respectfully concur in the Commission's amendments to its regulations regarding real-time public reporting, recordkeeping, and swap data repositories. The three rules being finalized together today are the culmination of a multi-year effort to streamline, simplify, and internationally harmonize the requirements associated with reporting swaps. Today's actions represent the end of a long procedural road at the Commission, one that started with the Commission's 2017 Roadmap to Achieve High Quality Swap Data.[1]

But the road really goes back much further than that, to the time prior to the 2008 financial crisis, when swaps were largely exempt from regulation and traded exclusively over-the-counter.[2] Lack of transparency in the over-the-counter swaps market contributed to the financial crisis because both regulators and market participants lacked the visibility necessary to identify and assess swaps market exposures, counterparty relationships, and counterparty credit risk.[3]

In the aftermath of the financial crisis, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010 (Dodd-Frank Act).[4] The Dodd-Frank Act largely incorporated the international financial reform initiatives for over-the-counter derivatives laid out at the 2009 G20 Pittsburgh Summit, which sought to improve transparency, mitigate systemic risk, and protect against market abuse.[5] With respect to data reporting, the policy initiative developed by the G20 focused on establishing a consistent and standardized global data set across jurisdictions in order to support regulatory efforts to timely identify systemic risk. The critical need and importance of this policy goal given the consequences of the financial crisis cannot be overstated.

[1] Roadmap to Achieve High Quality Swap Data, *available at http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/dmo_swapdataplan071017.pdf.*

[2] *See* Commodity Futures Modernization Act of 2000, Public Law 106–554, 114 Stat. 2763 (2000).

[3] *See* The Financial Crisis Inquiry Commission, The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States (Official Government Edition), at 299, 352, 363–364, 386, 621 n. 56 (2011), *available at https://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf.*

[4] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[5] G20, *Leaders' Statement, The Pittsburgh Summit* (Sept. 24–25, 2009) at 9, *available at https://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh_summit_leaders_statement_250909.pdf.*

Among many critically important statutory changes, which have shed light on the over-the-counter derivatives markets, Title VII of the Dodd-Frank Act amended the Commodity Exchange Act (''CEA'' or ''Act'') and added a new term to the Act: ''Real-time public reporting.'' [6] The Act defines that term to mean reporting ''data relating to swap transaction, including price and volume, *as soon as technologically practicable* after the time at which the swap transaction has been executed.'' [7]

As we amend these rules, I think it is important that we keep in mind the Dodd-Frank Act's emphasis on transparency, and what transpired to necessitate that emphasis. However, the Act is also clear that its purpose, in regard to transparency and real time public reporting, is to authorize the Commission to make swap transaction and pricing data available to the public ''as the Commission determines appropriate to enhance price discovery.'' [8] The Act expressly directs the Commission to specify the criteria for what constitutes a block trade, establish appropriate time delays for disseminating block trade information to the public, and ''take into account whether the public disclosure will materially reduce market liquidity.'' [9] So, as we keep Congress's directive regarding public transparency (and the events that necessitated that directive) in mind as we promulgate rules, we also need to be cognizant of instances where public disclosure of the details of large transactions in real time will materially reduce market liquidity. This is a complex endeavor, and the answers vary across markets and products. I believe that these final rules strike an appropriate balance.

Today's final rules amending the swap data and recordkeeping and reporting requirements also culminate a multi-year undertaking by dedicated Commission staff and our international counterparts working through the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions working group for the harmonization of key over-the-counter derivatives data elements. The amendments benefit from substantial public consultation as well as internal data and regulatory analyses aimed at determining, among other things, how the Commission can meet its current data needs in support of its duties under the CEA. These include ensuring the financial integrity of swap transactions, monitoring of substantial and systemic risks, formulating bases for and granting substituted compliance and trade repository access, and entering information sharing agreements with fellow regulators.

I wish to thank the responsible staff in the Division of Market Oversight, as well as in the Offices of International Affairs, Chief Economist, and General Counsel for their efforts and engagement over the last several years as well as their constructive dialogues with my office over the last several months. Their timely and fulsome responsiveness amid the flurry of activity at the Commission

[6] 7 U.S.C. 2(a)(13)(A).

[7] *Id.*

[8] 7 U.S.C. 2(a)(13)(B).

[9] 7 U.S.C. 2(a)(13)(C)(ii–iv).

as we continue to work remotely is greatly appreciated.

The final rules should improve data quality by eliminating duplication, removing alternative or adjunct reporting options, utilizing universal data elements and identifiers, and focusing on critical data elements. To the extent the Commission is moving forward with mandating a specific data standard for reporting swap data to swap data repositories (''SDRs''), and that the standard will be ISO 20022, I appreciate the Commission's thorough discussion of its rationale in support of that decision. I also commend Commission staff for its demonstrated expertise in incorporating the mandate into the regulatory text in a manner that provides certainty while acknowledging that the chosen standard remains in development.

The rules provide clear, reasonable and universally acceptable reporting deadlines that not only account for the minutiae of local holidays, but address the practicalities of common market practices such as allocation and compression exercises.

I am especially pleased that the final rules require consistent application of rules across SDRs for the validation of both Part 43 and Part 45 data submitted by reporting counterparties. I believe the amendments to part 49 set forth a practical approach to ensuring SDRs can meet the statutory requirement to confirm the accuracy of swap data set forth in CEA section 21(c) [10] without incurring unreasonable burdens.

I appreciate that the Commission considered and received comments regarding whether to require reporting counterparties to indicate whether a specific swap: (1) Was entered into for dealing purposes (as opposed to hedging, investing, or proprietary trading); and/or (2) needs not be considered in determining whether a person is a swap dealer or need not be counted towards a person's *de minimis* threshold for purposes of determining swap dealer status under Commission regulations.[11] While today's rules may not be the appropriate means to acquire such information, I continue to believe that that the Commission's ongoing surveillance for compliance with the swap dealer registration requirements could be enhanced through data collection and analysis.

Thank you again to the staff who worked on these rules. I support the overall vision articulated in these several rules and am committed to supporting the acquisition and development of information technology and human resources needed for execution of that vision. As data forms the basis for much of what we do here at the Commission, especially in terms of identifying, assessing, and monitoring risk, I look forward to future discussions with staff regarding how the CFTC's Market Risk Advisory Committee which I sponsor may be of assistance.

[10] 7 U.S.C. 24a(c)(2).

[11] Commission staff has identified the lack of these fields as limiting constraints on the usefulness of SDR data to identify which swaps should be counted towards a person's *de minimis* threshold, and the ability to precisely assess the current *de minimis* threshold or the impact of potential changes to current exclusions. *See* De Minimis Exception to the Swap Dealer Definition, 83 FR 27444, 27449 (proposed June 12, 2018); Swap Dealer De Minimis Exception Final Staff Report at 19 (Aug. 15, 2016); (Nov. 18, 2015), available at *https://www.cftc.gov/sites/default/files/idc/groups/public/@swaps/documents/file/dfreport_sddeminis081516.pdf;* Swap Dealer De Minimis Exception Preliminary Report at 15 (Nov. 18, 2015), available at *https://www.cftc.gov/sites/default/files/idc/groups/public/@swaps/documents/file/dfreport_sddeminis_1115.pdf.*

Appendix 5—Statement of Commissioner Dan M. Berkovitz

Introduction

I support today's final rules amending the swap data reporting requirements in parts 43, 45, 46, and 49 of the Commission's rules (the ''Reporting Rules''). The amended rules provide major improvements to the Commission's swap data reporting requirements. They will increase the transparency of the swap markets, enhance the usability of the data, streamline the data collection process, and better align the Commission's reporting requirements with international standards.

The Commission must have accurate, timely, and standardized data to fulfill its customer protection, market integrity, and risk monitoring mandates in the Commodity Exchange Act (''CEA'').[1] The 2008 financial crisis highlighted the systemic importance of global swap markets, and drew attention to the opacity of a market valued notionally in the trillions of dollars. Regulators such as the CFTC were unable to quickly ascertain the exposures of even the largest financial institutions in the United States. The absence of real-time public swap reporting contributed to uncertainty as to market liquidity and pricing. One of the primary goals of the Dodd-Frank Act is to improve swap market transparency through both real-time public reporting of swap transactions and ''regulatory reporting'' of complete swap data to registered swap data repositories (''SDRs'').[2]

As enacted by the Dodd-Frank Act, CEA section 2(a)(13)(G) directs the CFTC to establish real-time and comprehensive swap data reporting requirements, on a swap-by-swap basis. CEA section 21 establishes SDRs as the statutory entities responsible for receiving, storing, and facilitating regulators' access to swap data. The Commission began implementing these statutory directives in 2011 and 2012 in several final rules that addressed regulatory and real-time public reporting of swaps; established SDRs to receive data and make it available to regulators and the public; and defined certain swap dealer (''SD'') and major swap participant (''MSP'') reporting obligations.[3]

The Commission was the first major regulator to adopt data repository and swap data reporting rules. Today's final rules are informed by the Commission's and the market's experience with these initial rules. Today's revisions also reflect recent international work to harmonize and standardize data elements.

Part 43 Amendments (Real-time Public Reporting)

Benefits of Real Time Public Reporting

Price transparency fosters price competition and reduces the cost of hedging. In directing the Commission to adopt real-time public reporting regulations, the Congress stated ''[t]he purpose of this section is to authorize the Commission to make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate *to enhance price discovery.*'' [4] For real-time data to be useful for price discovery, SDRs must be able to report standardized, valid, and timely data. The reported data should also reflect the large majority of swaps executed within a particular swap category. The final Reporting Rules for part 43 address a number of infirmities in the current rules affecting the aggregation, validation, and timeliness of the data. They also provide pragmatic solutions to several specific reporting issues, such as the treatment of prime broker trades and post-priced swaps.

Block Trade Reporting

The Commission's proposed rule for block trades included two significant amendments to part 43: (1) refined swap categories for calculating blocks; and (2) a single 48-hour time-delay for reporting all blocks. In addition, the proposed rule would give effect to increased block trade size thresholds from 50% to 67% of a trimmed (excluding outliers) trade data set as provided for in the original part 43. The increases in the block sizing thresholds and the refinement of swap categories were geared toward better meeting the statutory directives to the Commission to enhance price discovery through real-time reporting while also providing appropriate time delays for the reporting of swaps with very large notional amounts, *i.e.,* block trades.

Although I supported the issuance of the proposed rule, I outlined a number of concerns with the proposed blanket 48-hour delay. As described in the preamble to the part 43 final rule, a number of commenters supported the longer delay as necessary to facilitate the laying off of risk resulting from entering into swaps in illiquid markets or with large notional amounts. Other commenters raised concerns that such a broad, extended delay was unwarranted and could impede, rather than foster, price discovery. The delay also would provide counterparties to large swaps with an information advantage during the 48-hour delay.

The CEA directs the Commission to provide for both real-time reporting and appropriate block sizes. In developing the final rule the Commission has sought to achieve these objectives.

[1] *See* CEA section 3b.

[2] Dodd-Frank Wall Street Reform and Consumer Protection Act, section 727, Public Law 111–203, 124 Stat. 1376 (2010) (the ''Dodd-Frank Act''), available at *https://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf.*

[3] Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (Jan. 13, 2012); and Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 FR 54538 (Sept. 1, 2011).

[4] CEA section 2(13)(B) (emphasis added).

As described in the preamble, upon analysis of market data and consideration of the public comments, the Commission has concluded that the categorization of swap transactions and associated block sizes and time delay periods set forth in the final rule strikes an appropriate balance to achieve the statutory objectives of enhancing price discovery, not disclosing ''the business transactions and market positions of any person,'' preserving market liquidity, and providing appropriate time delays for block transactions. The final part 43 includes a mechanism for regularly reviewing swap transaction data to refine the block trade sizing and reporting delays as appropriate to maintain that balance.

Consideration of Additional Information Going Forward

I have consistently supported the use of the best available data to inform Commission rulemakings, and the periodic evaluation and updating of those rules, as new data becomes available. The preamble to the final rules for part 43 describes how available data, analytical studies, and public comments informed the Commission's rulemaking. Following press reports about the contents of the final rule, the Commission recently has received comments from a number of market participants raising issues with the reported provisions in the final rule. These commenters have expressed concern that the reported reversion of the time delays for block trades to the provisions in the current regulations, together with the 67% threshold for block trades, will impair market liquidity, increase costs to market participants, and not achieve the Commission's objectives of increasing price transparency and competitive trading of swaps. Many of these commenters have asked the Commission to delay the issuance of the final rule or to re-propose the part 43 amendments for additional public comments.

I do not believe it would be appropriate for the Commission to withhold the issuance of the final rule based on these latest comments and at this late stage in the process. The Commission has expended significant time and resources in analyzing data and responding to the public comments received during the public comment period. As explained in the preamble, the Commission is already years behind its original schedule for revising the block thresholds. I therefore do not support further delay in moving forward on these rules.

Nonetheless, I also support evaluation and refinement of the block reporting rules, if appropriate, based upon market data and analysis. The 30-month implementation schedule for the revised block sizes provides market participants with sufficient time to review the final rule and analyze any new data. Market participants can then provide their views to the Commission on whether further, specific adjustments to the block sizes and/or reporting delay periods may be appropriate for certain instrument classes. This implementation period is also sufficient for the Commission to consider those comments and make any adjustments as may be warranted. The Commission should consider any such new information in a transparent, inclusive, and deliberative manner. Amended part 43 also provides a process for the Commission to regularly review new data as it becomes available and amend the block size thresholds and caps as appropriate.

Cross Border Regulatory Arbitrage Risk

The International Swaps and Derivatives Association, Inc. (''ISDA'') and the Securities Industry and Financial Markets Association (''SIFMA'') commented that higher block size thresholds may put swap execution facilities (''SEFs'') organized in the United States at a competitive disadvantage as compared to European trading platforms that provide different trading protocols and allow longer delays in swap trade reporting. SIFMA and ISDA commented that the higher block size thresholds might incentivize swap dealers to move at least a portion of their swap trading from United States SEFs to European trading platforms. They also noted that this regulatory arbitrage activity could apply to swaps that are subject to mandatory exchange trading. Importantly, European platforms allow a non-competitive single-quote trading mechanism for these swaps while U.S. SEFs are required to maintain more competitive request-for-quotes mechanisms from at least three parties. The three-quote requirement serves to fulfill important purposes delineated in the CEA to facilitate price discovery and promote fair competition.

The migration of swap trading from SEFs to non-U.S. trading platforms to avoid U.S. trade execution and/or swap reporting requirements would diminish the liquidity in and transparency of U.S. markets, to the detriment of many U.S. swap market participants. Additionally, as the ISDA/SIFMA comment letter notes, it would provide an unfair competitive advantage to non-U.S. trading platforms over SEFs registered with the CFTC, who are required to abide by CFTC regulations. Such migration would fragment the global swaps market and undermine U.S. swap markets.[5]

I have supported the Commission's substituted compliance determinations for foreign swap trading platforms in non-U.S. markets where the foreign laws and regulations provide for comparable and comprehensive regulation. Substituted compliance recognizes the interests of non-U.S. jurisdictions in regulating non-U.S. markets and allows U.S. firms to compete in those non-U.S. markets. However, substituted compliance is *not* intended to encourage—or permit—regulatory arbitrage or circumvention of U.S. swap market regulations. If swap dealers were to move trading activity away from U.S. SEFs to a foreign trading platform for regulatory arbitrage purposes, such as, for example, to avoid the CFTC's transparency and trade execution requirements, it would undermine the goals of U.S. swap market regulation, and constitute the type of fragmentation of the swaps markets that our cross-border regime was meant to mitigate. It also would undermine findings by the Commission that the non-U.S. platform is subject to regulation that is as comparable and comprehensive as U.S. regulation, or that the non-U.S. regime achieves a comparable outcome.

The Commission should be vigilant to protect U.S. markets and market participants. The Commission should monitor swap data to identify whether any such migration from U.S. markets to overseas markets is occurring and respond, if necessary, to protect the U.S. swap markets.

PART 45 (Swap Data Reporting), PART 46 (Pre-enactment and Transition Swaps), and PART 49 (Swap Data Repositories) Amendments

I also support today's final rules amending the swap data reporting, verification, and SDR registration requirements in parts 45, 46, and 49 of the Commission's rules. These regulatory reporting rules will help ensure that reporting counterparties, including SDs, MSPs, designated contract markets (''DCMs''), SEFs, derivatives clearing organizations (''DCOs''), and others report accurate and timely swap data to SDRs. Swap data will also be subject to a periodic verification program requiring the cooperation of both SDRs and reporting counterparties. Collectively, the final rules create a comprehensive framework of swap data standards, reporting deadlines, and data validation and verification procedures for all reporting counterparties.

The final rules simplify the swap data reports required in part 45, and organize them into two report types: (1) ''Swap creation data'' for new swaps; and (2) ''swap continuation data'' for changes to existing swaps.[6] The final rules also extend the deadline for SDs, MSPs, SEFs, DCMs, and DCOs to submit these data sets to an SDR, from ''as soon as technologically practicable'' to the end of the next business day following the execution date (T+1). Off-facility swaps where the reporting counterparty is not an SD, MSP, or DCO must be reported no later than T+2 following the execution date.

The amended reporting deadlines will result in a moderate time window where swap data may not be available to the Commission or other regulators with access to an SDR. However, it is likely that they will also improve the accuracy and reliability of data. Reporting parties will have more time to ensure that their data reports are complete and accurate before being transmitted to an SDR.[7]

The final rules in part 49 will also promote data accuracy through validation procedures

[5] In my dissenting statement on the Commission's recent revisions to it cross-border regulations, I detailed a number of concerns with how those revisions could provide legal avenues for U.S. swap dealers to migrate swap trading activity currently subject to CFTC trade execution requirements to non-U.S. markets that would not be subject to those CFTC requirements.

[6] Swap creation data reports replace primary economic terms (''PET'') and confirmation data previously required in part 45. The final rules also eliminate optional ''state data'' reporting, which resulted in extensive duplicative reports crowding SDR databases, and often included no new information.

[7] The amended reporting deadlines are also consistent with comparable swap data reporting obligations under the Securities and Exchange Commission's and European Securities and Markets Authority's rules.

to help identify errors when data is first sent to an SDR, and periodic reconciliation exercises to identify any discrepancies between an SDR's records and those of the reporting party that submitted the swaps. The final rules provide for less frequent reconciliation than the proposed rules, and depart from the proposal's approach to reconciliation in other ways that may merit future scrutiny to ensure that reconciliation is working as intended. Nonetheless, the validation and periodic reconciliation required by the final rule is an important step in ensuring that the Commission has access to complete and accurate swap data to monitor risk and fulfill its regulatory mandate.

The final rules also better harmonize with international technical standards, the development of which included significant Commission participation and leadership. These harmonization efforts will reduce complexity for reporting parties without significantly reducing the specific data elements needed by the Commission for its purposes. For example, the final rules adopt the Unique Transaction Identifier and related rules, consistent with CPMI–IOSCO technical standards, in lieu of the Commission's previous Unique Swap Identifier. They also adopt over 120 distinct data elements and definitions that specify information to be reported to SDRs. Clear and well-defined data standards are critical for the efficient analysis of swap data across many hundreds of reporting parties and multiple SDRs. Although data elements may not be the most riveting aspect of Commission policy making, I support the Commission's determination to focus on these important, technical elements as a necessary component of any effective swap data regime.

Conclusion

Today's Reporting Rules are built upon nearly eight years of experience with the current reporting rules and benefitted from extensive international coordination. The amendments make important strides toward fulfilling Congress's mandate to bring transparency and effective oversight to the swap markets. I commend CFTC staff, particularly in Division of Market Oversight and the Office of Data and Technology, who have worked on the Reporting Rules over many years. Swaps are highly variable and can be difficult to represent in standardized data formats. Establishing accurate, timely, and complete swap reporting requirements is a difficult, but important function for the Commission and regulators around the globe. This proposal offers a number of pragmatic solutions to known issues with the current swap data rules. For these reasons, I am voting for the final Reporting Rules.

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Part III

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 171, 172, et al.

Hazardous Materials: Adoption of Miscellaneous Petitions To Reduce Regulatory Burdens; Final Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 171, 172, 173, 178, 179, and 180

[Docket No. PHMSA–2017–0120 (HM–219C)]

RIN 2137–AF33

Hazardous Materials: Adoption of Miscellaneous Petitions To Reduce Regulatory Burdens

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration (PHMSA) is amending the Hazardous Materials Regulations in response to 24 petitions for rulemaking submitted by the regulated community between February 2015 and March 2018. This final rule updates, clarifies, or provides relief from various regulatory requirements without adversely affecting safety. PHMSA also, as of the effective date of this final rule, withdraws its September 28, 2017 enforcement discretion regarding the phase-out of mobile refrigeration systems.

DATES: *Effective date:* This rule is effective December 28, 2020.

Incorporation by reference date: The incorporation by reference of certain publications listed in this final rule is approved by the Director of the Federal Register as of December 28, 2020.

Delayed compliance date: Except as provided by the compliance timelines set forth in this final rule in connection with petitions for rulemaking P–1646, P–1691 and P–1692, compliance with the amendments adopted in this final rule is required beginning November 26, 2021.

FOR FURTHER INFORMATION CONTACT: Steven Andrews at (202) 366–8553 in the Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms

AAR Association of American Railroads
ACC American Chemistry Council
ADR European Agreement Concerning the International Carriage of Dangerous Goods by Road
AESC Association of Energy Service Companies
AFSL American Fireworks Standards Laboratory
APA American Pyrotechnics Association
ASME American Society of Mechanical Engineers
ASME BPVC ASME Boiler and Pressure Vessel Code
ASTM American Society for Testing and Materials
ATCCRP Advanced Tank Car Collaborative Research Program
CEQ Council on Environmental Quality
CFR Code of Federal Regulations
Chemours The Chemours Company
CI The Chlorine Institute
CGA Compressed Gas Association
COSTHA Council on Safe Transportation of Hazardous Articles
CPC Casualty Prevention Circular
CPSC Consumer Product Safety Commission
DGAC Dangerous Goods Advisory Council
DOT Department of Transportation
EC European Community
EPA Environmental Protection Agency
EU European Union
GIS Gentry Investigative Service
GTTC Global Transport Tank Consultants
HMR Hazardous Materials Regulations
HMT Hazardous Materials Table (49 CFR 172.101)
IAEA International Atomic Energy Agency
IBC Intermediate Bulk Container
ICAO International Civil Aviation Organization
ICAO Technical Instructions ICAO Technical Instructions for the Safe Transport of Dangerous Goods
IIAR International Institute of Ammonia Refrigeration
IMDG Code International Maritime Dangerous Goods Code
IME Institute of Makers of Explosives
IVODGA International Vessel Operators Dangerous Goods Association
JPG Jet Perforating Gun
MAWP Maximum Allowable Working Pressure
MTC UN Manual of Tests and Criteria
NBIC National Board Inspection Code
NFA National Fireworks Association
NPRM Notice of Proposed Rulemaking
OMB Office of Management and Budget
PHMSA Pipeline and Hazardous Materials Safety Administration
PIH Poison-by-Inhalation Hazard
PRD Pressure Relief Device
PSI Pounds per Square Inch
PSIG Pounds per Square Inch Gauge
RCRA Resource Conservation and Recovery Act
RFI Request for Information
RIA Regulatory Impact Analysis
RID European Agreement Concerning the International Carriage of Dangerous Goods by Rail
RIPA Reusable Industrial Packaging Association
RSI Railway Supply Institute
SBA Small Business Administration
SFX Stage FX
TC Transport Canada
TCC AAR Tank Car Committee
TFI The Fertilizer Institute
TDG Transport of Dangerous Goods
TPED Transportable Pressure Equipment Directive
UN United Nations
UN Model Regulations United Nations Recommendations on the Transport of Dangerous Goods: Model Regulations
Unified Agenda Unified Agenda of Federal Regulatory and Deregulatory Actions

Table of Contents

I. Background
II. Incorporation by Reference Discussion Under 1 CFR part 51
III. NPRM: Publication and Public Comments; Executive Order 13924
IV. Discussion of Amendments and Applicable Comments
V. Section-by-Section Review
VI. Regulatory Analyses and Notices
A. Statutory/Legal Authority for This Rulemaking
B. Executive Order 12866 and DOT Regulatory Policies and Procedures
C. Executive Order 13771
D. Executive Order 13132
E. Executive Order 13175
F. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies
G. Paperwork Reduction Act
H. Regulation Identifier Number (RIN)
I. Unfunded Mandates Reform Act
J. Environmental Assessment
K. Privacy Act
L. Executive Order 13609 and International Trade Analysis
M. Executive Order 13211
N. National Technology Transfer and Advancement Act
List of Subjects

I. Background

The Administrative Procedure Act [1] requires Federal agencies to give interested persons the right to petition an agency to issue, amend, or repeal a rule. The Department of Transportation (DOT) and PHMSA implementing regulations at 49 Code of Federal Regulations (CFR) 5.13(c) and 106.95, respectively, allow persons to ask PHMSA to add, revise, or delete a regulation by filing a petition for rulemaking containing adequate support for the requested action.

This final rule revises the Hazardous Materials Regulations (HMR [2]) in response to petitions for rulemaking submitted by shippers, carriers, manufacturers, and industry representatives. These revisions update, clarify, or provide relief from various regulatory requirements without adversely affecting safety. PHMSA discusses the petitions and revisions in detail in Section IV (Discussion of Amendments and Applicable Comments) of the preamble to this final rule. In this final rule, PHMSA is:

- Revising § 173.31 to prohibit the use of tank cars with shells or heads constructed of non-normalized steel in

[1] 5 U.S.C. 553 *et seq.*
[2] 49 CFR parts 171–180.

the transportation of poison-by-inhalation hazard (PIH) materials by rail after December 31, 2020.

• Harmonizing availability of limited quantity shipping exceptions for more than 100 entries for corrosive materials in the Hazardous Materials Table (HMT, § 172.101).

• Revising § 172.302(b)(2) to allow a minimum height of 12 mm (0.47 inches) for a proper shipping name marked on a portable tank with a capacity of less than 3,785 L (1,000 gallons).

• Revising § 173.28(c)(1)(i) to allow for regulatory flexibility for cleaning metal drums for reuse and clarifying the existing cleaning standard.

• Revising § 173.5b to allow for the continued use of portable and mobile refrigerator systems placed into service prior to 1991 that are rated to a minimum service pressure of 250 pounds per square inch (psig).

• Incorporating by reference updated editions of multiple Compressed Gas Association (CGA) publications into § 171.7.

• Removing the reference to special provision 103 in § 172.101 from Column (7) for four HMT entries.

• Removing the words ''manufactured before September 1, 1995'' from § 180.417(a)(3) to allow for an alternative report for cargo tanks manufactured after September 1, 1995.

• Revising the basis weight tolerance provided in § 178.521 from ±5 percent to ±10 percent from the nominal basis weight reported in the initial design qualification test report for paper shipping sacks.

• Revising § 173.308(d)(3) to harmonize with the International Maritime Dangerous Goods (IMDG) Code by removing the requirement for a closed transport container to have the warning mark ''WARNING—MAY CONTAIN EXPLOSIVE MIXTURES WITH AIR—KEEP IGNITION SOURCES AWAY WHEN OPENING'' when transporting lighters.

• Revising §§ 173.244(a)(2) and 173.314(c) to make the ''interim'' rail tank car specifications the ''final'' specifications for the transportation of PIH materials.

• Revising § 173.31 to prohibit the use of certain rail tank cars for the transportation of PIH materials after December 31, 2027.

• Allowing all waste materials to be managed in accordance with the lab pack exception and associated paragraphs in § 173.12 irrespective of whether they meet the definition of a hazardous waste per Environmental Protection Agency (EPA) regulations implementing the Resource Conservation and Recovery Act (RCRA).[3]

• Incorporating by reference the 2017 edition of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (BPVC) Sections II (Parts A and B), V, VIII (Division 1), and IX into § 171.7.

• Revising §§ 171.23, 173.302, and 173.304 to permit the import of filled pi-marked foreign pressure receptacles for intermediate storage, transport to point of use, discharge, and export as well as the import of certain pi-marked foreign pressure receptacles for filling, intermediate storage, and export.

• Revising § 172.101(c) to clarify that the word ''stabilized'' must be included as part of the proper shipping name when stabilization is required for transportation.

• Revising § 171.7(r) to update the address of the Institute of Makers of Explosives (IME) and to incorporate by reference the Association of Energy Service Companies (AESC)/IME Jet Perforating Gun (JPG) Standard, also known as the ''Guide to Obtaining DOT Approval of Jet Perforating Guns using AESC/IME Perforating Gun Specifications,'' Ver. 02, dated September 1, 2017.

• Incorporating by reference the January 1, 2018, edition of the American Pyrotechnics Association (APA) Standard 87–1 A, B, C, ''Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics,'' replacing the December 1, 2001 edition into § 171.7.

PHMSA discusses the petitions and revisions in detail in Section IV (Discussion of Amendments and Applicable Comments) of the preamble to this final rule. PHMSA also, as of the effective date of this final rule, withdraws its September 28, 2017, enforcement discretion regarding the phase-out of mobile refrigeration systems.

II. Incorporation by Reference Discussion Under 1 CFR part 51

The European Union (EU) standards, the APA standards, and the AESC/IME standards are free and accessible to the public on the internet, with access provided through the parent organization websites. The CGA and ASME references are available for interested parties to purchase in either print or electronic editions through the parent organization websites. The specific standards are discussed in greater detail in the section-by-section review (see § 171.7).

III. NPRM: Publication and Public Comments: Executive Order 13924

On August 14, 2019, PHMSA published a notice of proposed rulemaking (NPRM) in the **Federal Register** titled, ''Hazardous Materials: Adoption of Miscellaneous Petitions to Reduce Regulatory Burdens''[4] under Docket No. PHMSA–2017–0120 (HM–219C). The NPRM proposed revisions to the HMR in response to 24 petitions for rulemaking submitted to PHMSA by various stakeholders. PHMSA discusses these petitions and revisions in detail in Section IV (Discussion of Amendments and Applicable Comments) of the preamble to this final rule.

The comment period for the NPRM closed on October 15, 2019. PHMSA received a total of 49 sets of comments from 48 separate entities, 6 of which had submitted petitions that were the basis for HMR amendments proposed in the NPRM. There were no late-filed comments. An alphabetical list of the persons, companies, and associations that submitted comments to the HM–219C NPRM may be found in the below table:

Commenter name	Docket No.
American Fireworks Standards Laboratory (AFSL)	PHMSA–2017–0120–0050.
American Chemistry Council (ACC), the Chlorine Institute (CI), and The Fertilizer Institute (TFI)	PHMSA–2017–0120–0034.
American Pyrotechnics Association (APA)	PHMSA–2017–0120–0045.
American Pyrotechnics Association (APA)	PHMSA–2017–0120–0053.
Association of American Railroads (AAR)	PHMSA–2017–0120–0028.
Anthony Munoz	PHMSA–2017–0120–0016.
Charles Wald	PHMSA–2017–0120–0014.
Chemours Company (Chemours)	PHMSA–2017–0120–0055.
Compressed Gas Association (CGA)	PHMSA–2017–0120–0008.

[3] 42 U.S.C. 6901 *et seq.*

[4] 84 FR 41556 (Aug. 14, 2019).

Commenter name	Docket No.
Council on the Safe Transportation of Hazardous Articles (COSTHA)	PHMSA–2017–0120–0018.
Crazy Debbie's Fireworks, LLC	PHMSA–2017–0120–0049.
Daniel Butt	PHMSA–2017–0120–0039.
David Carlson	PHMSA–2017–0120–0012.
Dangerous Goods Advisory Council (DGAC)	PHMSA–2017–0120–0042.
Dow Chemical Company	PHMSA–2017–0120–0037.
Fireworks by Grucci, Inc.	PHMSA–2017–0120–0040.
Fireworks Over America	PHMSA–2017–0120–0027.
Galaxy Fireworks, Inc.	PHMSA–2017–0120–0026.
Garrett's Fireworks	PHMSA–2017–0120–0031.
Gentry Investigative Service, LLC (GIS)	PHMSA–2017–0120–0010.
Global Transport Tank Consultants (GTTC)	PHMSA–2017–0120–0007.
ICON Pyrotechnics International	PHMSA–2017–0120–0035.
Institute of Makers of Explosives (IME)	PHMSA–2017–0120–0011.
International Vessel Operators Dangerous Goods Association (IVODGA)	PHMSA–2017–0120–0017.
Inter-Oriental Fireworks (HK) LTD	PHMSA–2017–0120–0051.
Jake's Fireworks	PHMSA–2017–0120–0036.
Huang Johnson	PHMSA–2017–0120–0020.
Matson	PHMSA–2017–0120–0013.
Matthew Jones	PHMSA–2017–0120–0054.
National Fireworks Association (NFA)	PHMSA–2017–0120–0047.
NextFX	PHMSA–2017–0120–0023.
NJP Engineering LLC	PHMSA–2017–0120–0009.
Owen Compliance Services	PHMSA–2017–0120–0015.
Precocious Pyrotechnics	PHMSA–2017–0120–0046.
Pyrotechnics Guild International, Inc.	PHMSA–2017–0120–0038.
Pyrotechnics Guild International, Inc.	PHMSA–2017–0120–0041.
Rebecca Thomas	PHMSA–2017–0120–0033.
ResPyro—Kent Orwoll/VP Manufacturing	PHMSA–2017–0120–0025.
ResPyro—Steve Comen/CEO	PHMSA–2017–0120–0021.
Reusable Industrial Packaging Association (RIPA)	PHMSA–2017–0120–0052.
Santore and Sons	PHMSA–2017–0120–0032.
Stage FX (SFX)/Lyle Salmi	PHMSA–2017–0120–0024.
StageFX/Dennis Slicer	PHMSA–2017–0120–0029.
Ultratec Special Effects—John Thomas	PHMSA–2017–0120–0044.
Ultratec Special Effects—Otis Hart	PHMSA–2017–0120–0048.
Veolia ES Technical Solutions, LLC	PHMSA–2017–0120–0006.
Western Enterprises Inc.	PHMSA–2017–0120–0019.
Winco Fireworks International	PHMSA–2017–0120–0043.
Yienger Fireworks	PHMSA–2017–0120–0030.

The comments submitted to this docket may be accessed via the docket file numbers listed in the above table, as well as at *http://www.regulations.gov.* PHMSA developed this final rule in consideration of the comments received to the public docket.

Following the closing of the comment period, Executive Order (E.O.) 13924, ''Regulatory Relief to Support Economic Recovery,''[5] directed Federal agencies to respond to the economic harm caused by the novel coronavirus by reviewing their regulations and rescinding or modifying those regulations to reduce regulatory burdens and thereby promote economic growth. E.O. 13924 at § 4. PHMSA understands the cost savings expected from this final rule to be consistent with E.O. 13924's mandate.

IV. Discussion of Amendments and Applicable Comments

Based on an assessment of the 24 petitions and the comments received, PHMSA is amending the HMR as detailed in this section.

1. Phase-Out of Non-Normalized Tank Cars Used To Transport PIH Materials

In its petition (P–1646), the Association of American Railroads (AAR) requests that PHMSA consider an amendment to § 173.31 to codify a prohibition on the use of rail tank cars with shells or heads constructed of non-normalized steel for transportation of PIH materials.[6] In P–1646, AAR claims that the continued use of pressurized tank cars constructed from non-normalized steel for rail transportation of PIH materials poses an unnecessary risk to the public because at lower temperatures non-normalized steel is susceptible to brittle fractures, which are far more likely to result in a catastrophic failure and instantaneous release of a tank car's entire contents than ductile fractures. AAR notes that while a slow release of contents generally has time to dissipate in the atmosphere, an instantaneous release from a catastrophic failure creates a concentrated toxic cloud with potential catastrophic consequences for the nearby population.

PHMSA agrees with AAR's safety rationale for its recommendation of a regulatory prohibition on the use of rail tank cars with shells or heads constructed of non-normalized steel for transportation of PIH materials. Further, PHMSA expects that a regulatory phase-out of these rail tank cars would reinforce the voluntary phase-out of legacy PIH tank cars pursuant to current industry efforts. In 2008, PHMSA considered mandating a 5-year phase-out of non-normalized steel tank cars in

[5] 85 FR 31353 (May 22, 2020).

[6] PHMSA notes that petition P–1646 (codifying an industry phase-out of legacy tank cars with non-normalized steel for PIH service by December 31, 2020) is related to two other AAR petitions addressed in this final rule: P–1691 (re-designating the ''interim'' HM–246 standard for PIH tank cars as a ''permanent'' standard), and P–1692 (codifying an industry phase-out of legacy tank cars not built to the HM–246 standard for PIH service by December 31, 2027). See Sections IV.13 (Finalization of the HM–246 Tank Car Standard) and IV.14 (Phase-out of Non-HM–246 Compliant Rail Tank Cars).

PIH service.[7] However, in 2009, based in part on statements from owners that they were voluntarily phasing out such tank cars, PHMSA declined to require the phase-out but did require that owners prioritize replacement of the non-normalized steel tank cars from their PIH fleets.[8] Those voluntary efforts have been memorialized in interchange rules issued by AAR requiring compliance with design standards or operating conditions as a condition of shipping hazardous materials by rail. On April 7, 2017, AAR adopted an interchange rule in Casualty Prevention Circular (CPC)-1325 [9] that implemented a phase-out of these non-normalized (legacy) steel tank cars in PIH service by July 1, 2019. On July 27, 2018, AAR revised CPC–1325 and re-issued it as CPC–1336, but retained the phase-out deadline for the non-normalized steel tank cars,[10] effective July 1, 2019. Because AAR has already adopted a phase-out schedule, there are no additional costs associated with PHMSA implementing a December 31, 2020, date as a regulatory deadline. A more detailed discussion of this economic analysis can be found in the accompanying Regulatory Impact Analysis (RIA).

PHMSA received comments from AAR, the Chemours Company (Chemours), and a joint comment from the American Chemistry Council (ACC), the Chlorine Institute (CI), and The Fertilizer Institute (TFI) in support of the proposal to amend the HMR to include a regulatory phase-out of the use of pressurized tank cars constructed from non-normalized steel for rail transportation of PIH materials. These associations represent major stakeholders impacted by this change, including the shippers who own or lease the tank cars, and may bear the cost of implementing any phase-out, and the railroads who must transport the freight under their obligations as common carriers. PHMSA's actions to align the HMR with industry's voluntary phase-out the use of non-normalized (legacy) steel tank cars in PIH service in this final rule provide both shippers and carriers with regulatory certainty on the transportation of PIH materials by rail. This regulatory certainty makes transportation cost known to industry and, more importantly, locks-in within the HMR safety benefits from the transportation of PIH materials by rail achieved by industry's voluntary efforts to phasing-out the use of tank cars with shells or heads constructed of non-normalized steel.

Therefore, in this final rule, PHMSA is revising § 173.31 to provide for a regulatory phase-out non-normalized steel rail tank cars for the transportation of PIH materials by December 31, 2020.

2. Limited Quantity Shipments of Hydrogen Peroxide

In its petition (P–1658), Steris requests that PHMSA revise Column (8A) of the HMT to make available the limited quantity packaging exceptions at § 173.152 for ''UN2014, Hydrogen peroxide aqueous solution.'' Steris notes that the United Nations (UN) Recommendations on the Transport of Dangerous Goods: Model Regulations (Model Regulations) authorize shipment of limited quantities of UN2014 (Hydrogen peroxide). Steris contends that this amendment would provide economic and logistical consistency in global transportation and facilitate commerce for domestic companies without adversely impacting safety. PHMSA received no comments on this proposed revision in the NPRM.

The HMR at subpart D of part 173 provides, among other provisions, exceptions for some classes of hazardous materials when shipped under certain limited quantity thresholds. However, while other international standards and regulations, such as the UN Model Regulations, provide for the transport of UN2014 in limited quantities (up to 60 percent concentration), UN2014 is not authorized a limited quantity exception within the HMR as currently written. PHMSA has considered the operational experience in international transportation of UN2014 pursuant to the UN Model Regulations as well as in the domestic transport of materials of the same hazard class in limited quantities as allowed by current HMR exceptions and concluded that a limited quantity exception should be extended to UN2014 as well. PHMSA is unaware of any characteristics of UN2014 (Hydrogen peroxide) making it uniquely unsuitable for limited quantity shipment when other hazardous materials assigned the same hazard class can be shipped in limited quantities. Consequently, PHMSA expects that expanding the applicability of the limited quantity exception to this material will not adversely affect safety—particularly as other HMR requirements would still apply to assure safe shipment of limited quantities of UN2014 (Hydrogen peroxide). PHMSA expects cost savings to be achieved from this amendment to the HMR, as extension of the limited quantity exceptions to apply to another material will reduce regulatory burdens on regulated entities. However, since limited quantity shipments within the United States have not been authorized for UN2014 (Hydrogen peroxide) previously, there is inadequate domestic data available to quantify the specific cost savings that would result from this change. A more detailed discussion of the economic analysis can be found in the accompanying RIA.

Therefore, in this final rule, PHMSA is revising Column (8A) of the HMT for ''UN2014, Hydrogen peroxide aqueous solution'' to allow limited quantity packaging for this material by referencing the exception in § 173.152.

3. Markings on Portable Tanks

In his petition (P–1666), William J. Briner requests that PHMSA revise § 172.302(b)(2) of the HMR consistent with section 5.3.2.0.2 of the IMDG Code to allow a minimum height of 12 mm (0.47 inches) for proper shipping name markings on portable tanks with a capacity of less than 3,785 L (1,000 gallons). The petitioner contends that the revision would provide regulatory flexibility for the size of markings on portable tanks without adversely impacting safety. PHMSA received no comments on this proposed revision in the NPRM.

As currently codified in the HMR, § 172.302(b)(2) requires markings on portable tanks with capacity less than 3,785 L (1,000 gallons) to have a width of at least 4.0 mm (0.16 inch) and a height of at least 25 mm (1 inch). Through its technical review of this petition, PHMSA determined that harmonizing the height of this marking with that in the IMDG Code (12 mm) would not cause a reduction in hazard communication and, therefore, would not have a negative effect on safety. PHMSA expects that harmonizing this requirement with international standards would provide cost savings and efficiencies in transportation; however, PHMSA is unable to quantify these potential cost savings as there is no cost data on the savings gained from using smaller markings and the number of stakeholders affected. A more detailed discussion of the economic

[7] See 73 FR 17817 (April 1, 2008).

[8] 74 FR 1770 (Jan. 13, 2009).

[9] CPCs are documents issued by AAR to its members outlining requirements for the transportation of hazardous materials by rail.

[10] A piece of rail equipment, such as a tank car, that does not meet AAR interchange standards is effectively prohibited from movement on the U.S., Canadian, and Mexican freight rail system. The AAR Tank Car Committee (TCC) initially developed a phase-out schedule for non-normalized tank cars in 2008 under AAR CPC–1187, which prohibited the use of non-normalized tank cars after December 31, 2018. Prior to adoption of the final AAR interchange phase-out requirements in CPC–1325, AAR TCC solicited comments to amend CPC–1187 via CPC–1324.

analysis can be found in the accompanying RIA.

Therefore, in this final rule, PHMSA is revising § 172.302(b)(2) to allow a minimum height of 12 mm (0.47 inches) for proper shipping name markings on portable tanks with a capacity of less than 3,785 L (1,000 gallons).

4. Reconditioning of Metal Drums

In its petition (P–1670), the Reusable Industrial Packaging Association (RIPA) requests that PHMSA revise § 173.28(c)(1)(i) to require that labels be substantially removed, rather than completely removed, during the reconditioning of metal drums. RIPA states that a strict reading of the current HMR requirement asks for an impossible standard, as the full removal of coatings and labels (including their adhesive residues) is practically impossible. RIPA justifies this request by noting that current cleaning and surface preparation processes have been utilized for decades and, from its standpoint, have never been considered a safety issue.

In the NPRM, PHMSA responded to P–1670 by proposing to allow tightly adhering paint, mill scale, and rust to remain on no more than 10 percent of the surface area of a drum being reconditioned. While supportive of revising this section, RIPA notes in its comments to the NPRM that the proposed revision fails to achieve PHMSA's goal of allowing some coating residue to remain on steel drums provided safety is not compromised. RIPA contends it is technically impossible to meet a requirement that entails the removal of 90 percent of ''tightly adhering paint . . .'' from the entire surface area of every steel drum and contends that the limit of 10 percent surface area for exterior coatings is arbitrary and will be difficult to enforce. Lastly, RIPA notes that mill scale does not appear on metal used to manufacture or recondition steel drums and should be removed from the proposed revisions to § 173.28(c)(1)(i). Therefore, in its comments to the NPRM, RIPA suggests that § 173.28(c)(1)(i) be revised to read, ''Cleaning to base material of construction, with all former contents, internal and external corrosion removed, and any external coatings and labels sufficiently removed to expose any metal deterioration which adversely affects transportation safety.'' RIPA contends this will establish a workable safety standard based upon adequate removal of surface coating materials to expose evidence of metal deterioration. PHMSA received no other comments on this proposed change to the HMR.

After further consideration, PHMSA agrees that identifying a specific numeric threshold for sufficient removal of coatings and labels to expose deterioration is impracticable and expects that the language RIPA suggests in its comments to the NPRM will appropriately address the issue by ensuring external coatings and labels are sufficiently removed to expose metal deterioration that could adversely impact transportation safety. Furthermore, PHMSA expects cost savings to be achieved through this amendment, as it provides for a partial relaxation of the requirements in the HMR; however, PHMSA is unable to quantify these potential cost savings because it does not have data on the cost differences between ''removed'' and ''substantially removed'' or the number of persons affected. A more detailed discussion of the economic analysis can be found in the accompanying RIA.

Therefore, in this final rule, PHMSA is revising § 173.28(c)(1)(i) to read, ''Cleaning to base material of construction, with all former contents, internal and external corrosion removed, and any external coatings and labels sufficiently removed to expose any metal deterioration that adversely affects transportation safety.''

5. Limited Quantity Harmonization

In its petition (P–1676), URS Corporation requests that PHMSA revise Column (8A) of the HMT to extend exceptions allowing for shipment of limited quantities of 45 additional hazardous materials. URS Corporation noted that the absence from the HMR of limited quantity exceptions for those materials is inconsistent with provisions under various international standards authorizing limited quantity shipment of the same materials. URS Corporation contends that this inconsistency between domestic and international standards regarding the limited quantity exception for these 45 proper shipping names causes confusion regarding the pertinent regulatory requirements with importing hazardous materials shipments into the United States that had been prepared as limited quantity shipments under international regulations.

As noted in the NPRM, PHMSA conducted a technical review of the petition and identified a total of 114 entries in the HMT—including the 45 listed in URS Corporation's petition—that are not in alignment with the UN Model Regulations permitting limited quantity shipment of hazardous materials. In addition, PHMSA determined that HMR treatment of 64 of those 114 entries also diverged from the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods (ICAO Technical Instructions) permitting limited quantity shipment of hazardous materials. Further, in reviewing the HMR, PHMSA determined that these hazardous materials currently without limited quantity exceptions are of the same hazard classes as materials for which the HMR already contains an exception allowing limited quantity shipment.

PHMSA expects that expanding the applicability of the limited quantity exception to these additional materials would not adversely affect safety. PHMSA is unaware of any characteristics of the hazardous materials at issue that makes them uniquely unsuitable for limited quantity shipment when the HMR authorizes other hazardous materials assigned the same hazard class to be shipped in limited quantities. Consequently, PHMSA expects that expanding the applicability of the limited quantity exception to other materials that are within the same hazard class will not adversely affect safety—particularly as other HMR requirements would still apply to assure safe shipment of limited quantities of those materials. By way of example, limited quantities of these hazardous materials will still need to display a conspicuous marking indicating they are limited quantity shipments pursuant to § 172.315, and will still need to be packaged in accordance with other requirements in 49 CFR part 173. The operational experience of safe transportation of limited quantities of these materials pursuant to UN Model Regulations provides additional evidence that extension of the HMR's limited quantity exceptions to those materials will not adversely affect safety. Furthermore, PHMSA expects cost savings to be achieved through this amendment, as it provides exceptions to the requirements in the HMR that impose compliance burdens on regulated entities; however, due to a lack of domestic data on these types of shipments, PHMSA is unable to quantify the specific cost savings that would result from this change. A more detailed discussion of the economic analysis can be found in the accompanying RIA.

The Council on Safe Transportation of Hazardous Articles (COSTHA) and International Vessel Operators Dangerous Goods Association (IVODGA) submitted comments to the NPRM in support of this proposed revision, while also noting that PHMSA overlooked one listing in the HMT for harmonization. The commenters explain that the HMT

listing for ''UN3170, Aluminum smelting by-products or Aluminum remelting by-products'' includes a change in Column (8A) from ''None'' to ''151'' for Packing Group (PG) II but failed to revise the PG III entry. PHMSA acknowledges that this was an oversight and is revising the language in the HMT to include ''UN3170, Aluminum smelting by-products or Aluminum remelting by-products'' PG III materials in this final rule.

Therefore, in this final rule, PHMSA is revising Column (8A) (exceptions) of the HMT consistent with the UN Model Regulations to allow an additional 114 hazardous materials entries to be shipped as limited quantities under the HMR. The complete list of hazardous materials affected by this provision is in the amendments to the HMT at the end of this final rule.

6. Mobile Refrigeration Units

In its petition (P–1677), the International Institute of Ammonia Refrigeration (IIAR) requests that PHMSA revise § 173.5b to allow the continued use of mobile refrigeration units (which are commonly used by the U.S. produce industry) that were placed into service prior to 1991, provided they are tested to a service pressure of 250 psig. PHMSA received no comments on this proposed revision in the NPRM.

As currently written, § 173.5b(b)(6) of the HMR requires that mobile refrigeration systems placed into service prior to June 1, 1991 be phased-out by October 1, 2017; however, PHMSA issued an enforcement discretion memorandum [11] on September 28, 2017, permitting the continued use of mobile refrigeration units that are tested to a service pressure of 250 psig. In its technical review conducted in connection with the Enforcement Discretion Memorandum, PHMSA determined there is no reduction in safety by authorizing the continued use of mobile refrigeration units that are tested to a service pressure of 250 psig because the purpose of § 173.5b is to eliminate the use of systems with a maximum allowable working pressure (MAWP) of 150 psig. PHMSA consequently incorporated that conservatism within the Enforcement Discretion Memorandum in the proposed HMR amendments set forth in the NPRM. The proposed amendment would allow the system to be used if its components are designed for a MAWP of 250 psig regardless of whether it was put into service before June 1, 1991, or if the MAWP is a result of upgrading components.

As described in the RIA, although PHMSA describes the nature of cost savings associated with adoption of this petition, PHMSA was unable to estimate the cost savings with sufficient accuracy to quantify them due to data uncertainties. Therefore, in this final rule, PHMSA is revising § 173.5b to allow the continued use of certain portable and mobile refrigerator systems that meet the 250 psig service pressure specification by removing the prohibition on use of refrigeration systems placed into service before June 1, 1991. Further, PHMSA, as of the effective date of this final rule, withdraws its September 28, 2017, enforcement discretion regarding the phase-out of mobile refrigeration systems because it will no longer be necessary.

7. Incorporation by Reference of CGA Standards

PHMSA received multiple petitions to update CGA standards currently incorporated by reference in § 171.7 of the HMR. These petitions include:

- Petition P–1679. CGA requests that PHMSA incorporate by reference CGA C–6.3, ''Standard for Visual Inspection of Low Pressure Aluminum Alloy Cylinders, 2013, Third Edition'' [12] into § 171.7 to replace the outdated reference to the First Edition of this standard published in 1991. This publication is an industry standard governing periodic inspection of aluminum alloy compressed gas cylinders with service pressures of 500 psi (3450 kPa) or less. Notable changes from the previous edition consist of updating HMR citations and changing the characterization of the document from a ''guideline'' to a ''standard.''
- Petition P–1680. CGA requests that PHMSA incorporate by reference CGA S–7, ''Method for Selecting Pressure Relief Devices for Compressed Gas Mixtures in Cylinders, 2013, Fifth Edition'' into § 171.7 to replace the outdated reference to the Fourth Edition of this standard published in 2005. This industry standard governs methods for selecting pressure relief devices (PRDs) for compressed gas mixtures packaged in cylinders having water capacities of 1000 lb (454 kg) or less. Notable changes from the previous edition of this document includes revising reference temperatures, changing the characterization of this document from a ''publication'' to a ''standard,'' and expanding its scope to address PRDs for five additional gases.
- Petitions P–1684 and P–1693. In two separate petitions, Worthington Cylinders and CGA request that PHMSA incorporate by reference CGA C–11, ''Practices for Inspection of Compressed Gas Cylinders at Time of Manufacture, 2013, Fifth Edition'' into § 171.7 to replace the outdated reference to the Third Edition of this standard published in 2001. These petitions also request revisions to § 178.35(b) and (c) to refer to CGA C–11. This updated publication outlines best practices for inspection of cylinders consistent with industry practice and clarifies the parameters of inspector actions when inspecting compressed gas cylinders.
- Petition P–1694. CGA requests that PHMSA incorporate by reference CGA C–6.1–2013, ''Standards for Visual Inspection of High Pressure Aluminum Compressed Gas Cylinders'' into § 171.7 to replace the outdated reference to the Fourth Edition of this standard published in 2002. This standard was developed for the visual inspection of aluminum alloy compressed gas cylinders with service pressures of 1800 psi (12410 kPa) or greater. Notable changes from the previous edition of this publication include new guidelines for the use of ultrasonic inspection (UE), and incorporation by reference of another CGA publication (CGA Safety Bulletin 22 Aluminum Cylinders—Guidelines for Heat Exposure) for use with aluminum cylinders.

PHMSA evaluated the recommended CGA standards as part of its technical review of these petitions. In each instance, PHMSA compared the two editions—the edition currently incorporated by reference in the HMR and the update edition proposed to be incorporated by the petitioner—for any changes or substantial revisions. PHMSA found only non-substantial revisions during that review and determined that they would not result in a reduction in safety. Moreover, insofar as the revisions in the updated CGA standards reflect lessons learned from operational experience and best practices developed since the earlier standards were placed in effect, incorporation of those updated standards could promote safety. There were no quantifiable cost savings identified, as these revisions to the CGA standards incorporated by reference are primarily technical in nature and are not expected to have a material effect on the cost of business. A more detailed discussion of the economic analysis can be found in the accompanying RIA.

[11] Enforcement Discretion Memorandum for Mobile Refrigeration Units—*https://www.regulations.gov/document?D=PHMSA-2016-0085-0004.*

[12] The previous edition of this document was titled, ''Guidelines for Visual Inspection and Requalification of Low Pressure Aluminum Compressed Gas Cylinders, 1991, First Edition.''

PHMSA received comments from CGA, COSTHA, and Gentry Investigative Service (GIS) in support of this proposal. However, in its comment, GIS notes that there are newer editions of the CGA publications and suggests that these editions should be incorporated as part of this final rule. Although PHMSA acknowledges that newer editions have been recently developed, PHMSA declines to incorporate by reference in this rulemaking newer editions of CGA documents. PHMSA has yet to evaluate those more recent editions, which were not proposed in the HM–219C NPRM. PHMSA, however, encourages industry to petition PHMSA to include any newer edition of incorporated-by-reference publications as desired and supported by technical analysis within those petitions.

Therefore, in this final rule, PHMSA is updating CGA standards incorporated by reference in § 171.7 of the HMR as proposed in the NPRM.

8. Special Provision for Explosives

In its petition (P–1681), IME requests that PHMSA remove special provision 103 from § 172.102 and from Column (7) of the HMT for the following entries: ''UN0361, Detonator assemblies, non-electric, for blasting''; ''UN0365, Detonators for ammunition''; ''UN0255, Detonators, electric, for blasting''; and ''UN0267, Detonators, non-electric, for blasting.'' IME explains that this change would harmonize the HMR with the UN Model Regulations, and would enhance continuity when transporting these materials domestically and internationally. PHMSA proposed these changes in the NPRM and PHMSA received comments in support from IME, Owen Compliance Services, and COSTHA.

Special provision 103 restricts classification of detonators as Division 1.4B if they are shipped in packages containing more than 25 grams of net explosive mass that could be involved in a limited propagation explosion. However, the UN Model Regulations contain no quantified mass restriction for the same materials: rather, they require only that detonators must pass the tests prescribed by the UN Manual of Tests and Criteria (MTC)—in this case, the UN Test Series 6 requirements—to be classified as Division 1.4B. The UN MTC contains the criteria, test methods, and procedures used for the classification of dangerous goods (*i.e.,* hazardous materials) per the provisions of UN Model Regulations to ensure an appropriate level of safety, and demonstrate whether exposure of the material to fire or explosion during shipment conditions will result in a mass detonation of the material. Only those detonators that successfully pass tests prescribed for Division 1.4B may be classed in this hazardous materials category.

PHMSA agrees that the removal of special provision 103 would harmonize with the international regulations and would have no negative impact on safety. Special provision 103 is outdated, as the HMR has since aligned its classification methodologies with the UN performance-based classification method to improve harmonization with the internationally-accepted system for the classification of explosives. Finally, the operational experience of safe transportation of these materials pursuant to UN Model Regulations provides further evidence that the amendments to the HMR as proposed will not adversely affect safety—particularly as other HMR requirements would still apply to assure safe shipment. However, since special provision 103 is no longer widely used, PHMSA does not expect there would be any quantifiable cost savings. A more detailed discussion of the economic analysis can be found in the accompanying RIA.

Therefore, in this final rule, PHMSA is removing the references to special provision 103 from four entries in Column (7) (Special provisions) of the HMT, and removing special provision 103 from § 172.102 altogether.

9. Safety Devices

In its petition (P–1683), the Ford Motor Company requests that PHMSA remove the word ''None'' from Column (8A) of the HMT for the proper shipping name ''UN0503, Safety Devices, pyrotechnic'' and replace it with ''166,'' which would allow for the packaging exceptions currently authorized for other safety devices in § 173.166.

PHMSA proposed this revision in the HM–219C NPRM. PHMSA separately published a notice of request for information (RFI) in the **Federal Register** soliciting information and data from stakeholders regarding the classification, testing, and conditions for transportation relevant to the potential classification of safety devices.[13] To ensure a more fulsome safety analysis of the HMR amendments requested in P–1683, PHMSA is not adopting the amendments proposed in the NPRM at this time and may instead consider them in a future rulemaking that could be informed by the information and data received in response to the RFI.

10. Alternative Reports for Cargo Tanks

In its petition (P–1685), Polar Service Systems requests that PHMSA revise § 180.417(a)(3) to remove the words ''manufactured before September 1, 1995,'' thereby allowing an alternative report in lieu of obtaining the manufacturers certificate of compliance for cargo tanks manufactured after September 1, 1995. The petitioner notes that there is no provision to allow for the use of alternative reports when a certificate of compliance is unavailable for cargo tanks manufactured after September 1, 1995,[14] and explains that some cargo tank manufacturers have gone out of business in the past 25 years, making it impossible for a tank owner to obtain a missing certificate of compliance from these manufacturers. Therefore, these alternative reports would replace a missing certificate of compliance for cargo tanks manufactured after September 1, 1995. PHMSA received no comments on this proposed revision in the NPRM.

PHMSA's technical review of the petition determined there are challenges in maintaining the required documentation for cargo tanks and cargo tank motor vehicles when cargo tank manufacturers are no longer in business. This is true irrespective of the timeframe set forth in § 180.417. Further, PHMSA does not expect there would be a reduction in safety in allowing alternative reports for cargo tanks manufactured after September 1, 1995, because the testing and recordkeeping requirements that PHMSA would demand in those alternative reports provide much of the same information that would be in a manufacturer's certificate. Further, PHMSA's experience administering the alternative reporting requirement under existing HMR provisions demonstrates that extension of this compliance flexibility to additional cargo tanks would not adversely affect safety. Similarly, this amendment is not expected to result in any material cost to industry; rather, cargo tanks manufactured after September 1, 1995, with useful life remaining would not be forced out of service, thereby saving regulated entities the cost of replacement. A more detailed

[13] 85 FR 35368 (June 9, 2020). PHMSA has continued to see advancements in technologies for articles containing hazardous materials; those advancements have been the subject of requests for approvals or special permits for transportation as safety devices (UN0503 and UN3268). As such, PHMSA is, in the RFI, requesting information or data from stakeholders regarding the classification, testing, and conditions for transportation of these devices requesting an approval to be classified as safety devices.

[14] See 59 FR 1786 (Jan. 12, 1994).

discussion of the economic analysis can be found in the accompanying RIA.

Therefore, in this final rule, PHMSA is revising the language in § 180.417(a)(3) to allow for alternative reports when a manufacturer's certificate is not available regardless of the date of manufacture of the cargo tank.

11. Weight Tolerances for Paper Shipping Sacks

In its petition (P–1688), the Paper Shipping Sack Manufacturers Association requests that PHMSA amend § 178.521 to revise the basis weight tolerances for liners and mediums used in the manufacture of multi-wall shipping sacks from ±5 percent to ±10 percent from the nominal basis weight reported to PHMSA in the initial design qualification test. The petitioner explains that multi-wall sacks are manufactured on the same or technically equivalent machines that manufacture the liners for fiberboard boxes and further notes that PHMSA revised the basis weight tolerances from ±5 percent to ±10 percent for fiberboard boxes in the HM–219A final rule.[15]

PHMSA notes that the petitioner is correct in that the paper used to manufacture multi-wall shipping sacks is made on the same or similar machines as those used to make fiberboard boxes. Given the technical data presented in the petition, which included linerboard drop and dynamic compression tests, PHMSA concluded that a small reduction (or a nearly infinite increase) in basis weight of the paper used in manufacturing fiberboard boxes would not affect the safety of the packaging, and PHMSA expects that multi-wall shipping sacks—made of similar materials and manufactured on the same or technically equivalent machines—will behave similarly such that there will be no adverse impact to safety. Furthermore, PHMSA estimates the total potential annualized cost savings to the industry of between $20,000 and $200,000. A more detailed discussion of the economic analysis can be found in the accompanying RIA.

PHMSA received one comment from David Carlson in support of this proposal. However, in addition to his support, Mr. Carlson requested that PHMSA extend a similar provision to 11G packagings in this final rule. PHMSA notes that 11G packagings were not discussed in the NPRM, and while there may be merits to this proposed revision, PHMSA has not conducted a technical analysis of that proposal and is not adopting it at this time. PHMSA would like to allow further stakeholder engagement and opportunity to comment on any proposed changes before making this specific determination. The commenter is encouraged to petition PHMSA with supporting data to include 11G packagings in a future rulemaking.

Therefore, based on its technical analysis showing no negative impact on safety, PHMSA is amending § 178.521 to revise the nominal basis weight reported in the initial design qualification test report from ±5 percent to ±10 percent.

12. Markings on Closed Transport Containers

In its petition (P–1690), Matson requests that PHMSA amend § 173.308(d)(3) to remove the requirement for a warning to be placed on the access door of a closed transport vehicle or a closed freight container when lighters are transported by vessel. Matson explains that the IMDG Code does not require a similar warning, thereby noting inconsistencies between the HMR and the international requirements that could cause confusion regarding the pertinent requirements governing international shipments. PHMSA received one comment from IVODGA in support of this proposal. The petitioner is correct in that the current HMR requirement is inconsistent with the IMDG Code. The IMDG Code does not require this additional marking and has not experienced an appreciable adverse safety impact. PHMSA is, further, unaware of a compelling safety justification for requiring the marking—particularly as other HMR hazard communication requirements (such as transport documents and container placards) would remain operative even if the amendment is adopted. In addition, the amendment would improve the internal consistency of the HMR, which does not impose the same restriction on other packages containing a Division 2.1 flammable gas as it does packages composed of lighters containing Division 2.1 flammable gasses. Furthermore, while PHMSA was unable to quantify any specific cost savings associated with this amendment, no costs are anticipated. A more detailed discussion of the economic analysis can be found in the accompanying RIA.

Therefore, based on its technical analysis, PHMSA is amending § 173.308(d)(3) to remove the requirement for vessel transport of a closed transport vehicle or freight container to display the warning mark ''WARNING—MAY CONTAIN EXPLOSIVE MIXTURES WITH AIR—KEEP IGNITION SOURCES AWAY WHEN OPENING'' on the access door.

13. Finalization of the HM–246 Tank Car Standard

In a joint petition (P–1691), AAR, CI, ACC, TFI, and the Railway Supply Institute (RSI) request that PHMSA revise §§ 173.314(c) and 173.244(a)(2) of the HMR to convert ''interim'' rail tank car specifications to ''final'' tank car specifications. The interim tank car specifications were issued as part of the HM–246 final rule titled, ''Hazardous Materials: Improving the Safety of Railroad Tank Car Transportation of Hazardous Materials''[16] to be used for rail tank cars transporting PIH materials until PHMSA issued a permanent standard. The petitioners note that the PIH tank cars built in compliance with the HM–246 interim specifications have performed well and with no noteworthy safety concerns.

The HM–246 final rule prescribed enhanced safety measures for PIH materials transported in rail tank cars. These safety measures include stronger tanks made from normalized steel and capable of withstanding higher tank test pressures, fittings, tank head-puncture resistance protection, and thermal protection for some commodities. The HM–246 final rule was the result of industry consensus that an updated regulatory standard was necessary to improve accident survivability, even as research continued to develop a long-term PIH tank car specification. Following publication of the HM–246 final rule and adoption of the interim specifications, the Advanced Tank Car Collaborative Research Program (ATCCRP)[17] suggested the HM–246 interim specifications provide significant safety improvements over legacy designs and noted a scarcity of other feasible options beyond the interim specifications. In addition, conclusions from various ATCCRP projects provide scientific support to make the interim specifications permanent. Conclusions resulting from these safety research efforts, as reported by ATCCRP, include:

- The interim specifications provide significant improvement in accident

[15] 83 FR 55792 (Nov. 7, 2018).

[16] 74 FR 1769 (Jan. 13, 2009).

[17] The ATCCRP coordinates research efforts to enhance the safety and security of rail tank car shipments of toxic-by-inhalation hazard (TIH) materials. It is a joint effort comprised of shippers of tank cars carrying TIH materials (represented by ACC, CI, and TFI); railroads that transport hazardous materials (represented by AAR); and rail tank car builders and lessors (represented by RSI). For more information, see *https://tankcarresourcecenter.com/wp-cojntent/uploads/2017/11/ATCCRP-Research-Background-2016.pdf.*

survivability over the legacy designs (*i.e.,* legacy specifications); and

• No design feature or material was identified that would provide a significantly greater level of improvement, or would be a reasonable alternative (from an economic or manufacturability standpoint) that should be required industry-wide.

PHMSA received comments to the HM–219C NPRM from AAR, The Dow Chemical Company, Chemours, and a joint comment from ACC, CI, and TFI in support of this proposal. These commenters noted that by re-designating the HM–246 specifications as permanent, PHMSA will provide regulatory certainty to the stakeholder community that an ''interim'' standard cannot. In its comment, AAR recommended that PHMSA coordinate with Transport Canada (TC) to assign a unique designator when translating the interim tank car specifications into permanent tank car specifications. PHMSA agrees with AAR and collaborated with TC during the final rule drafting stage to assign a unique designator to denote those permanent tank car specifications. This unique identifier will help ensure that tank cars used to transport PIH materials built to the permanent specifications can more easily move between the United States and Canada without encountering delays.

PHMSA's technical review of this petition determined that the HM–246 compliant rail tank cars have an established safety record with no major incidents attributed to the tank car design. As explained by ATCCRP and discussed at greater length in Section IV.14. (Phase-out of Non-HM–246 Compliant Rail Tank Cars), the HM–246 interim specifications represent a substantial safety improvement over legacy tank cars in PIH service. This amendment is not expected to result in any new material costs to industry. Any costs associated with phasing out legacy tank cars result from the decision by AAR to utilize interchange agreements to mandate retirement of these cars from PIH service by the date (December 31, 2027) specified in CPC–1336; this final rule would align the HMR with those industry efforts. A more detailed discussion of this economic analysis can be found in the accompanying RIA.

Therefore, in this final rule, PHMSA is amending §§ 173.314(c) and 173.244(a)(2) of the HMR to make the HM–246 rail tank car specifications permanent for the transportation of PIH materials and is assigning the unique identifier of ''DOT–105H600W'' for HM–246 tank cars transporting PIH materials by rail.

14. Phase-Out of Non-HM–246 Compliant Rail Tank Cars

In its petition (P–1692), AAR requests that PHMSA amend § 173.31 to adopt a 6-year phase-out for PIH rail tank cars that do not meet the interim HM–246 specifications as implemented in the HM–246 final rule published on January 13, 2009. Specifically, AAR argues that collaborative research undertaken by industry and government partners (through ATCCRP) has confirmed that HM–246 specification cars have the highest accident survivability rate over other designs and are the most feasible available technology to transport PIH materials.

In 2006, after several major PIH rail tank car accidents, AAR began to release a series of CPCs that mandated the use of a safer design for tank cars that transport PIH materials. On March 31, 2008, AAR published CPC–1187, which implemented design specifications for tank cars used in PIH service and included a 10-year phase-out schedule for tank cars that did not meet the CPC–1187 specifications. According to CPC–1187, non-compliant tank cars would not be accepted for interchange after December 31, 2018. PHMSA published an NPRM [18] proposing revisions to the HMR to improve the crashworthiness protection of rail tank cars designed to transport PIH materials on April 1, 2008 and later issued a final rule establishing the interim HM–246 specifications in January 13, 2009. The interim HM–246 specifications effectively adopted AAR's CPC–1187 tank car specifications for the transportation of PIH materials until further research could be completed on enhanced tank car specifications.

In the HM–246 NPRM, PHMSA considered adopting a phase-out of tank cars that did not meet the proposed interim specifications. However, PHMSA did not codify a phase-out timeline in the final rule, stating ''[a]lthough PHMSA continues to expect that an accelerated phase-out of these cars is justified, PHMSA recognizes the voluntary efforts already underway by many fleet owners to phase out these cars, in many cases on schedules more aggressive than the five-year deadline proposed in the NPRM.'' [19] Instead, the HM–246 final rule adopted the interim tank car specifications; subsequently, AAR suspended CPC–1187 until new tank car specifications could be finalized and suspended the December 2018 retirement deadline for non-compliant tank cars.

As discussed in the previous sub-section (''Finalization of the HM–246 Tank Car Standard''), research conducted under the ATCCRP has since demonstrated that the HM–246 interim tank car specifications provide significant improvements in survivability and there is no reason to expect a different design would provide a significantly greater level of improvement. However, despite initial indications in 2009 that voluntary efforts would result in an accelerated phase-out of those tank cars in PIH service that failed to comply with the HM–246 interim specifications, the industry had not adopted a voluntary phase-out schedule as of December 2016 that would eliminate such tank cars from PIH service.

On December 16, 2016, AAR submitted its petition (P–1692) requesting that PHMSA adopt a 6-year phase-out for PIH rail tank cars that do not meet the interim specifications as implemented in the HM–246 final rule published on January 13, 2009. AAR argued that collaborative research undertaken by industry and government partners (through ATCCRP) over the last 7 years had confirmed that HM–246 specification cars have the highest accident survivability rate over other designs and are the most feasible technology to transport PIH materials.

Before PHMSA completed its review of P–1692, AAR adopted CPC–1325 in April 2017, which implemented a mandatory phase-out by July 1, 2023, of any tank car in PIH service that does not comply with the HM–246 interim specifications. Prior to AAR's adoption of CPC–1325, TFI commented to the P–1692 docket [20] that it opposed implementation of the July 1, 2023, phase-out schedule. TFI contended that DOT has sole authority over hazardous materials packaging and that because AAR's adoption of the phase-out schedule was done without performing an economic analysis, it was impossible to estimate the full extent of its potential costs or benefits.

Similar comments were relayed to PHMSA by a group of shipper associations during a January 13, 2017 meeting.[21] AAR met with PHMSA and the Federal Railroad Administration (FRA) on August 1, 2017, during which AAR suggested its phase-out schedule did not conflict with DOT regulations and that the phase-out schedule was intended to remove an older, less-safe

[18] 73 FR 17817 (Apr. 1, 2008).

[19] 74 FR at 1777–78.

[20] Docket No. PHMSA–2016–0165, available at *www.regulations.gov.*

[21] Attendees included representatives from TFI, ACC, CI, and API. Meeting Notes from the Listening Session for Petitions P–1678 and P–1692, available at *https://www.regulations.gov/document?D=PHMSA-2016-0165-0007.*

car design from PIH service.[22] PHMSA later notified AAR on December 7, 2017, that it was accepting P–1692 and would conduct a ''safety and policy review that will aid in determining whether the HMR should mandate a phase-out period and, if so, what period would ensure safety and protect the public interest.'' [23]

On July 27, 2018, AAR revised CPC–1325 and re-issued it as CPC–1336, extending the phase-out schedule for non-HM–246 compliant tank cars from 6 years (July 1, 2023) to 10 years (December 31, 2027). On August 15, 2018, the railroads (represented by AAR) and a group of leading PIH material shippers (represented by ACC, CI, and TFI) submitted a joint comment to P–1692 proposing a phase-out date of December 31, 2027, for all non-HM–246 specification rail tank cars. The December 31, 2027, phase-out date is in lieu of the 6-year timeline requested in AAR's original petition. The joint commenters met with PHMSA on September 6, 2018, and urged PHMSA to act quickly in completing a rulemaking that would adopt the petition's proposed 10-year phase-out timeline.[24] The joint commenters contend that codifying the phase-out in the HMR would improve safety and increase market certainty. PHMSA in the NPRM proposed revision of the HMR to adopt the joint commenters' December 31, 2027 deadline. PHMSA received no adverse comments in response to that NPRM proposal. PHMSA received comments in support of this proposal from AAR, the Dow Chemical Company, Chemours, and a joint comment by ACC, CI, and TFI.

PHMSA expects the phase-out of legacy rail tank cars for PIH service will have a positive impact on safety because they would be replaced with more robust tank cars for use in the transportation of PIH materials and because regulatory certainty could foster market certainty. In the NPRM, PHMSA proposed a phase-out deadline of December 31, 2027; however, the phase-out will go into effect under mandatory railroad interchange rules regardless of whether PHMSA adopts this date into regulation. As a result, there is no cost associated with PHMSA promulgating this date as a regulatory deadline for the phase-out. A more detailed discussion of the economic analysis can be found in the accompanying RIA.

As such, PHMSA is codifying the phase-out of all non-HM–246 rail tank cars for use in the transportation of PIH materials. PHMSA's actions in this final rule provide both shippers and carriers with regulatory certainty on the transportation of PIH materials by rail. This regulatory certainty makes transportation cost predictable to industry and—more importantly—locks-in safety benefits associated with industry's movement to phase-out non-HM–246 tank cars in the transportation of PIH materials by rail.

Therefore, PHMSA is revising § 173.31 to phase-out all non-HM–246 rail tank cars for the transportation of PIH materials by December 31, 2027, to align with the agreed upon phase-out dates between AAR and leading PIH material shippers.

15. Allow Non-RCRA Waste To Use Lab Pack Exception

In its petition (P–1695), Veolia requests that PHMSA amend § 171.8 by adding a definition of ''waste material'' to allow for all waste material to be managed in accordance with the lab packs exception and associated paragraphs in § 173.12, regardless of whether it meets the definition of a ''hazardous waste'' in EPA regulations implementing RCRA at 40 CFR 261.3. The ''lab pack exception'' for waste under § 173.12(b) provides for exceptions from some HMR packaging requirements (such as those pertaining to chemical constituent marking and specification packaging requirements for combination packages) to facilitate transportation for disposal of certain waste materials when shipped in packages satisfying packaging requirements identified in that section. The petitioner notes that PHMSA has stated in a letter of interpretation (16–0099) [25] that this exception only applies to ''hazardous wastes'' as defined by EPA's regulations implementing RCRA; amendment of the HMR to make the lab pack exception in § 173.12 more broadly available to ''waste materials'' would provide regulatory relief in the disposal and recovery of hazardous materials. PHMSA received comments from Veolia and COSTHA in support of this proposal.

PHMSA's technical review of the petition supports the petitioner's interpretation. Neither the regulatory text nor the preamble of the December 21, 1990 final rule codifying § 173.12(b) indicate the lab pack exception is limited to ''hazardous wastes'' as that term is defined under the EPA's RCRA regulations.[26] PHMSA expects that making all waste material eligible for the lab pack exception would not lead to a reduction in safety because waste materials present no greater hazard than materials defined as a hazardous waste according to the EPA's RCRA regulations. Further, insofar as the lab pack exception would make it easier for regulated entities without sophisticated compliance programs, or limited storage space, to dispose of waste consistent with the HMR, the final rule could improve safety. In addition, there are no costs expected based on this revision. Extension of the lab pack exception offers additional flexibility for transporting waste materials; it does not increase compliance costs or changes to how waste material is handled. A more detailed discussion of the economic analysis can be found in the accompanying RIA.

Therefore, in this final rule, PHMSA is adding a definition of ''waste material'' to allow for all waste material to be managed in accordance with the lab packs exception and associated paragraphs in § 173.12.

16. Incorporation of ASME Code Sections II, V, VIII, and IX

In its petition (P–1700), Trinity Containers requests that PHMSA incorporate by reference the 2017 edition of the ASME BPVC Sections II (Parts A and B), V, VIII (Division 1), and IX into § 171.7(g)(1) of the HMR. The ASME BPVC is a consensus industry standard for the design and construction of boilers and pressure vessels. Significant revisions to the relevant portions of the ASME BPVC introduced in the 2017 edition include the following:

- ASME BPVC Section II, Part A: Incorporation of 25 new American Society for Testing and Materials (ASTM) and 7 new international specifications authorized in connection within ferrous material within ASME-compliant boilers and pressure vessels;
- ASME BPVC Section II, Part B: Incorporation of 10 new ASTM specifications authorized for use in connection with non-ferrous material within ASME-compliant boilers and pressure vessels;
- ASME BPVC Section V: Incorporation of 19 new ASTM specifications providing for ASME-compliant methodologies in conducting non-destructive examination of boilers

[22] AAR Presentation on Tank Car Phase Out and TCC Authority from August 1, 2017, available at *https://www.regulations.gov/document?D=PHMSA-2016-0165-0011.*

[23] P–1692 Acceptance Letter, available at *https://www.regulations.gov/document?D=PHMSA-2016-0165-0012.*

[24] Meeting Summary, available at *https://www.regulations.gov/document?D=PHMSA-2016-0165-0014.*

[25] PHMSA Letter of Interpretation, Reference No. 16–0099, available at *https://www.phmsa.dot.gov/regulations/title49/interp/16-0099.*

[26] See 55 FR 52402, 52423 (Dec. 21, 1990).

and pressure vessels, as well as revisions of existing standards pertaining to acoustic emissions testing and block calibration;

• ASME BPVC Section VIII, Division 1: Revision of existing specifications for the construction of pressure vessels to expand coverage of openings and quick-action/actuation closures, clarify guidelines on performance of manual and automated ultrasonic testing, and provide new procedural pathways for manufacturers to obtain ASME certifications; and

• ASME BPVC Section IX: Revision of existing specifications for welding, brazing and fusing qualifications to expand acceptable testing methods and clarify welder personnel qualification requirements.

The petitioner contends that without regulatory amendment, ASME certificate holders would be obliged to comply with obsolete industry standards for manufacturing cargo tanks, non-specification tanks, and implements of husbandry to the ASME BPVC referenced in § 171.7(g)(1).

PHMSA received comments on this proposal from Global Transport Tank Consultants (GTTC), GIS, and NJP Engineering. GTTC requests that PHMSA clarify which sections are being updated and whether the updated ASME BPVC Section VIII, Division 1 ''Design Margin'' would be applicable to any of the cargo tank packaging ''designed'' to the requirements of ASME BVCP Section VIII, Division 1. In addition, GTTC asks if it was PHMSA's intention to require the repair of ASME ''marked'' packaging to meet the requirements of the 1992 edition of the National Board Inspection Code (NBIC) currently incorporated by reference in to HMR. GTTC and GIS request that PHMSA incorporate the 2019 editions of the ASME BPVC and the NBIC since they are currently available.

NJP Engineering supports the HMR amendments proposed in the NPRM but requests correction of an alleged oversight by PHMSA in incorporating the 2015 edition of the ASME BPVC.[27] NJP Engineering notes that the ASME BPVC standard contains a requirement for a 6 percent knuckle radius on torispherical heads that is the subject of exception in three places (see §§ 178.346–1(d)(8), 178.347–1(d)(8), and 178.348(e)(2)(viii)) within the HMR. These HMR exceptions reference standard ASME BPVC standard UG–32(e) and were added to the HMR in response to the incorporation of the previous 1998 edition of the ASME BPVC. However, prior to the incorporation of the 2015 edition, ASME removed paragraph (b) from UG–32, resulting in the re-designation of the former UG–32(e) as UG–32(d). NJP Engineering seeks clarification that it was PHMSA's intention to retain those exceptions and recommends that ''UG–32(e)'' be replaced with ''UG–32(d)'' accordingly.

In this final rule, PHMSA is incorporating by reference the 2017 editions of the ASME BPVC Section II, Part A (Ferrous Materials Specifications); Section II, Part B (Nonferrous Material Specifications); Section V (Nondestructive Examination); Section VIII, Division 1 (Rules for Construction of Pressure Vessels Division); and Section IX (Welding, Brazing, and Fusing Qualifications). PHMSA's technical review of P–1700 determined that the HMR's incorporation by reference of the obsolete 2015 edition of the ASME BPVC could induce confusion among stakeholders about the controlling edition of the ASME BPVC. PHMSA agrees with the petitioner that adopting the updated edition would help ensure that the HMR remains consistent with the best practices used by the industry.

The design margin(s) in the HMR for DOT specification cargo tanks remain as currently authorized;[28] this rulemaking does not authorize the ''design margin'' described in the 2017 edition of the ASME BPVC Sections II (Parts A and B), V, VIII (Division 1), and IX into the HMR for DOT specification cargo tanks, even as it would apply to specification portable tanks. This distinction was clarified in a letter of interpretation (17–0083[29]) published in response to PHMSA's incorporation by reference of the 2015 edition of the ASME BPVC Section VIII Division. This rulemaking did not consider incorporating the updated NBIC; however, the 2017 edition is under review currently as part of the HM–241[30] rulemaking. The 1992 edition of the NBIC currently incorporated by reference into the HMR will remain in effect for the repair of ASME packagings manufactured in accordance with the HMR. PHMSA will retain the exceptions in §§ 178.346–1(d)(8), 178.347–1(d)(8), and 178.348(e)(2)(viii), and agrees that ''UG–32(e)'' should be replaced with ''UG–32(d)'' provisions. PHMSA is making an additional editorial change to the HMR to update the references to UG–32 as recommended by NJP Engineering. PHMSA expects that the cost-savings associated with P–1700 would be modest. A more detailed discussion of this economic analysis can be found in the accompanying RIA.

17. Import of Foreign Pi-Marked Cylinders

In its petition (P–1701), CGA requests that PHMSA modify §§ 171.23, 173.302, and 173.304 to permit the transportation of filled pi-marked foreign pressure receptacles in compliance with applicable requirements of the European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR) and EU Directive 2010/35/EU of the European Parliament and of the Council. The HMR currently allows pi-marked cylinders (which are filled and shipped within the EU and marked with a pi (π) symbol to denote compliance with the ADR and EU Directive 2010/35/EU) to be imported through use of special permits. The petitioner requests revisions to the HMR authorizing without the need for a special permit, the (1) import, intermediate storage, transport to point of use, discharge, and export, as well as (2) import of empty pi-marked foreign pressure receptacles for filling, intermediate storage, and export. Entegris provided comments to the P–1701 docket[31] and requested additional revisions to §§ 171.23(a) and 173.302(a)(2) to allow shipment of adsorbed gasses within those pi-marked cylinders that were the subject of CGA's petition for rulemaking. The changes to § 171.23(a)(3) requested by Entegris are intended to allow for domestic sourcing as well as the import of empty pi-marked pressure receptacles for filling and export.

PHMSA's technical review did not find evidence to suggest there would be any adverse safety impacts resulting from those HMR amendments. The shipping of pi-marked cylinders within the United States has been allowed for many years through special permits—with at least 3,000 shipments occurring since the special permits were first issued; there is also extensive operational experience in the safe international shipment of pi-marked cylinders. Although there is limited market data on the current export of pi-marked cylinders pursuant to special permit, PHMSA expects that adopting

[27] See 81 FR 25613 (Apr. 29, 2016).

[28] The ASME design margin does not apply to DOT specification cargo tanks because of the structural integrity sections in part 178, which specify alternative design margins. In contrast, the ASME design margin applies to portable tanks as the HMR contains no exception allowing the use of an alternative design margin.

[29] PHMSA Letter of Interpretation Reference No. 17–0083, available at *https://www.phmsa.dot.gov/regulations/title49/interp/17-0083.*

[30] See Spring 2020 Unified Agenda at *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202004&RIN=2137-AE58.*

[31] *https://www.regulations.gov/docket?D=PHMSA-2017-0026.*

these amendments would not result in a change to the number of pi-marked cylinders that are transported or the risk profile of their transportation. Nonetheless, cost savings are expected to be minimal, resulting primarily from the potential time savings for industry and government due to the elimination of the need for a special permit. A more detailed discussion of the economic analysis can be found in the accompanying RIA.

PHMSA received comments from CGA and Chemours in support of this proposal. COSTHA notes that the 2017 edition of the ADR is being referenced in § 171.7 of the NPRM. COSTHA also notes that as of September 2019, the most current edition of the ADR is the 2019 edition that became effective July 1, 2019. PHMSA will consider updating this reference in a future rulemaking, as it has yet to conduct a technical evaluation of the 2019 edition of the ADR.

In this final rule, PHMSA is modifying §§ 171.23, 173.302, and 173.304 to permit the import of filled pi-marked foreign pressure receptacles for storage incidental to movement, transport to point of use, discharge, and export. PHMSA is also permitting the transportation of pi-marked foreign pressure receptacles for export, including filling and storage incidental to movement. In addition, PHMSA is revising §§ 171.23(a) and 173.302(a)(2) to ensure that the authorization for pi-marked cylinders is applicable to adsorbed gas packages. Finally, to align with similar ADR provisions and increase shipper and carrier awareness of the requirements for pi-marked cylinders, PHMSA is requiring a notation on the shipping paper following the basic description of the hazardous material to certify compliance with the pi-marked cylinder requirements. PHMSA is updating § 171.7 to include the ADR and EU Directive 2010/35/EU of the European Parliament and of the Council into the HMR.

18. Placement of the Word ''Stabilized'' in Shipping Description

In its petition (P–1706), Evonik requests that PHMSA revise how the word ''stabilized'' should appear when providing the shipping name for a hazardous material to maintain consistency with the IMDG Code. The HMR does not allow the word ''stabilized'' to appear as part of the proper shipping name, whereas the IMDG Code requires it, when stabilization is required prior to transportation. The petitioner claims that this causes needless discrepancies with the IMDG Code in connection with international shipments. PHMSA received comments from the Dow Chemical Company, Dangerous Goods Advisory Council (DGAC), and IVODGA supporting this proposal.

PHMSA's technical review confirmed inconsistency between the HMR and the IMDG Code and revealed that hazardous materials that have some instability but that are not specifically identified or classified as self-reactive substances or organic peroxides cannot be shipped in compliance with both the IMDG Code and the HMR as currently written. In addition, PHMSA determined that requiring the use of the word ''stabilized'' when stabilization is required by § 173.21(f) would not result in any reduction in safety, but would instead increase safety by indicating that a material has been stabilized in preparing it for transportation. Although this amendment may incur costs for manufacturers and shippers related to training and compliance, costs are expected to be negligible because affected entities that engage in international commerce are already aware of the requirement under the IMDG Code. A more detailed discussion of the economic analysis can be found in the accompanying RIA.

Therefore, in this final rule, PHMSA is revising § 172.101(c) to clarify that the word ''stabilized'' must be included as part of the proper shipping name when the HMR requires stabilization before transportation.

19. Incorporation by Reference of an AESC/IME Standard

In its petition (P–1710), IME requests that PHMSA update § 171.7(r) to update IME's corporate address and incorporate by reference the AESC/IME JPG Standard, also called the ''Guide to Obtaining DOT Approval of Jet Perforating Guns using AESC/IME Perforating Gun Specifications,'' Version 02, dated September 1, 2017. IME also proposes that PHMSA include a new § 173.67 codifying PHMSA's current practice excepting JPGs conforming to the AESC/IME JPG Standard from the exhaustive testing generally required pursuant to § 173.56 to receive an EX number authorizing transportation of a new explosive.[32]

JPGs use shaped explosive charges to produce a high-pressure jet penetrating the liner or casing of a wellbore to enhance production of oil and gas wells. The petitioners note that the initial version of the AESC/IME JPG Standard has been used by PHMSA since 2008. Entities seeking PHMSA's assignment of an EX number for a JPG product submit applications demonstrating conformity with one of 13 standard design templates within the AESC/IME JPG Standard, thereby avoiding having to submit their product for explosive laboratory testing normally required under § 173.56. IME submits that the HMR amendments identified in its petition would codify existing PHMSA practices for review of JPG products under § 173.56. PHMSA received no adverse comments on the petition or the proposals in the NPRM.

PHMSA expects that adoption of the petition as proposed in the NPRM will not have an adverse effect on safety. PHMSA has relied on AESC/IME's JPG Standard to expedite its review of applications since 2008; PHMSA is unaware any significant operational or testing experience indicating that historical practice is unsafe. Further, the most recent version of the AESC/IME JPG Standard is potentially more conservative than the current standard, as it would narrow the universe of JPG product designs (from 13 to 8) eligible for expedited review to only those 1.1D products without a detonator. Furthermore, the economic analysis suggests potential annualized cost savings of approximately $360,000 for manufacturers of JPGs that would avail themselves of the newly-codified regulations incorporating the updated AESC/IME JPG Standard to avoid the need for explosives laboratory testing. Additional cost savings are expected for both manufacturers and PHMSA due to reduced labor requirements for processing applications for EX approvals. A more detailed discussion of the economic analysis can be found in the accompanying RIA.

Therefore, in this final rule, PHMSA is updating IME's address in § 171.7(r), incorporating the updated AESC/IME JPG Standard into a new § 171.7(r)(3) of the HMR, and adding a new § 173.67 codifying existing practice allowing AESC/IME JPG Standard-compliant products access to expedited PHMSA review under § 173.56.

20. Incorporation by Reference of an Updated APA Standard 87–1

In its petition (P–1711), the APA requests that PHMSA incorporate by reference the 2018 edition of APA Standard 87–1, ''Standard for Construction and Approval for Transportation of Fireworks, Novelties,

[32] PHMSA's use of the 2008 version of the AESC/IME JPG Standard in its § 173.56 reviews is an informal practice and not a regulatory requirement. See Correspondence from Theodore L. Willke (PHMSA) to Lon Santis (IME) (Nov. 19, 2008), *http://www.ocsresponds.com/ref/AESC-IMEPerfGunApproval(2008.11.19).pdf.*

and Theatrical Pyrotechnics'' [33] to replace the outdated reference to the 2001 edition of this standard, noting advances in product safety and design in the fireworks industry over the last 15 years. Significant changes from the previous edition of APA Standard 87–1 include the following:

- Re-organizing Standard 87–1 into three parts: APA Standard 87–1A (consumer fireworks), APA Standard 87–1B (display fireworks), and APA Standard 87–1C (entertainment and technical industry fireworks, otherwise referred to as articles pyrotechnics).
- Updating the product descriptions throughout each of those parts to accommodate new types and configurations popularized since the 2001 edition of APA Standard 87–1.

The petitioner contends that because the classification system in the 2001 edition of APA Standard 87–1 does not reflect new product types and configurations (*e.g.,* combination devices containing multiple tubes, and combinations of effects previously limited to single tubes), those new products are not eligible pursuant to §§ 173.64 and 173.65 for expedited PHMSA review and approval.[34] The petitioner submits that incorporation by reference of the updated version of APA Standard 87–1 would relieve administrative burdens on industry by facilitating expedited PHMSA review and approval of fireworks products and provide regulatory certainty regarding compliance with the HMR.

PHMSA received numerous comments to the NPRM regarding this petition, and to address each issue, PHMSA broke them out into the following sub-sections for detailed discussion.

General Comments: Support

PHMSA received comments in support of this proposal from Charles Ward; Huang Johnson; Western Enterprises Inc.; ResPyro (Steve Comen); StageFX (Lyle Salmi); Galaxy Fireworks, Inc.; ResPyro (Kent Orwoll); NextFX; Fireworks Over America; Dennis Slicer; Santore and Sons; Pyrotechnics Guild International (Paul Smith); Garrett's Fireworks; ICON Pyrotechnics Internationals; American Fireworks Standards Laboratory (AFSL); Inter-Oriental Fireworks LTD; APA; APA Rebuttal to National Fireworks Association (NFA); and Matthew Jones. These commenters generally supported incorporating the updated APA Standard 87–1, noting that it will add numerous new devices, expand the permitted chemical list, and is directed toward hazard classification for transportation. The commenters add that the updated APA Standard 87–1 provides defined criteria that will relieve the burden of submitting new fireworks designs to a third-party test lab for classification and will reduce the regulatory burden on industry, including manufacturers and small business importers, who often have to spend their time helping their foreign manufacturers obtain EX approvals.

General Comment: Opposed

PHMSA received comments opposing incorporation of APA Standard 87–1A from Yienger Fireworks, NFA, and Crazy Debbie's Fireworks. NFA and Crazy Debbie's Fireworks explain that while many of the proposed revisions to APA Standards 87–1A, B, and C would clarify the requirements applicable to fireworks devices, there are certain revisions in APA Standard 87–1A that will not reduce regulatory burdens and do not relate to improving transportation safety. These commenters further contend that APA Standard 87–1A would conflict with the regulatory regime of the Consumer Product Safety Commission (CPSC) governing the safety of fireworks from a consumer-use standpoint.

Instead, PHMSA's incorporation of APA Standard 87–1 pertains to its distinguishable jurisdictional responsibility over regulation of packaging and transportation of fireworks and other hazardous materials. PHMSA-imposed restrictions on packaging and shipment of hazardous materials for transportation that give rise to incidental effects on the way those materials are marketed to consumers are, therefore, not duplicative or conflicting regulations. In addition, PHMSA notes that the APA 87–1 standards were developed with the resources of the APA, which welcomed broad input and participation from the fireworks industry. APA allowed organizations, including the NFA, to participate in that process as an organization.

Comments Regarding Section 2.4: Break/Burst Charge Limits

PHMSA received several comments on section 2.4 of APA Standard 87–1A, which outlines the general requirements that must be met for construction and design of consumer firework devices and novelties. Jake's Fireworks, NFA, Crazy Debbie's Fireworks, Ultratec Special Effects and the APA provided comments specifically on the break/burst charge limits outlined in this section of APA Standard 87–1A:

- Jake's Fireworks contends that APA Standard 87–1A's limitation on metals in the composition of a break/burst charges was rejected by the CPSC commissioners, alleging that in doing so, the CPSC rejected metal composition as a factor in the safety of break/burst charges.
- Ultratec Special Effects states that some of the weight limit increases for devices per tube in APA Standard 87–1A will allow for a break/burst charge of 42.5 grams, which is more than enough to produce a salute device. It also claims that if these devices were subject to UN Series 6 testing, they would likely be classified as 1.3G or 1.1G devices, further adding that reports and airburst reports should always be subject to UN Series 6 testing since these devices are highly energetic and should be scrutinized for proper construction and packing techniques to ensure safe transportation. Ultratec Special Effects adds that many of these devices are currently unregulated due to older issued EX numbers that have vague specifications and no specified part numbers.
- NFA asserts that adoption of the language for break/burst charges in APA Standard 87–1A will not reduce regulatory burdens and will create conflict and confusion between agency regulations instead, further claiming that it is unrelated to safe transportation of hazardous materials in commerce.
- Crazy Debbie's Fireworks alleges that APA Standards 87–1A and C should have identical break/burst charge limits for the same fireworks. By way of example, Crazy Debbie's Fireworks notes that for the same firework—''UN0336, Fireworks, 1.4G''—each of APA Standard 87–1A and Standard 87–1C impose two different break/burst composition restrictions. Under APA Standard 87–1A, this material is limited to less than 149 microns (100 mesh) metals in the break/burst charges, but APA Standard 87–1C states that aluminum particles greater than 53 microns in diameter must not exceed 10 percent by weight of the break/burst charge.

[33] APA Standard 87–1 is a consensus industry standard in which fireworks classifications are assigned based upon the weight and type of chemical composition for each type of device, including specific permissible and restricted chemicals.

[34] Sections 173.64 and 173.65 permit fireworks manufactured in compliance with APA Standard 87–1 to be classified and approved on an expedited basis, as each application for a new fireworks product would otherwise have to provide product-specific testing required under § 173.56 to obtain an EX number from PHMSA authorizing their transportation.

APA Standard 87–1A's restrictions on metal size and chemical composition within break/burst charges for consumer fireworks are not new regulatory requirements; rather, they have been in place since the 2001 edition of APA Standard 87–1 currently incorporated into § 171.7, as metal size and chemical composition directly impact hazard classification. For this reason, PHMSA is not persuaded by the commenters' arguments that APA Standard 87–1A's limitations on break/burst device metal composition are unnecessary; rather, PHMSA understands those metal size limitations to be essential to safe transportation of consumer fireworks whose chemical structure and metal composition makes them inherently more dangerous than fireworks with different constituents. Further, even if the CPSC may not have had reservations about whether an adequate technical basis to conclude that the precise metal composition limits at issue in its rulemaking would ensure consumer product safety, PHMSA is satisfied, based on its experience regulating transportation of hazardous materials (an activity that involves a different risk profile than use of fireworks by individual consumers) that the approach taken in APA Standard 87–1 and 87–1A is appropriate for its transportation regulatory oversight activities. PHMSA notes that none of the commenters on the NPRM provided technical or operational data supporting a contrary conclusion.

In addition, Ultratec Special Effects' assertion that APA Standard 87–1A will allow for an increased break/burst charge of 42.5 grams, and therefore allow salute device access to the expedited review processes under §§ 173.64 and 173.65, is incorrect. A device containing a burst charge weight of 42.5 grams would not comply with either the existing APA Standard 87–1 nor the updated APA Standard 87–1A. The only weight increases in the updated APA Standard 87–1A pertain to fountain devices, which do not contain burst/break charges; the break/burst charge weight limit of 15 grams for aerial shells did not change. Devices with break/burst charges exceeding 15 grams would have to be submitted to a DOT-approved test laboratory pursuant to § 173.56, where the device would be subjected to the UN Series 6 testing and subsequently reviewed by PHMSA.

Further, although PHMSA acknowledges that the HMR allows the use of the default UN classification testing (including UN Series 6 testing) instead of reliance on compliance with APA Standard 87–1A, PHMSA is not convinced that UN Series 6 testing is necessarily superior to APA Standard 87–1A's approach of limiting the metal particle sizes and chemical composition. Indeed, insofar as both APA Standards (87–1 and 87–1A) as well as the UN Model Regulations classify fireworks with an eye toward limiting the amount of flash powder compositions that can be present in fireworks, they do so by different approaches: APA Standard 87–1 and the updated 87–1A do so by way of adjusting chemical composition and metal particle sizes to control flash powder compositions, while the UN Model Regulations rely on the use of a flash powder test to determine the presence of flash powder compositions. Based on its long experience regulating safe transportation of fireworks, PHMSA is satisfied that both the APA Standard (87 and 87–1A) and UN approaches are appropriate. PHMSA notes that none of the commenters on the NPRM provided technical or operational data supporting a contrary conclusion.

PHMSA is aware of the different limits on metal size permitted under APA Standards 87–1A and C for the same UN0336, 1.4G firework. As explained above, PHMSA understands metal size to be an important factor in classifying fireworks to ensure their safe transportation. But metal size is not necessarily the only component that should be considered in the classification of fireworks under the HMR. Indeed, the differences between APA Standards 87–1A and C with respect to the same fireworks reflect the common-sense proposition that other characteristics of fireworks can influence their classification for regulation of their transportation—and that those transportation-relevant characteristics often derive from (or incidentally effect) the end uses of the fireworks. As explained by APA in supplemental comments submitted in response to Crazy Debbie's Fireworks et al., the chemical composition and design of articles pyrotechnics governed by APA Standard 87–1C are much more energetic than the consumer fireworks governed by APA Standard 87–1A—hence, the difference in authorized metal sizes despite the same 1.4G classification. PHMSA understands the different metal size limits for consumer applications (APA Standard 87–1A) and articles pyrotechnics applications (APA Standard 87–1C) to be appropriate.

Comments Regarding Reloadable Aerial Shell Kits

PHMSA received comments from Jake's Fireworks, NFA, and Crazy Debbie's Fireworks, on sections 2.4 and 3.2.5.1 of APA Standard 87–1A pertaining to reloadable aerial shell kits. These commenters do not view those requirements (for fully assembled tubes, inner packaging and a base) as being related to the risk of harm in the transportation of these products, instead claiming they relate to the kits' packaging and design as it interfaces with the consumer, which they allege is subject to the jurisdiction of the CPSC and distinct from transportation safety regulated by PHMSA. NFA further claims adoption of this portion of the proposed language under section 3.2.5.1 will not reduce regulatory burdens, may create conflict and confusion between CPSC and PHMSA regulations, and eliminate a currently-allowed industry practice prior to an item being offered for retail sale.

However, APA submitted supplemental comments noting that NFA, et al. were not criticizing the NPRM so much as existing HMR requirements as elaborated by PHMSA safety guidance [35] on reloadable aerial shell kits. APA further explained that the transportation of completed kits with inner packaging significantly increases safety in the event of an incident occurring during transportation: If a trailer load or shipping container of reloadable shells did not have the separation provided by inner packaging required under APA Standard 87–1A, the product could behave as a 1.3G explosive and pose far more serious transportation risks than a 1.4G incident.

PHMSA agrees with APA that Standard 87–1A's requirement for reloadable aerial shell kits to contain fully assembled tube and be packaged in an inner packaging with base is not a new regulatory requirement: Those elements are in the 2001 edition of APA Standard 87–1, in addition to the PHMSA guidance identified above. PHMSA further agrees with APA that the requirements for inner packagings and bases for reloadable aerial shell kits in APA Standard 87–1A are important contributors to the safe shipment of aerial shell kits. Indeed, PHMSA's technical review regarding P–1710 included research yielding a preliminary conclusion that reloadable aerial shell kits can be shipped in bulk safely as 1.4G explosives.

Comments Regarding Appendices

PHMSA received comments from Jake's Fireworks and the NFA on ''Appendix VI: General Requirements

[35] *https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/approvals-and-permits/hazmat/energetic-materials-approvals/18296/safetyguidanceforthecclassificationofanaerialshellkit.pdf.*

Pertaining to the Consumer Product Safety Commission.'' The commenters note that the requirements in Appendix VI do not relate to matters of transportation safety, but rather concern consumer safety issues which are within the jurisdiction of the CPSC.

PHMSA agrees with the commenters that Appendix VI of APA Standard 87–1A is within the jurisdiction of CPSC, and will therefore not incorporate it by reference in this final rule. Nor will PHMSA incorporate by reference any of Appendices II–V of APA Standard 87–1A, Appendices II–IV of APA Standard 87–1B, and Appendices II–IV of APA Standard 87–1C, as PHMSA has not conducted a technical evaluation of those Appendices.

Conclusion Regarding Incorporation by Reference of Updated APA Standard

Based on PHMSA's technical analysis and the comments received on the NPRM, PHMSA will in this final rule incorporate by reference the updated APA Standards 87–1A, B, and C, with their respective Appendix I Permitted and Restricted Chemicals lists. Other Appendices of APA Standard 87–1A (Appendices II–VI), APA Standard 87–1B (Appendices II–IV), and APA Standard 87–1C (Appendices II–IV) will not be incorporated by reference. PHMSA expects the updated APA Standards 87–1A, B, and C will provide clarity to the fireworks industry, while maintaining the composition restrictions for classification that are needed to ensure the safe transportation of fireworks. Furthermore, PHMSA's decision to incorporate by reference the updated APA Standard 87–1 is based on its review of the requirements for consumer fireworks in APA Standard 87–1A, display fireworks in APA Standard 87–1B, and professional fireworks (classed as articles pyrotechnics) in APA Standard 87–1C. These standards add numerous new devices, expand the permitted chemical list, and are directed toward hazard classification for transportation. PHMSA is also clarifying that in incorporating Appendix I of each of APA Standards 87–1A, B, and C, it will adopt a one-percent manufacturing tolerance for the application of the chemical constituent limits in updated APA Standard 87–1. This would mean that for individual chemical constituents, an increase or decrease of one-percent of that material's share of the composition compared to the limits set forth in the updated APA Standard will be permitted for chemicals (other than red phosphorous and silver fulminate).

PHMSA expects its incorporation of the updated APA Standard 87–1 will provide cost savings to the fireworks industry by streamlining the EX approval process for many types of pyrotechnic devices. The EX approval processes within the updated APA Standard 87–1 will relieve the burden of submitting new fireworks designs to a third-party test lab for classification—a compliance cost often borne by distributors and small business importers, who often must contract to assist foreign manufacturing sources in obtaining EX approvals for their manufactured products. In addition, PHMSA expects that the incorporation of the revised APA standards will provide opportunities for the fireworks industry to work with the Department of Defense in developing incendiary type devices for training exercises. PHMSA estimates that adoption of this petition would provide an annualized cost savings of approximately $270,000 to industry through expediting the approval process to reduce explosives lab testing requirements. A more detailed discussion of the economic analysis can be found in the accompanying RIA.

V. Section-by-Section Review

Below is a section-by-section description of the amendments in this final rule.

1. Appendix A to Part 107, Subpart D

Appendix A to Part 107, Subpart D sets forth the guidelines PHMSA uses (as of October 2, 2013) in making initial baseline determinations for civil penalties. In this final rule, PHMSA is updating the references to APA Standard 87–1 to reflect the new edition of this standard.

2. Section 107.402

Section 107.402 outlines how to apply for designation as a certification agency. PHMSA is updating the references to the APA Standard 87–1 to reflect the new edition of this standard in § 107.402(d).

3. Section 171.7

Section 171.7 lists all standards incorporated by reference into the HMR that are not specifically set forth in the regulations. In this final rule, PHMSA is incorporating by reference the following publications by the APA, ASME, CGA, EU, and AESC/IME:

- *European Agreement concerning the International Carriage of Dangerous Goods by Road,* 2017, into § 171.23. The ADR is the European agreement concerning the international carriage of dangerous goods by road within the EU.
- *Directive 2010/35/EU of the European Parliament and of the Council,* June 16, 2010, into § 171.23. The aim of Directive 2010/35/EU of the European Parliament and of the Council on Transportable Pressure Equipment (2010 TPED) is to promote the free movement of transportable pressure equipment (TPE) within the European Community (EC). It provides for a legal structure whereby TPE can be manufactured and sold and used throughout the EC.
- CGA C–6.1, *Standards for Visual Inspection of High Pressure Aluminum Compressed Gas Cylinders,* 2002, Fourth Edition, into §§ 180.205 and 180.209. This publication has been prepared as a guide for the visual inspection of aluminum compressed gas cylinders with service pressures of 1800 psig or greater. It is general in nature and does not cover all circumstances for each individual cylinder type or lading.
- CGA C–6.3, *Guidelines for Visual Inspection and Requalification of Low Pressure Aluminum Compressed Gas Cylinders,* 2013, Third Edition, into §§ 180.205 and 180.209. This publication has been prepared as a guide for the periodic inspection of aluminum alloy compressed gas cylinders with service pressures of 500 psi or less. This publication is general in nature and will not cover all circumstances for each individual cylinder type or lading.
- CGA C–11, *Recommended Practices for Inspection of Compressed Gas Cylinders at Time of Manufacture,* 2013, Fifth Edition, into § 178.35. The purpose of this publication is to promote safety by outlining inspection requirements of DOT and UN pressure vessels as interpreted and practiced by manufacturers and inspectors.
- CGA S–7, *Method for Selecting Pressure Relief Devices for Compressed Gas Mixtures in Cylinders,* 2013, Fifth Edition, into § 173.301. This method is applicable to the determination of the PRD to use with compressed gas mixtures in cylinders. This method is limited to those compressed gas mixtures with known flammability, toxicity, state, and corrosively.
- ASME *Boiler and Pressure Vessel Code (ASME BPVC),* 2017 Edition, July 1, 2017 (as follows), into §§ 172.102; 173.3; 173.5b; 173.24b; 173.306; 173.315; 173.318; 173.420; 178.255–1; 178.255–2; 178.255–14; 178.255–15; 178.273; 178.274; 178.276; 178.277; 178.320; 178.337–1; 178.337–2; 178.337–3; 178.337–4; 178.337–6; 178.337–16; 178.337–18; 178.338–1; 178.338–2; 178.338–3; 178.338–4; 178.338–5; 178.338–6; 178.338–13; 178.338–16; 178.338–18; 178.338–19; 178.345–1; 178.345–2; 178.345–3; 178.345–4; 178.345–7; 178.345–14;

178.345–15; 178.346–1; 178.347–1; 178.348–1; 179.400–3; and 180.407. The ASME BPVC is a standard that regulates the design and construction of boilers and pressure vessels. The document is written and maintained by volunteers chosen for their technical expertise.

• AESC/IME JPG Standard, *Guide to Obtaining DOT Approval of Jet Perforating Guns using AESC/IME Perforating Gun Specifications,* Ver. 02, dated September 1, 2017, into § 173.67. The AESC/IME JPG Standard was developed by IME, AESC, and PHMSA to provide an efficient and economical mechanism to obtain explosives approvals of JPGs in compliance with the HMR. Applications that are prepared and submitted using the standard are processed by PHMSA with minimal delay and without the need for expensive and time-consuming testing.

• APA Standards: 87–1A *Standard for the Construction, Classification, Approval and Transportation of Consumer Fireworks,* January 1, 2018 edition into §§ 107.402(d), 173.59, 173.64, 173.65, and Appendix A to Part 107, Subpart D (Guidelines for Civil Penalties); 87–1B *Standard for the Construction, Classification, Approval, and Transportation of Display Fireworks,* January 1, 2018 edition into § 173.64 and Appendix C to Part 107, Subpart D (Guidelines for Civil Penalties); and 87–1C *Standard for the Construction, Classification, Approval, and Transportation of Entertainment Industry and Technical (EI&T) Pyrotechnics,* January 1, 2018 edition version into § 173.64 and Appendix A to Part 107, Subpart D (Guidelines for Civil Penalties). APA Standard 87–1A, B, and C is a consensus standard in which fireworks classifications are assigned based upon the weight and type of chemical composition contained for each specific type of device, including specific permissible and restricted chemicals.

4. Section 171.8

Section 171.8 defines terms generally used throughout the HMR that have broad or multi-modal applicability. PHMSA is adding a definition for ''waste material'' to allow wastes that do not meet the EPA/RCRA definition of hazardous waste to be managed in accordance with the lab pack exception and associated paragraphs in § 171.23.

5. Section 171.23

Section 171.23 covers the requirements for specific materials and packagings transported under the ICAO Technical Instructions, IMDG Code, TC Transport of Dangerous Goods (TDG) Regulations, or the International Atomic Energy Agency (IAEA) Regulations. PHMSA is revising § 171.23(a)(3) to allow for the use of pressure vessels and pressure receptacles that are marked with a pi mark in accordance with the European Directive 2010/35/EU on TPED and that comply with the requirements of Packing Instruction P200, P208 and 6.2 of ADR concerning PRD use, test period, filling ratios, test pressure, maximum working pressure, and material compatibility for the lading contained or gas being filled. This revision allows for import, intermediate storage, transport to point of use, discharge, and export of pi-marked cylinders. Note that since the publication of the NPRM, PHMSA has made minor editorial revisions to this section such as revising § 171.23(a)(3) to refer to 6.2.2. of the ADR instead of 6.2. PHMSA also removed the word ''import'' from § 171.23(a)(3)(i) and ''export'' from § 171.23(a)(3)(ii).

6. Section 172.101

The HMT is contained in § 172.101. The HMT lists alphabetically, by proper shipping name, those materials that have been designated hazardous materials for transportation purpose. It provides information used on shipping papers, package marking, and labeling, as well as other pertinent shipping information for hazardous materials. In this final rule, PHMSA is removing references to special provision 103 from Column (7) of the HMT for the following four explosive entries: ''UN0361, Detonator assemblies, non-electric, for blasting''; ''UN0365, Detonators for ammunition''; ''UN0255, Detonators, electric, for blasting''; and ''UN0267, Detonators, non-electric, for blasting.'' PHMSA is also revising more than 100 entries to harmonize the limited quantity exceptions in Column (8A) with the ICAO Technical Instructions and the UN Model Regulations.

7. Section 172.102

Section 172.102 lists special provisions applicable to the transportation of specific hazardous materials. Special provisions contain packaging requirements, prohibitions, and exceptions applicable to particular quantities or forms of hazardous materials. Consistent with the § 172.101 Column (7) revisions to ''UN0361, Detonator assemblies, non-electric, for blasting''; ''UN0365, Detonators for ammunition''; ''UN0255, Detonators, electric, for blasting''; and ''UN0267, Detonators, non-electric, for blasting,'' PHMSA is removing special provision 103 as it would no longer apply to any HMT entry.

8. Section 172.302

Section 172.302 describes the general marking requirements for bulk packagings. In this final rule, PHMSA is revising the minimum size of the marking requirement on certain portable tanks in § 172.302(b)(2). This revision requires a minimum marking of 12 mm (0.47 inch) in height as applicable to portable tanks with capacities less than 3,785 L (1,000 gallons).

9. Section 173.5b

Section 173.5b authorizes the transportation by highway of residual amounts of Division 2.2 refrigerant gases or anhydrous ammonia contained in non-specification pressure vessels that are components of refrigeration systems. PHMSA is revising paragraph (b) to indefinitely allow the use of refrigeration systems placed into service prior to June 1, 1991 under specified conditions.

10. Section 173.28

Section 173.28 outlines the requirements for the reuse, reconditioning, and re-manufacture of packagings. In this final rule, PHMSA is modifying language in § 173.28(c)(1)(i) to clarify requirements for reconditioning metal drums and to allow for the sufficient removal of external coatings to ensure there is no adverse effect on transportation safety.

11. Section 173.31

Section 173.31 outlines the requirements for shipping hazardous materials in tank cars. In this final rule, PHMSA is prohibiting the use of tank cars that were manufactured using non-normalized steel for head or shell construction for the transportation of PIH materials after December 31, 2020. Furthermore, PHMSA is phasing out all non-HM–246 compliant tank cars for the transportation of PIH materials by December 31, 2027.

12. Section 173.56

Section 173.56 outlines the definitions and procedures for the classification and approval of a new explosive. In this final rule, PHMSA is adding a reference to the new § 173.67, which would apply to exceptions for Division 1.1 JPGs.

13. Section 173.59

Section 173.59 outlines the description of terms for explosives. In this final rule, PHMSA is updating a reference to the APA documents in the definition of consumer fireworks.

14. Section 173.64

Section 173.64 outlines the exceptions for Division 1.3 and 1.4 fireworks. In this final rule, PHMSA is updating a reference to the APA documents in § 173.64(a)(1) and (3).

15. Section 173.65

Section 173.65 outlines the exceptions for Division 1.4G consumer fireworks. In this final rule, PHMSA is updating a reference to the APA documents in § 173.65(a)(1), (a)(3)(i), and (a)(4)(iv).

16. Section 173.67

In this final rule, PHMSA is adding a new § 173.67 to outline exceptions for Division 1.1 JPGs.

17. Section 173.151

Section 173.151 outlines exceptions for Class 4 materials. In this final rule, PHMSA is revising the limited quantities provisions in this section to present limited quantities in appropriate SI units in liters in addition to kilograms.

18. Section 173.244

Section 173.244 outlines the requirements for bulk packaging for certain pyrophoric liquids, dangerous when wet (Division 4.3) materials, and poisonous liquids with inhalation hazards (Division 6.1). In this final rule, PHMSA is modifying the list of authorized tank car specifications in the table of PIH materials (§ 173.244(a)(2)) by replacing the delimiter ''I'' with ''W'' to reflect the change of the interim tank car standard to a permanent standard.

19. Section 173.302

Section 173.302 outlines the requirements for the filling of cylinders with nonliquefied (permanent) compressed gases or adsorbed gases. In this final rule, PHMSA is revising § 173.302(a)(1) to refer to exceptions in § 171.23(a)(3) for the importation of pi-marked cylinders. PHMSA is also revising § 173.302(a)(2) to make adsorbed gases eligible for the exceptions provided in § 171.23(a)(3).

20. Section 173.304

Section 173.304 outlines the requirements for the filling of cylinders with liquefied compressed gases. In this final rule, PHMSA is revising § 173.304(a) to refer to exceptions in § 171.23(a)(3) for the importation of pi-marked cylinders.

21. Section 173.308

Section 173.308 outlines the requirements for the shipment of lighters. In this final rule, PHMSA is deleting § 173.308(d)(3), which requires a closed transport vehicle or closed freight container being transported by vessel to contain the marking, ''WARNING—MAY CONTAIN EXPLOSIVE MIXTURES WITH AIR—KEEP IGNITION SOURCES AWAY WHEN OPENING.''

22. Section 173.314

Section 173.314 outlines the requirements for transporting compressed gases in tank cars and multi-unit tank cars. In this final rule, PHMSA is modifying the table in § 173.314(c), which lists the authorized tank car specifications for specific compressed gases. The changes replace the last specification delimiter ''J'' with ''H'' and ''I'' with ''W'' to reflect the change of the interim HM–246 tank car specification standard for PIH materials to a permanent standard.

23. Section 178.35

Section 178.35 prescribes the manufacturing and testing specifications for cylinders used for the transportation of hazardous materials in commerce. In this final rule, PHMSA is modifying § 178.35(b) and (c) to clarify inspection requirements as stipulated in CGA C–11. This includes revision to the inspector duties as consistent with CGA C–11.

24. Section 178.521

Section 178.521 prescribes the requirements for paper bags used as non-bulk packagings for hazardous materials. In this final rule, PHMSA is revising § 178.521(b)(4) to allow for a weight tolerance of ±10 percent from the nominal basis weight reported in the initial design qualification test report instead of ±5 percent.

25. Section 179.22

Section 179.22 specifies additional marking requirements for tank cars. In this final rule, PHMSA is modifying § 179.22(e) to provide for new markings for tank cars manufactured after March 16, 2009, to meet the requirements of §§ 173.244(a)(2) or (3) or 173.314(c) or (d) to reflect the change of the interim tank car standard to a permanent standard. PHMSA is replacing ''I'' with ''W'' for cars manufactured before the effective date of this final rule and specifying that tank cars manufactured after the effective date will be marked with ''W'' following the test pressure and with a delimiter of ''H.''

26. Section 180.209

Section 180.209 specifies requirements for requalification of specification cylinders. In this final rule, PHMSA is modifying § 180.209(l)(2) to reference § 171.23(a)(5) in lieu of paragraph (4).

27. Section 180.213

Section 180.213 specifies requirements for requalification markings. In this final rule, PHMSA is modifying § 180.213(d)(2) to reference § 171.23(a)(5) in lieu of paragraph (4).

28. Section 180.417

Section 180.417 prescribes the reporting and record retention requirements pertaining to cargo tanks. Currently, §§ 180.417(a)(3)(i) and (ii) allow the use of alternative reports when a manufacturer's certificate and related papers are not available for DOT specification cargo tanks that were manufactured before September 1, 1995. In this final rule, PHMSA is removing the provision that limits use of alternative reports to those DOT specification cargo tanks ''manufactured before September 1, 1995'' from § 180.417(a)(3).

VI. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This rulemaking is published under the authority of Federal hazardous materials transportation law [36] (Federal hazmat law.). Section 5103(b) of the Federal hazmat law authorizes the Secretary of Transportation to ''prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce.'' The Secretary's authority regarding hazardous materials safety is delegated to PHMSA at 49 CFR 1.97. This rulemaking amends several sections of the HMR in response to petitions for rulemaking received from the regulated community.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of E.O. 12866, ''Regulatory Planning and Review'' [37] and, therefore, was not formally reviewed by the Office of Management and Budget (OMB). This rulemaking is also not considered a significant rulemaking under the DOT regulations governing rulemaking procedures at 49 CFR part 5, subpart B. E.O. 12866 requires agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop

[36] 49 U.S.C. 5101 *et seq.*

[37] 58 FR 51735 (Oct. 4, 1993).

regulations that ''impose the least burden on society.'' Similarly, DOT regulations at § 5.5(f)–(g) require that regulations issued by PHMSA and other DOT Operating Administrations ''should be designed to minimize burdens and reduce barriers to market entry whenever possible, consistent with the effective promotion of safety'' and should generally ''not be issued unless their benefits are expected to exceed their costs.''

In addition, E.O. 12866 and DOT implementing regulations at 49 CFR 5.5(i) require PHMSA to provide a meaningful opportunity for public participation, which also reinforces requirements for notice and comment under the Administrative Procedure Act. Therefore, in the NPRM, PHMSA sought public comment on its proposed revisions to the HMR, the preliminary cost and cost savings analyses in the Preliminary RIA, as well as any information that could assist in quantifying the benefits of this rulemaking. Those comments are addressed in this final rule, and additional discussion about the economic impacts of the final rule are provided within the RIA posted in the docket.

In this final rule, PHMSA is introducing amendments to the HMR responding to 24 petitions that have been submitted by stakeholders. Overall, this rulemaking maintains the continued safe transportation of hazardous materials while producing a net cost savings. PHMSA estimates a present value of quantified net cost savings of approximately $0.72 million annualized at a 7 percent discount rate over a perpetual time horizon. These estimates do not include non-monetized and qualitative cost/cost savings discussed in the RIA.

PHMSA's cost/cost savings analysis relies on the monetization of impacts for three petitions included in this rulemaking. The following table presents a summary of the three petitions that would have monetized impacts upon codification and contribute to PHMSA's estimation of quantified net cost savings.

TABLE 1—SUMMARY OF COST/COST SAVINGS OF PETITIONS FOR REGULATORY REFORM

Monetized costs/(cost savings) by petition			
Petition #	Petition topic	Total cost savings (millions)	Annualized cost savings (millions)
P–1688	*Weight Tolerances for Paper Shipping Sacks*	$1.30	$0.09
P–1710	*Incorporation of an Institute of Makers of Explosives Standard*	5.10	0.36
P–1711	*Incorporation of American Pyrotechnics Association Standard*	3.90	0.27
Total		10.30	0.72

In addition to those three items, this rulemaking amends the HMR in response to other petitions that are either (1) cost neutral or (2) deregulatory in nature in that they provide relief from unnecessary requirements or provide additional flexibility, but which have not been monetized due to information gaps preventing quantification of cost savings. Furthermore, PHMSA's actions in this final rule provide regulatory certainty to industry and allow efficient movement of hazardous materials resulting in increased economic activity.

PHMSA's findings are described in further detail in the RIA posted in the docket.

C. Executive Order 13771

This final rule is a deregulatory action under E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs.'' [38] Details on the estimated cost savings of this final rule can be found in the RIA posted in the docket.

D. Executive Order 13132

This rulemaking was analyzed in accordance with the principles and criteria contained in E.O. 13132, ''Federalism'', [39] and the presidential memorandum (''Preemption'') that was published in the **Federal Register**. [40] E.O. 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This rulemaking may preempt State, local, and Tribal requirements, but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of E.O. 13132 do not apply.

The Federal hazmat law contains an express preemption provision, 49 U.S.C. 5125(b), that preempts State, local, and Indian Tribal requirements on the following subjects:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered certain of the subject items above and preempts State, local, and Indian Tribe requirements concerning those subjects unless the non-Federal requirements are ''substantively the same'' as the Federal requirements. PHMSA received no comments on the NPRM regarding the effect of the adoption of the specific proposals on State, local or tribal governments.

E. Executive Order 13175

This rulemaking was analyzed in accordance with the principles and criteria contained in E.O. 13175, ''Consultation and Coordination with Indian Tribal Governments'' [41] and DOT Order 5301.1, ''Department of

[38] 82 FR 9339 (Jan. 30, 2017).

[39] 64 FR 43255 (Aug. 10, 1999).

[40] 74 FR 24693 (May 22, 2009).

[41] 65 FR 67249 (Nov. 6, 2000).

Transportation Policies, Programs, and Procedures Affecting American Indians, Alaska Natives, and Tribes.'' E.O. 13175 requires agencies to assure meaningful and timely input from Tribal government representatives in the development of rules that significantly or uniquely affect Tribal communities by imposing ''substantial direct compliance costs'' or ''substantial direct effects'' on such communities or the relationship and distribution of power between the Federal Government and Tribes. PHMSA assessed the impact of the rulemaking on Indian Tribal communities and determined that it would not significantly or uniquely affect Tribal communities or Indian Tribal governments. Therefore, the funding and consultation requirements of E.O. 13175 do not apply. Further, PHMSA did not receive comments on the Tribal implications of the rulemaking.

F. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act [42] requires agencies to consider whether their rulemakings will have a ''significant economic impact on a substantial number of small entities'' to include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. This rulemaking has been developed in accordance with E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' [43] and DOT implementing regulations at 49 CFR 5.13(f) to ensure compliance with the Regulatory Flexibility Act requirements regarding evaluation of potential impacts of draft rules on small entities.

1. *Need for and objectives of the final rule.*

This final rule amends miscellaneous provisions in the HMR in response to 24 petitions for rulemaking. While maintaining safety, this final rule would amend certain requirements that are overly burdensome and provide clarity and flexibility where requested by the regulated community. The changes are generally intended to provide relief to shippers, carriers, and packaging manufacturers, including small entities.

2. *Significant issues raised by the public comments, a statement of the assessment by PHMSA regarding such issues, and a statement of any changes made in the proposed rule as a result of such comments.*

PHMSA did not receive any public comments suggesting that the proposed amendments would have a significant impact on small entities. Please refer to Section IV. (Discussion of Amendments and Applicable Comments) above and the RIA for PHMSA's responses to comments submitted in the rulemaking docket.

3. *PHMSA's response to any comments of the Chief Counsel for Advocacy of the Small Business Association (SBA).*

PHMSA received no comments filed by the SBA in response to the NPRM, and therefore has introduced no changes to this final rule in response.

4. *An estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.*

This final rule affects numerous small entities across a wide range of industries. However, quantified impacts on entities, large or small, could only be assessed for a few of the changes incorporated in this final rule due to data limitations. These impacts are explained, discussed and assessed in the accompanying RIA. For the purposes of identifying affected small entities, PHMSA focused on the industries for which quantified impacts could be estimated. PHMSA assumes that any change that did not draw comment from the industry and could not be quantified is unlikely to have a significant economic or other impact on small entities. PHMSA therefore limits the discussion here to the three items for which impacts could be quantified: (1) The adoption of petition P–1688 adopting a wider range of basis weight for the paper stock used to manufacture UN specification paper sacks; (2) P–1710 adopting a new AESC/IME standard for JPGs; and (3) P–1711 incorporating by reference an updated APA Standard 87–1 pertaining to fireworks.

The table below presents the U.S. Census Bureau Statistics of U.S. Businesses (SUBS) revenue data for each relevant NAICS Code that could be affected by incorporating P–1688.

NAICS	Industry title	Firm size category	Number of firms in category	Total firm revenue in category ($1,000s)
322220	Paper Bag and Coated and Treated Paper Manufacturing	Total	575	20,836,474
322220	Paper Bag and Coated and Treated Paper Manufacturing	< 500	511	7,225,805
322220	Paper Bag and Coated and Treated Paper Manufacturing	500+	64	13,610,669

Depending on the industrial sector, the SBA defines small entities either by a revenue threshold or by the number of employees. As identified in the accompanying RIA, the entities affected by the adoption of petition P–1688 are in North American Industrial Classification System (NAICS) code 322220—Paper Bag and Coated and Treated Paper Products Manufacturing. Firms in this NAICS sector manufacture a wide range of products, of which only a small subset are shipping sacks or shipping sack feed stock. Data are not available that would enable PHMSA to identify how many firms within the larger NAICS manufacture both shipping sacks and feed stock for shipping sacks, much less identify the number of small entities. Neither can PHMSA estimate the revenues for those small entities with any degree of certainty. As noted in the RIA, the high-end cost savings estimate is roughly $160,000 in cost savings per year. PHMSA does not believe these modest cost savings, spread among all affected manufacturers, would rise to the level of a significant impact for affected small entities.

The second industry to consider is associated with petition P–1710 and affects manufacturers of JPGs. As described in the RIA, there are five NAICS sectors that manufacture, operate or contract JPG services. These sectors include:

- NAICS Code 325920, *Explosives Manufacturing*
- NAICS Code 213111, *Drilling Oil and Gas Wells*
- NAICS Code 213112, *Support Activities for Oil and Gas Operations*

[42] 65 FR 67249 (Nov. 6, 2000).

[43] 67 FR 53461 (Aug. 16, 2002).

- NAICS Code 333132, *Oil and Gas Field Machinery and Equipment Manufacturing*
- NAICS Code 423830, *Industrial Machinery and Equipment Merchant Wholesalers*

The RIA quantifies impacts related to elimination of testing requirements. The entities most directly impacted by this elimination are manufacturers of JPGs. While the firms involved in drilling wells, and equipment wholesalers, and support activities for oil and gas operations may use JPGs they are unlikely to manufacture them. PHMSA therefore uses NAICS codes 325920 and 333132 to identify the entities most likely to be affected by the cost savings associated with the changes associated with adoption of this petition. The small business size threshold for NAICS 325920—Explosives Manufacturing—is fewer than 750 employees. For NAICS 333132 the threshold for a small business is fewer than 1,250 employees. Given the size threshold for NAICS 333132—Oil and Gas Field Machinery and Equipment Manufacturing, and looking at the Census Bureau SUBS tables, for this NAICS, it seems likely that virtually all firms in this industry qualify as small businesses. The average number of employees per firm with 500 employees or more is essentially 500 employees, indicating that even the largest firms in this industry are not much larger than 500 employees. Given that the threshold is more than double 500 employees, it seems reasonable to assume that essentially all firms in this industry fall under the SBA threshold.

NAICS	Industry title	Firm size category	Number of firms in category	Total firm revenue in category ($1,000s)
325920	Explosives Manufacturing	Total	52	2,382,540
325920	Explosives Manufacturing	< 500	37	560,068
325920	Explosives Manufacturing	500+	15	1,822,472

NAICS	Industry title	Firm size category	Number of firms in category	Total firm revenue in category ($1,000s)
333132	Oil and Gas Field Machinery and Equipment Manufacturing	Total	502	12,526,389
333132	Oil and Gas Field Machinery and Equipment Manufacturing	< 500	456	4,285,830
333132	Oil and Gas Field Machinery and Equipment Manufacturing	500+	46	8,240,559

The other NAICS under consideration (Explosives Manufacturing) has a threshold of 750 employees. 15 of the 52 firms in this sector have more than 500 employees. Again, it appears likely that the larger firms are clustered nearer the 500-employee threshold and hence would qualify as small businesses given a threshold of 750 employees.

Both industrial sectors manufacture a wide range of products: Explosives range from munitions, to fireworks, demolitions explosives, etc. JPGs make up a small fraction of the product output for these firms. Similarly, there is a wide range of drilling and other equipment manufactured for oil and gas exploration, of which JPGs make up a small fraction. Given the nature of the data available from the Census Bureau or other sources, PHMSA is unable to identify the number of firms in either of these broader industrial sectors that manufacture JPGs, much less those that would qualify as small entities. Nor could PHMSA identify revenues for small entities for use in making a significance determination with any degree of certainty. Although PHMSA cannot determine the number of JPG manufacturers or their revenues with any degree of specificity, PHMSA does not believe that the cost savings would amount to a significant impact on small entities, as estimated cost savings would be $360,000 split among all manufacturers of JPGs.

PHMSA concludes by evaluating the last provision of this final rule for which it has quantified the economic impacts: That element responding to petition P–1711 by incorporating an updated edition of APA Standard 87–1 by reference. This provision is the only element of the NPRM that drew adverse comments. These adverse comments are addressed above in the preamble. To summarize PHMSA's response, the items that drew the most concern appear to be unchanged from the existing regulatory requirements. Insofar as that is the case, the negative consequences for small entities alleged by the comments on the NPRM do not result from adoption of the updated APA Standard 87–1.

PHMSA did quantify some cost savings related to testing fireworks associated with adoption of the updated APA Standard 87–1. These cost savings result from reducing UN series 5 and 6 testing requirements for certain classes of fireworks. As described in the RIA, PHMSA estimated that this change may reduce testing costs by roughly $270,000 per year. Such a reduction in costs would be to the benefit of the fireworks industry, and PHMSA does not interpret these cost savings to be significant.

As described in the RIA, virtually all consumer fireworks, and roughly 75 percent of display fireworks, are manufactured in China. The RIA describes the U.S. fireworks industry as having about $1.2 billion in revenue, of which consumer fireworks revenues account for about $885 million and display fireworks account for the remaining $353 million.

Fireworks manufacturers fall into a miscellaneous NAICS code—NAICS 325998—All Other Miscellaneous Chemical Product and Preparation Manufacturing. Fireworks manufacturing makes up a small fraction of the economic activity in this industry, which has a total revenue of roughly $22 billion according to the Census Bureau SUBS data. The SBA size threshold for this industry is 500 employees: Firms with fewer than 500 employees are defined as small entities and those with 500 or more employees are not defined as small entities. The table below presents the relevant SUBS data for this NAICS code.

NAICS	Industry title	Firm size category	Number of firms in category	Total firm revenue in category ($1,000s)
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing.	Total	1,064	21,932,497
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing.	< 500	974	8,690,809
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing.	500+	90	13,241,688

As with other sectors assessed in this section, PHMSA cannot estimate the number of entities within the broader NAICS category that manufacture fireworks. The NAICS category in question contains firms that manufacture a wide range of products, only one small subset of which are fireworks. Given the lack of data with more detailed specificity, PHMSA cannot identify firms that manufacture fireworks, much less identify small entities that manufacture fireworks, or estimate revenue for those small entities. Given the relatively modest estimate of $270,000 in annual cost savings, and that those savings would be split among multiple firms, PHMSA does not expect the impacts to be significant.

5. *A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.*

There are no reporting or recordkeeping requirements under the ''Paperwork Reduction Act'' associated with this final rule.

6. *Alternative proposals for small entities.*

The Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards for small entities, where it is possible to do so and still meet the objectives of the applicable regulatory statutes.

To the extent that PHMSA received adverse comments, they were not targeted at alleviating burdens on small entities. While PHMSA may consider guidance to the extent that it is necessary to help clarify responsibilities for small entities, PHMSA does not expect that establishing exceptions to the HMR amendments in this final rule or alternative requirements for small entities to address potential concerns about the impact on small entities would accomplish the safety objectives of Federal hazmat law. Moreover, many of the HMR amendments introduced in this final rule—insofar as they relate to or incorporate by reference technical specifications or industry standards—do not accommodate different regulatory approaches based on whether the entity is small entity or not. Further, as explained at length in Section IV. (Discussion of Amendments and Applicable Comments) of this final rule, the HMR amendments introduced in this final rule are generally deregulatory in nature and intended to provide reduce regulatory burdens on small entities and other members of the regulated community.

7. *Conclusion.*

The changes in this final rule are generally intended to provide relief to shippers, carriers, and packaging manufactures and testers, including small entities. As discussed above, a shortage of pertinent data prevents PHMSA from quantifying economic impacts on small entities potentially affected by most of the HMR amendments introduced in this final rule. However, PHMSA has developed estimates for the numbers of small businesses that may be affected by the HMR revisions introduced in this final rule for which PHMSA has provided quantified cost benefits. For those HMR amendments, PHMSA has compared cost savings impacts to average small entity annual revenue and in none of those cases does an impact rise to even 1 percent of average small entity revenue, and in all cases the impacts reduce costs for the entities affected. Therefore, PHMSA determines that this final rule will not have a significant economic impact on a substantial number of small entities.

G. Paperwork Reduction Act

PHMSA has analyzed this final rule in accordance with the Paperwork Reduction Act of 1995.[44] This final rule does not impose new information collection requirements. PHMSA did not receive any comments regarding information collection activities under this final rule.

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

H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this final rule can be used to cross-reference this action with the Unified Agenda.

I. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act (UMRA)[45] requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million or more annually, adjusted for inflation. A Federal mandate is defined, in part, as a regulation that imposes an enforceable duty upon State, local, or Tribal governments or would reduce or eliminate the amount of authorization of appropriation for Federal financial assistance that would be provided to State, local, or Tribal governments for the purpose of complying with a previous Federal mandate.

This final rule does not impose unfunded mandates under the UMRA. It does not result in costs of $100 million or more, adjusted for inflation, to either State, local, or tribal governments, in the aggregate, or to the private sector in any one year, and is the least burdensome alternative that achieves the objective of the rule.

J. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA)[46] requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. The Council on Environmental Quality (CEQ)

[45] 2 U.S.C. 1501 *et seq.*

[46] 42 U.S.C. 4321 *et seq.*

implementing regulations (40 CFR part 1500–1508) require Federal agencies to conduct an environmental review considering (1) the need for the action, (2) a description of the action and alternatives, (3) probable environmental impacts of the action and alternatives, and (4) comments from the public and the agencies and persons consulted during the consideration process. DOT Order 5610.1C, ''Procedures for Considering Environmental Impacts,'' establishes departmental procedures for evaluation of environmental impacts under NEPA and its implementing regulations.

PHMSA has completed its NEPA analysis. Based on the environmental assessment herein, PHMSA determined that an environmental impact statement is not required for this final rule because the HMR amendments introduced will not result in a significant environmental impact requiring the preparation of an environmental impact statement. PHMSA notes that it received no comments from the public on the NEPA analysis within the NPRM.

1. Need for the Action

PHMSA is amending the HMR in response to petitions for rulemaking submitted by the regulated community to update, clarify, or provide relief from miscellaneous regulatory requirements. PHMSA expects that the HMR revisions in this final rule will provide cost benefits to the regulated community without adversely affecting safety. PHMSA has provided a brief summary of each of those HMR revisions, including their impact on safety, in Section IV (Discussion of Amendments and Applicable Comments) of this final rule.

2. Alternatives

In this rulemaking, PHMSA considered the following alternatives:

Alternative 1: No Action

The No Action Alternative would not proceed with a rulemaking on any of the previously-accepted petitions for rulemaking submitted by stakeholders. In the No Action Alternative, current HMR provisions would remain in effect.

Alternative 2: Amend the HMR as Provided in This Final Rule

The Final Rule Alternative would adopt the HMR amendments set forth in this final rule.

3. Environmental Impacts

Hazardous materials are substances that may pose a threat to public safety or the environment during transportation because of their physical, chemical, or nuclear properties. Under the HMR, hazardous materials are transported by aircraft, vessel, rail, and highway. The HMR embodies a risk management approach that is prevention-oriented and focused on identifying a safety hazard and reducing the probability and quantity of a hazardous material release. The potential for environmental damage or contamination exists when packages of hazardous materials are involved in accidents or en route incidents resulting from cargo shifts, valve failures, package failures, loading, unloading, collisions, handling problems, or deliberate sabotage. The release of hazardous materials can cause the loss of ecological resources (*e.g.,* wildlife habitats) and the contamination of air, aquatic environments, and soil. Contamination of soil can lead to the contamination of ground water. Compliance with the HMR substantially reduces the possibility of accidental release of hazardous materials, thereby minimizing the potential a significant impact on public health and the environment.

Alternative 1: No Action

If PHMSA were to select the No Action Alternative, current regulations would remain in place. However, efficiencies gained through harmonization of HMR provisions with international (UN, ICAO, IMDG, and EU) and consensus standards (AAR, APA, ASME, CGA, IME) for domestic U.S. industry would not be realized, thereby foregoing cost and safety benefits identified in Section IV. (Discussion of Amendments and Applicable Comments) of this final rule. Consistency between HMR requirements and international regulations and updated industry standards can promote the safety of international hazardous materials transportation through a better understanding of HMR requirements, an increased level of industry compliance, and fewer disruptions in transport of hazardous materials from their points of origin to their points of destination. Each of those consequences promote protection of human health and the environment; they also result in decreased compliance costs for regulated entities.

Nor, moreover, would the No Action Alternative provide meaningful safety benefits in declining to adopt HMR revisions in this final rule affording regulated entities greater flexibility in complying with HMR requirements. As explained in greater detail in Section IV. (Discussion of Amendments and Applicable Comments) PHMSA does not expect those flexibility-affording HMR amendments in the final rule (including, but not limited to, extension of regulatory exceptions to additional commodities; relaxation of labelling requirements or cleaning requirements) to adversely affect safety. Further, the regulatory flexibilities foregone in the No Action Alternative do not exist in isolation: Rather, they are each backstopped by the robust, proven safety framework provided by other HMR requirements governing the transportation of hazardous materials.

Alternative 2: Go Forward With the Proposed Amendments to the HMR in This Final Rule

PHMSA selected the Final Rule Alternative as the preferred alternative. The Final Rule Alternative updates, clarifies, or provides relief from a variety of HMR regulatory requirements. As explained at greater length in Section IV (Discussion of Amendments and Applicable Comments) of this final rule and the above discussion of the No Action Alternative, PHMSA expects the Final Rule Alternative will realize cost benefits from providing greater compliance flexibility for regulated entities without adversely affecting safety. Further, PHMSA expects cost and safety benefits from harmonizing HMR requirements with international and domestic U.S. industry standards can also promote safety, thereby minimizing the risk of environmental impacts from the release of hazardous materials to the environment during shipment. For example, the Final Rule Alternative's regulatory phase out of legacy-specification PIH tank cars consistent with industry (AAR) consensus standards and contractual practices (*e.g.,* interchange rules) permanently locks-in the safety benefits associated with a more robust tank car design for transporting PIH material.

The table below summarizes the anticipated environmental impacts from each of the elements of the final rule alternative:

SUMMARY OF PROBABLE ENVIRONMENTAL IMPACTS BY AMENDMENTS

Proposed amendment(s) to HMR (lettered as above herein)	Type of amendment(s)	Environmental impact(s) anticipated
A. Phase-Out of Non-Normalized Tank Cars Used to Transport PIH material	Regulatory Flexibility	No adverse impacts.
B. Limited Quantity Shipments of Hydrogen Peroxide	Regulatory Flexibility—Harmonization	No adverse impacts.
C. Markings on Portable Tanks	Regulatory Flexibility	No adverse impacts.
D. Reconditioning of Metal Drums	Regulatory Flexibility	No adverse impacts.
E. Limited Quantity Harmonization	Regulatory Flexibility—Harmonization	No adverse impacts.
F. Mobile Refrigeration Units	Regulatory Flexibility	No adverse impacts.
G. Incorporation by Reference of CGA Standards	Standard Incorporation	No adverse impacts.
H. Special Provision for Explosives	Regulatory Flexibility	No adverse impacts.
I. Cargo Tank Reports	Regulatory Flexibility	No adverse impacts.
J. Weight Tolerances for Paper Shipping Sacks	Regulatory Flexibility	No adverse impacts.
K. Markings on Closed Transport Containers	Regulatory Flexibility	No adverse impacts.
L. Finalization of the HM–246 Tank Car Standard	Regulatory Flexibility	No adverse impacts.
M. Phase-out of non-HM–246 Tank Cars	Harmonization	No adverse impacts.
O. Allow Non-RCRA Waste to Use Lab Pack Exception	Regulatory Flexibility	No adverse impacts.
P. Incorporation of ASME Code Sections II, V, VIII, and IX	Standard Incorporation	No adverse impacts.
Q. Import of Foreign Pi-Marked Cylinders	Regulatory Flexibility—Harmonization	No adverse impacts.
R. Placement of the word "stabilized" in shipping description	Regulatory Flexibility	No adverse impacts.
S. Incorporation of an IME Standard	Standard Incorporation	No adverse impacts.
T. Incorporation of APA Standard	Standard Incorporation	No adverse impacts.

4. Agencies consulted

PHMSA expects this final rule would affect hazardous materials shippers and carriers by highway, rail, vessel, and aircraft, as well as package manufacturers and testers. PHMSA sought therefore sought comment from the following Federal Agencies and modal partners:

- Federal Aviation Administration
- Federal Motor Carrier Safety Administration
- Federal Railroad Administration
- U.S. Coast Guard

PHMSA did not receive any adverse comments on the amendments in this final rule from these or any other Federal Agencies.

5. Conclusion

PHMSA finds that no significant environmental impacts will result from this final rule. The revisions in the final rule are intended to update, clarify, or provide relief from certain existing HMR requirements by eliminating unnecessary regulatory requirements; aligning HMR requirements with international and industry standards; and introducing editorial clarifications to make HMR requirements easier to understand. PHMSA does not expect those HMR revisions to adversely impact safety, much less cause a significant environmental impact under NEPA.

K. 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 *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

L. Executive Order 13609 and International Trade Analysis

Under E.O. 13609, ''Promoting International Regulatory Cooperation,'' [47] agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979,[48] as amended by the Uruguay Round Agreements Act,[49] prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA participates in the establishment of international standards to protect the safety of the American public. PHMSA has assessed the effects of the rulemaking to ensure that it does not cause unnecessary obstacles to foreign trade. As explained in greater detail in Section IV. (Discussion of Amendments and Applicable Comments) of the preamble to this final rule, several of the HMR amendments introduced in this rulemaking better align U.S. requirements for transportation of hazardous materials with international (*e.g.,* UN, IMDG) standards. Further, insofar as those and other HMR amendments in this final rule are expected to reduce regulatory burdens, improve the clarity of HMR provisions, and afford regulated entities greater flexibility in satisfying HMR requirements, PHMSA expects the final rule to make a positive contribution to U.S. domestic and international trade. Accordingly, this final rule is consistent with E.O. 13609 and PHMSA's obligations under the Trade Agreement Act, as amended.

M. Executive Order 13211

E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' [50] requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' Under E.O. 13211, a ''significant energy action'' is defined as any action by an agency

[47] 77 FR 26413 (May 4, 2012).

[48] Public Law 96–39.

[49] Public Law 103–465.

[50] 66 FR 28355 (May 22, 2001).

(normally published in the **Federal Register**) that promulgates, or is expected to lead to the promulgation of, a final rule or regulation (including a notice of inquiry, ANPRM, and NPRM) that: (1)(i) Is a significant regulatory action under E.O. 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

This final rule is not significant energy action as contemplated by E.O. 13211. It is neither a ''significant regulatory action'' under E.O. 12866, nor expected to have a significant adverse effect on the supply, distribution or use of energy in the United States. The Administrator of OIRA has not designated the final rule as a significant energy action.

N. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 [51] directs Federal agencies to use voluntary consensus standards in their regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specification of materials, test methods, or performance requirements) that are developed or adopted by voluntary consensus standards bodies. This final rule incorporates updates to multiple voluntary consensus standards which are listed in § 171.7. See Section II, ''Incorporation by Reference Discussion Under 1 CFR part 51'' for availability.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Incorporation by reference, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 179

Hazardous materials transportation, Incorporation by reference, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Incorporation by reference, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, PHMSA amends 49 CFR chapter I as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410, Section 4; Pub. L. 104–121, Sections 212–213; Pub. L. 104–134, Section 31001; Pub. L. 114–74, Section 4 (28 U.S.C. 2461 note); 49 CFR 1.81 and 1.97; 33 U.S.C. 1321.

■ 2. In Appendix A to subpart D of part 107, in the List of Frequently Cited Violations, under ''Offeror Requirements—Specific hazardous materials'' revise sections B.1 through 7 to read as follows:

Appendix A to Subpart D of Part 107—Guidelines for Civil Penalties

* * * * *

Violation description	Section or cite	Baseline assessment
* * * * *	*	*
Offeror Requirements—Specific hazardous materials		
* * * * *	*	*
B. Class 1—Explosives:	.....	
1. Failure to mark the package with the EX number for each substance contained in the package or, alternatively, indicate the EX number for each substance in association with the description on the shipping description.	172.320	$1,000.
2. Offering an unapproved explosive for transportation:	173.54, 173.56(b)	
a. Division 1.4 fireworks meeting the chemistry requirements of APA 87–1A or 87–1C.	.....	$5,000.
b. Division 1.3 fireworks meeting the chemistry requirements of APA 87–1B	.....	$7,500.
c. All other explosives (including forbidden)	.....	$12,500 and up.
3. Offering an unapproved explosive for transportation that minimally deviates from an approved design in a manner that does not impact safety:	173.54, 173.56(b)	
a. Division 1.4	.....	$3,000.
b. Division 1.3	.....	$4,000.
c. All other explosives	.....	$6,000.
4. Offering a leaking or damaged package of explosives for transportation:	173.54(c).	
a. Division 1.3 and 1.4	.....	$12,500.
b. All other explosives	.....	$16,500.

[51] 15 U.S.C. 272 note.

Violation description	Section or cite	Baseline assessment
5. Offering a Class 1 material that is fitted with its own means of ignition or initiation, without providing protection from accidental actuation.	173.60(b)(5)	$15,000.
6. Packaging explosives in the same outer packaging with other materials	173.61	$9,300.
7. Transporting a detonator on the same vehicle as incompatible materials using the approved method listed in 177.835(g)(3) without meeting the requirements of IME Standard 22.	177.835(g)(3)	$10,000.
* * * * * * *		

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■ 3. In § 107.402, revise paragraph (d) introductory text to read as follows:

§ 107.402 Application for designation as a certification agency.

* * * * *

(d) *Fireworks Certification Agency.* Prior to reviewing, and certifying Division 1.4G consumer fireworks (UN0336) for compliance with the APA 87–1A, excluding appendices II through VI, (IBR, see § 171.7 of this chapter) as specified in part 173 of this chapter, a person must apply to, and be approved by, the Associate Administrator to act as a Fireworks Certification Agency.

* * * * *

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 4. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410, Section 4; Pub. L. 104–134, Section 31001; Pub. L. 114–74, Section 4 (28 U.S.C. 2461 note); 49 CFR 1.81 and 1.97.

■ 5. In § 171.7;
■ a. Revise paragraphs (f), (g), and (n)(4), (6), (9), and (20);
■ b. Add paragraph (p);
■ c. Revise paragraph (r) introductory text; and
■ d. Add paragraphs (r)(3) and (dd)(4).

The revisions and additions read as follows:

§ 171.7 Reference material.

* * * * *

(f) *American Pyrotechnics Association* (APA), P.O. Box 30438, Bethesda, MD 20824, (301) 907–8181, *www.americanpyro.com.*

(1) APA 87–1A: Standard for the Construction, Classification, Approval and Transportation of Consumer Fireworks, final draft January 1, 2018 (excluding appendices II through VI), into §§ 107.402(d); 173.59; 173.64; and 173.65.

(2) APA 87–1B: Standard for the Construction, Classification, Approval, and Transportation of Display Fireworks, final draft January 1, 2018 (excluding appendices II through IV), into § 173.64.

(3) APA 87–1C: Standard for the Construction, Classification, Approval, and Transportation of Entertainment Industry and Technical (EI&T) Pyrotechnics, final draft January 1, 2018 (excluding appendices II through IV), into § 173.64.

(g) *The American Society of Mechanical Engineers* (ASME), 150 Clove Road, Little Falls, NJ 07424–2139, telephone: 1–800–843–2763, *http://www.asme.org.*

(1) ASME Boiler and Pressure Vessel Code (ASME Code), 2017 Edition, July 1, 2017 (as follows), into §§ 172.102; 173.3; 173.5b; 173.24b; 173.306; 173.315; 173.318; 173.420; 178.255–1; 178.255–2; 178.255–14; 178.255–15; 178.273; 178.274; 178.276; 178.277; 178.320; 178.337–1; 178.337–2; 178.337–3; 178.337–4; 178.337–6; 178.337–16; 178.337–18; 178.338–1; 178.338–2; 178.338–3; 178.338–4; 178.338–5; 178.338–6; 178.338–13; 178.338–16; 178.338–18; 178.338–19; 178.345–1; 178.345–2; 178.345–3; 178.345–4; 178.345–7; 178.345–14; 178.345–15; 178.346–1; 178.347–1; 178.348–1; 179.400–3; 180.407:

(i) ASME BPVC.II.A–2017 (vols. 1 and 2), Section II—Materials—Part A—Ferrous Materials Specifications.

(ii) ASME BPVC.II.B–2017, Section II—Materials—Part B—Nonferrous Material Specifications.

(iii) ASME BPVC.V–2017, Section V—Nondestructive Examination.

(iv) ASME BPVC.VIII.1–2017, Section VIII—Rules for Construction of Pressure Vessels Division 1.

(v) ASME BPVC.IX–2017, Section IX—Qualification Standard for Welding, Brazing, and Fusing Procedures; Welders; Brazers; and Welding, Brazing, and Fusing Operators.

Note 1 to paragraph (g)(1): The requirement for a 6% knuckle radius on torispherical heads are excepted.

(2) ASME B31.4–2012, Pipeline Transportation Systems for Liquids and Slurries, November 12, 2012, into § 173.5a.

* * * * *

(n) * * *

(4) CGA C–6.1—2013, Standards for Visual Inspection of High Pressure Aluminum Compressed Gas Cylinders, Sixth Edition, copyright 2013 (corrected 4/14/2015), into §§ 180.205; 180.209.

* * * * *

(6) CGA C–6.3—2013, Standard for Visual Inspection of Low Pressure Aluminum Alloy Compressed Gas Cylinders, Third Edition, copyright 2013, into §§ 180.205; 180.209.

* * * * *

(9) CGA C–11—2013, Practices for Inspection of Compressed Gas Cylinders at Time of Manufacture, Fifth Edition, copyright 2013, into § 178.35.

* * * * *

(20) CGA S–7—2013, Standard for Selecting Pressure Relief Devices for Compressed Gas Mixtures in Cylinders, Fifth Edition, copyright 2013, into § 173.301.

* * * * *

(p) *European Union. Rue de la Loi/Wetstraat, 175B–1048 Bruxelles/Brussel Belgique/België], https://europa.eu/european-union/documents-publications_en.*

(1) Directive 2010/35/EU of the European Parliament and of the Council, ''on transportable pressure equipment and repealing Council Directives 76/767/EEC, 84/525/EEC, 84/526/EEC, 84/527/EEC and 1999/36/EC'', June 16, 2010, into § 171.23.

(2) [Reserved].

* * * * *

(r) *Institute of Makers of Explosives,* 1212 New York Ave NW, #650, Washington, DC 20005.

* * * * *

(3) AESC/IME JPG Standard, Guide to Obtaining DOT Approval of Jet Perforating Guns using AESC/IME Perforating Gun Specifications, Ver. 02, dated September 1, 2017, into § 173.67.

* * * * *

(dd) * * *

(4) ECE/TRANS/257 (Vol.I), European Agreement concerning the International Carriage of Dangerous Goods by Road, copyright 2016, into § 171.23.

* * * * *

■ 6. In § 171.8, add a definition for ''waste material'' in alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Waste material means, for the purposes of lab pack requirements in § 173.12 of this subchapter, all hazardous materials which are destined for disposal or recovery, and not so limited to only those defined as a hazardous waste in this section.

* * * * *

■ 7. In § 171.23, revise paragraph (a) to read as follows:

§ 171.23 Requirements for specific materials and packagings transported under the ICAO Technical Instructions, IMDG Code, Transport Canada TDG Regulations, or the IAEA Regulations.

* * * * *

(a) *Conditions and requirements for cylinders and pressure receptacles*—(1) *Applicability.* Except as provided in this paragraph (a), a filled cylinder (pressure receptacle) manufactured to other than a DOT specification or a UN standard in accordance with part 178 of this subchapter, a DOT exemption or special permit cylinder, a TC, CTC, CRC, or BTC cylinder authorized under § 171.12, or a cylinder used as a fire extinguisher in conformance with § 173.309(a) of this subchapter, may not be transported to, from, or within the United States.

(2) *Conditions.* Cylinders (including UN pressure receptacles) transported to, from, or within the United States must conform to the applicable requirements of this subchapter. Unless otherwise excepted in this subchapter, a cylinder must not be transported unless—

(i) The cylinder is manufactured, inspected and tested in accordance with a DOT specification or a UN standard prescribed in part 178 of this subchapter, or a TC, CTC, CRC, or BTC specification set out in the Transport Canada TDG Regulations (IBR, see § 171.7), except that cylinders not conforming to these requirements must meet the requirements in paragraph (a)(3), (4), or (5) of this section;

(ii) The cylinder is equipped with a pressure relief device in accordance with § 173.301(f) of this subchapter and conforms to the applicable requirements in part 173 of this subchapter for the hazardous material involved;

(iii) The openings on an aluminum cylinder in oxygen service conform to the requirements of this paragraph, except when the cylinder is used for aircraft parts or used aboard an aircraft in accordance with the applicable airworthiness requirements and operating regulations. An aluminum DOT specification cylinder must have an opening configured with straight (parallel) threads. A UN pressure receptacle may have straight (parallel) or tapered threads provided the UN pressure receptacle is marked with the thread type, *e.g.* ''17E, 25E, 18P, or 25P'' and fitted with the properly marked valve; and

(iv) A UN pressure receptacle is marked with ''USA'' as a country of approval in conformance with §§ 178.69 and 178.70 of this subchapter, or ''CAN'' for Canada.

(3) *Pi-marked pressure receptacles.* Pressure receptacles that are marked with a pi mark in accordance with the European Directive 2010/35/EU (IBR, see § 171.7) on transportable pressure equipment (TPED) and that comply with the requirements of Packing Instruction P200 or P208 and 6.2 of ECE/TRANS/257 (Vol. I), the Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR) (IBR, see § 171.7) concerning pressure relief device use, test period, filling ratios, test pressure, maximum working pressure, and material compatibility for the lading contained or gas being filled, are authorized as follows:

(i) Filled pressure receptacles imported for intermediate storage, transport to point of use, discharge, and export without further filling; and

(ii) Pressure receptacles imported or domestically sourced for the purpose of filling, intermediate storage, and export.

(iii) The bill of lading or other shipping paper must identify the cylinder and include the following certification: ''This cylinder (These cylinders) conform(s) to the requirements for pi-marked cylinders found in 171.23(a)(3).''

(4) *Importation of cylinders for discharge within a single port area.* Except as provided in § 171.23(a)(3), a cylinder manufactured to other than a DOT specification or UN standard in accordance with part 178 of this subchapter, or a TC, CTC, BTC, or CRC specification cylinder set out in the Transport Canada TDG Regulations (IBR, see § 171.7), and certified as being in conformance with the transportation regulations of another country may be authorized, upon written request to and approval by the Associate Administrator, for transportation within a single port area, provided—

(i) The cylinder is transported in a closed freight container;

(ii) The cylinder is certified by the importer to provide a level of safety at least equivalent to that required by the regulations in this subchapter for a comparable DOT, TC, CTC, BTC, or CRC specification or UN cylinder; and

(iii) The cylinder is not refilled for export unless in compliance with paragraph (a)(5) of this section.

(5) *Filling of cylinders for export or for use on board a vessel.* A cylinder not manufactured, inspected, tested and marked in accordance with part 178 of this subchapter, or a cylinder manufactured to other than a UN standard, DOT specification, exemption or special permit, or other than a TC, CTC, BTC, or CRC specification, may be filled with a gas in the United States and offered for transportation and transported for export or alternatively, for use on board a vessel, if the following conditions are met:

(i) The cylinder has been requalified and marked with the month and year of requalification in accordance with subpart C of part 180 of this subchapter, or has been requalified as authorized by the Associate Administrator;

(ii) In addition to other requirements of this subchapter, the maximum filling density, service pressure, and pressure relief device for each cylinder conform to the requirements of this part for the gas involved; and

(iii) The bill of lading or other shipping paper identifies the cylinder and includes the following certification: ''This cylinder has (These cylinders have) been qualified, as required, and filled in accordance with the DOT requirements for export.''

(6) *Cylinders not equipped with pressure relief devices.* A DOT specification or a UN cylinder manufactured, inspected, tested and marked in accordance with part 178 of this subchapter and otherwise conforms to the requirements of part 173 of this subchapter for the gas involved, except that the cylinder is not equipped with a pressure relief device may be filled with a gas and offered for transportation and transported for export if the following conditions are met:

(i) Each DOT specification cylinder or UN pressure receptacle must be plainly and durably marked ''For Export Only'';

(ii) The shipping paper must carry the following certification: ''This cylinder has (These cylinders have) been retested and refilled in accordance with the DOT requirements for export.''; and

(iii) The emergency response information provided with the shipment and available from the emergency response telephone contact person must indicate that the pressure receptacles are not fitted with pressure relief devices and provide appropriate guidance for exposure to fire.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

■ 8. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 9. In § 172.101, add paragraph (c)(17) and amend the Hazardous Materials Table to revise entries under ''[REVISE]'' to read as follows:

§ 172.101 Purpose and use of the hazardous materials table.

* * * * *

(c) * * *

(17) Unless it is already included in the proper shipping name in the § 172.101 Table, the qualifying word ''stabilized'' may be added in association with the proper shipping name, as appropriate, where without stabilization the substance would be forbidden for transportation according to § 173.21(f) of this subchapter.

* * * * *

§ 172.101 Hazardous Materials Table

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	(8) Packaging Non-bulk	(8) Packaging Bulk	(9) Quantity limitations (see §§ 173.27 and 175.75) Passenger aircraft/rail	(9) Quantity limitations Cargo aircraft only	(10) Vessel stowage Location	(10) Vessel stowage Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[REVISE]												
	Allyl isothiocyanate, stabilized.	6.1	UN1545	II	6.1, 3	387, A3, A7, IB2, T7, TP2.	153	202	243	Forbidden	60 L	D	25, 40
	*		*		*		*	*		*	*		
	Aluminum smelting by-products *or* Aluminum remelting by-products.	4.3	UN3170	II	4.3	128, B115, IB7, IP2, IP21, T3, TP33, W31, W40.	151	212	242	15 kg	50 kg	B	13, 85, 103, 148
				III	4.3	128, B115, IB8, IP21, T1, TP33, W31.	151	213	241	25 kg	100 kg	B	13, 85, 103, 148
	*		*		*		*	*		*	*		
G	Amine, liquid, corrosive, flammable, n.o.s. or Polyamines, liquid, corrosive, flammable, n.o.s.	8	UN2734	I	8, 3	A3, A6, N34, T14, TP2, TP27.	None	201	243	0.5L	2.5L	A	52
				II	8, 3	IB2, T11, TP2, TP27.	154	201	243	1L	30L	A	52
	*		*		*		*	*		*	*		
	Amyl mercaptan	3	UN1111	II	3	A3, A6, IB2, T4, TP1.	150	202	242	5 L	60 L	B	95, 102
	*		*		*		*	*		*	*		
	Antimony pentachloride, liquid.	8	UN1730	II	8	B2, IB2, T7, TP2.	154	202	242	1 L	30 L	C	40, 53, 58
	*		*		*		*	*		*	*		
	Antimony pentafluoride	8	UN1732	II	8, 6.1	A3, A6, A7, A10, IB2, N3, N36, T7, TP2.	154	202	243	Forbidden	30 L	D	40, 44, 53, 58, 89, 100, 141
	*		*		*		*	*		*	*		
	Batteries, dry, containing potassium hydroxide solid, *electric storage.*	8	UN3028		8	237	154	213	None	25 kg	230 kg	A	52
	*		*		*		*	*		*	*		
	Borneol	4.1	UN1312	III	4.1	A1, IB8, IP3, T1, TP33.	151	213	240	25 kg	100 kg	A	
	*		*		*		*	*		*	*		
	5-tert-Butyl-2,4,6-trinitro-m-xylene *or* Musk xylene.	4.1	UN2956	III	4.1	159	151	223	None	Forbidden	Forbidden	D	12, 25, 40, 127
	*		*		*		*	*		*	*		
	1,4-Butynediol	6.1	UN2716	III	6.1	A1, IB8, IP3, T1, TP33.	153	213	240	100 kg	200 kg	C	52, 53, 70
	*		*		*		*	*		*	*		
	Calcium resinate	4.1	UN1313	III	4.1	A1, A19, IB6, T1, TP33.	151	213	240	25 kg	100 kg	A	
	Calcium resinate, fused.	4.1	UN1314	III	4.1	A1, A19, IB4, T1, TP33.	151	213	240	25 kg	100 kg	A	
	*		*		*		*	*		*	*		
	Camphor, *synthetic*	4.1	UN2717	III	4.1	A1, IB8, IP3, T1, TP33.	151	213	240	25 kg	100 kg	A	
	*		*		*		*	*		*	*		
	Celluloid, *in block, rods, rolls, sheets, tubes, etc., except scrap.*	4.1	UN2000	III	4.1	420	151	213	240	25 kg	100 kg	A	
	*		*		*		*	*		*	*		
	Cerium, *slabs, ingots, or rods.*	4.1	UN1333	II	4.1	IB8, IP2, IP4, N34, W100.	151	212	240	15 kg	50 kg	A	13, 74, 91, 147, 148
	*		*		*		*	*		*	*		
	Chloric acid aqueous solution, *with not more than 10 percent chloric acid.*	5.1	UN2626	II	5.1	IB2, T4, TP1, W31.	152	229	None	Forbidden	Forbidden	D	53, 56, 58

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations (see §§ 173.27 and 175.75) Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*		*	*		*	*		
	1-Chloropropane	3	UN1278	II	3	IB2, IP8, N34, T7, TP2.	150	202	242	Forbidden	60 L	E	
	Chromium trioxide, anhydrous.	5.1	UN1463	II	5.1, 6.1, 8.	IB8, IP2, IP4, T3, TP33, W31.	152	212	242	5 kg	25 kg	A	66, 90
	*		*		*		*	*		*	*		
	Corrosive liquids, flammable, n.o.s.	8	UN2920	I	8, 3	A6, B10, T14, TP2, TP27.	None	201	243	0.5 L	2.5 L	C	25, 40
				II	8, 3	B2, IB2, T11, TP2, TP27.	154	202	243	1 L	30 L	C	25, 40
	*		*		*		*	*		*	*		
G	Corrosive liquids, oxidizing, n.o.s.	8	UN3093	I	8, 5.1	A6, A7	None	201	243	Forbidden	2.5 L	C	89
				II	8, 5.1	A6, A7, IB2	154	202	243	1 L	30 L	C	89
	*		*		*		*	*		*	*		
	Corrosive solids, flammable, n.o.s.	8	UN2921	I	8, 4.1	IB6, T6, TP33	None	211	242	1 kg	25 kg	B	12, 25
				II	8, 4.1	IB8, IP2, IP4, T3, TP33.	154	212	242	15 kg	50 kg	B	12, 25
	*		*		*		*	*		*	*		
G	Corrosive solids, oxidizing, n.o.s.	8	UN3084	I	8, 5.1	T6, TP33	None	211	242	1 kg	25 kg	C	
				II	8, 5.1	154, IB6, IP2, T3, TP33.	154	212	242	15 kg	50 kg	C	
	*		*		*		*	*		*	*		
G	Corrosive solids, water-reactive, n.o.s.	8	UN3096	I	8, 4.3	IB4, IP1, T6, TP33.	None	211	243	1 kg	25 kg	D	13, 148
				II	8, 4.3	IB6, IP2, T3, TP33, W100.	154	212	242	15 kg	50 kg	D	13, 148
G	Corrosive liquids, oxidizing, n.o.s.	8	UN3093	I	8, 5.1	A6, A7	None	201	243	Forbidden	2.5 L	C	89
				II	8, 5.1	A6, A7, IB2	154	202	243	1 L	30 L	C	89
	*		*		*		*	*		*	*		
G	Corrosive solids, oxidizing, n.o.s.	8	UN3084	I	8, 5.1	T6, TP33	None	211	242	1 kg	25 kg	C	
				II	8, 5.1	154, IB6, IP2, T3, TP33.	154	212	242	15 kg	50 kg	C	
G	Corrosive solids, self-heating, n.o.s.	8	UN3095	I	8, 4.2	T6, TP33	None	211	243	1 kg	25 kg	C	
				II	8, 4.2	IB6, IP2, T3, TP33.	154	212	242	15 kg	50 kg	C	
	*		*		*		*	*		*	*		
G	Corrosive solids, water-reactive, n.o.s.	8	UN3096	I	8, 4.3	IB4, IP1, T6, TP33.	None	211	243	1 kg	25 kg	D	13, 148
				II	8, 4.3	IB6, IP2, T3, TP33, W100.	154	212	242	15 kg	50 kg	D	13,148
	*		*		*		*	*		*	*		
	Cyanuric chloride	8	UN2670	II	8	IB8, IP2, IP4, T3, TP33.	None	212	240	15 kg	50 kg	A	12, 25, 40, 53, 58
	*		*		*		*	*		*	*		
	Cyclohexylamine	8	UN2357	II	8, 3	IB2, T7, TP2	154	202	243	1 L	30 L	A	40, 52
	*		*		*		*	*		*	*		
	Decaborane	4.1	UN1868	II	4.1, 6.1	A19, A20, IB6, IP2, T3, TP33, W31.	151	212	None	Forbidden	50 kg	A	74
	*		*		*		*	*		*	*		
	Detonator assemblies, non-electric, for blasting.	1.4B	UN0361		1.4B	148	63(f), 63(g)	62	None	Forbidden	75 kg	05	25
	*		*		*		*	*		*	*		
	Detonators, electric, for blasting.	1.4B	UN0255		1.4B	148	63(f), 63(g)	62	None	Forbidden	75 kg	05	25
	*		*		*		*	*		*	*		
	Detonators for ammunition.	1.4B	UN0365		1.4B		None	62	None	Forbidden	75 kg	05	25
	*		*		*		*	*		*	*		
	Detonators, non-electric, for blasting.	1.4B	UN0267		1.4B		63(f), 63(g)	62	None	Forbidden	75 kg	05	25
	*		*		*		*	*		*	*		
	Diethyl sulfide	3	UN2375	II	3	IB2, T7, TP1, TP13.	150	202	243	5 L	60 L	E	52
	*		*		*		*	*		*	*		
	2-Diethylaminoethanol	8	UN2686	II	8, 3	B2, IB2, T7, TP2.	154	202	243	1 L	30 L	A	52
	*		*		*		*	*		*	*		
	N,N-Diethylethylenediamine.	8	UN2685	II	8, 3	IB2, T7, TP2	154	202	243	1 L	30 L	A	52
	*		*		*		*	*		*	*		
	Diethylthiophosphoryl chloride.	8	UN2751	II	8	B2, IB2, T7, TP2.	154	212	240	15 kg	50 kg	D	12, 25, 40, 53, 58

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations (see §§ 173.27 and 175.75) Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*		*	*		*	*		
	Difluorophosphoric acid, anhydrous.	8	UN1768	II	8	A6, A7, B2, IB2, N5, N34, T8, TP2.	154	202	242	1 L	30 L	A	40, 53, 58
	*		*		*		*		*		*		*
	Di-n-butylamine	8	UN2248	II	8, 3	IB2, T7, TP2	154	202	243	1 L	30 L	A	52
	*		*		*		*	*		*	*		
	Ethyl bromoacetate	6.1	UN1603	II	6.1, 3	IB2, T7, TP2	153	202	243	Forbidden	Forbidden	D	40
	*		*		*		*	*		*	*		
	Fibers *or* Fabrics impregnated with weakly nitrated nitrocellulose, n.o.s.	4.1	UN1353	III	4.1	A1, IB8, IP3	151	213	240	25 kg	100 kg	D	
	*		*		*		*	*		*	*		
	Films, nitrocellulose base, *gelatine coated (except scrap).*	4.1	UN1324	III	4.1		151	183	None	25 kg	100 kg	D	28
	*		*		*		*	*		*	*		
	Firelighters, solid *with flammable liquid.*	4.1	UN2623	III	4.1	A1, A19	151	213	None	25 kg	100 kg	A	52
	*		*		*		*	*		*	*		
G	Flammable solid, oxidizing, n.o.s.	4.1	UN3097	II	4.1, 5.1	131	151	214	214	Forbidden	Forbidden	E	40
				III	4.1, 5.1	131, T1, TP33.	151	214	214	Forbidden	Forbidden	D	40
	*		*		*		*	*		*	*		
	Flammable solids, corrosive, organic, n.o.s.	4.1	UN2925	II	4.1, 8	A1, IB6, IP2, T3, TP33.	151	212	242	15 kg	50 kg	D	40
				III	4.1, 8	A1, IB6, T1, TP33.	151	213	242	25 kg	100 kg	D	40
	*		*		*		*	*		*	*		
	Fluorophosphoric acid anhydrous.	8	UN1776	II	8	A6, A7, B2, IB2, N3, N34, T8, TP2.	154	202	242	1 L	30 L	A	53, 58
	*		*		*		*	*		*	*		
	Fluorosilicic acid	8	UN1778	II	8	A6, A7, B2, B15, IB2, N3, N34, T8, TP2.	154	202	242	1 L	30 L	A	53, 58
	*		*		*		*	*		*	*		
	Gallium	8	UN2803	III	8	T1, TP33	154	162	240	20 kg	20 kg	B	25
	*		*		*		*	*		*	*		
	Hafnium powder, wetted *with not less than 25 percent water (a visible excess of water must be present) (a) mechanically produced, particle size less than 53 microns; (b) chemically produced, particle size less than 840 microns.*	4.1	UN1326	II	4.1	A6, A19, A20, IB6, IP2, N34, T3, TP33, W31, W40.	151	212	241	15 kg	50 kg	E	74
	*		*		*		*	*		*	*		
	Hexadienes	3	UN2458	II	3	IB2, T4, TP1	150	202	242	5 L	60 L	B	
	*		*		*		*	*		*	*		
	Hexafluorophosphoric acid.	8	UN1782	II	8	A6, A7, B2, IB2, N3, N34, T8, TP2.	154	202	242	1 L	30 L	A	53, 58
	*		*		*		*	*		*	*		
	Hexamethylenediamine solution.	8	UN1783	II	8	IB2, T7, TP2	154	202	242	1 L	30 L	A	52
				III	8	IB3, T4, TP1	154	203	241	5 L	60 L	A	
	*		*		*		*	*		*	*		
	Hydrazine aqueous solution, *with more than 37% hydrazine, by mass.*	8	UN2030	I	8, 6.1	B16, B53, T10, TP2, TP13.	None	201	243	Forbidden	2.5 L	D	40, 52
				II	8, 6.1	B16, B53, IB2, T7, TP2, TP13.	154	202	243	Forbidden	30 L	D	40, 52
				III	8, 6.1	B16, B53, IB3, T4, TP1.	154	203	241	5 L	60 L	D	40, 52
	*		*		*		*	*		*	*		
	Hydrogen peroxide and peroxyacetic acid mixtures, stabilized *with acids, water, and not more than 5 percent peroxyacetic acid.*	5.1	UN3149	II	5.1, 8	145, A2, A3, A6, B53, IB2, IP5, T7, TP2, TP6, TP24.	152	202	243	1 L	5 L	D	25, 66, 75.

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations (see §§ 173.27 and 175.75) Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Hydrogen, peroxide, aqueous solutions with more than 40 percent but not more than 60 percent hydrogen peroxide (stabilized as necessary).	5.1	UN2014	II	5.1, 8	12, A60, B53, B80, B81, B85, IB2, IP5, T7, TP2, TP6, TP24, TP37.	152	202	243	Forbidden	Forbidden	D	25, 66, 75
	Hydrogen peroxide, aqueous solutions with not less than 20 percent but not more than 40 percent hydrogen peroxide (stabilized as necessary).	5.1	UN2014	II	5.1, 8	A2, A3, A6, B53, IB2, IP5, T7, TP2, TP6, TP24, TP37.	152	202	243	1 L	5 L	D	25, 66, 75
	*		*		*		*	*		*	*		
	Hydrogendifluoride, solid, n.o.s.	8	UN1740	II	8	IB8, IP2, IP4, N3, N34, T3, TP33.	154	212	240	15 kg	50 kg	A	25, 40, 52, 53, 58
				III	8	IB8, IP3, N3, N34, T1, TP33.	154	213	240	25 kg	100 kg	A	25, 40, 52
	*		*		*		*	*		*	*		
	Iodine monochloride, solid.	8	UN1792	II	8	B6, IB8, IP2, IP4, N41, T7, TP2.	154	212	240	Forbidden	50 kg	D	40, 53, 58, 66, 74
	*		*		*		*	*		*	*		
	Lead phosphite, dibasic.	4.1	UN2989	II	4.1	IB8, IP2, IP4, T3, TP33.	151	212	240	15 kg	50 kg	B	34.
				III	4.1	IB8, IP3, T1, TP33.	151	213	240	25 kg	100 kg	B	34
	*		*		*		*	*		*	*		
	Mercaptans, liquid, flammable, toxic, n.o.s. *or* Mercaptan mixtures, liquid, flammable, toxic, n.o.s.	3	UN1228	II	3, 6.1	IB2, T11, TP2, TP27.	150	202	243	Forbidden	60 L	B	40, 95, 102
				III	3, 6.1	A6, B1, IB3, T7, TP1, TP28.	150	203	242	5 L	220 L	A	40, 95, 102
	*		*		*		*	*		*	*		
	2-Methyl-2-butene	3	UN2460	II	3	IB2, IP8, T7, TP1.	150	202	242	5 L	60 L	E.	
	*		*		*		*	*		*	*		
	Methylal	3	UN1234	II	3	IB2, IP8, T7, TP2.	150	202	242	5 L	60 L	E	
	*		*		*		*	*		*	*		
	Nitrating acid mixtures spent *with not more than 50 percent nitric acid.*	8	UN1826	II	8	A7, B2, IB2, T8, TP2.	154	158	242	Forbidden	30 L	D	40. 53. 58
	*		*		*		*	*		*	*		
	Nitrating acid mixtures *with not more than 50 percent nitric acid.*	8	UN1796	II	8	A7, B2, IB2, T8, TP2, TP13.	154	158	242	Forbidden	30 L	D	40, 53, 58
	*		*		*		*	*		*	*		
	Nitric acid *other than red fuming, with at least 65 percent, but not more than 70 percent nitric acid.*	8	UN2031	II	8, 5.1	A6, B2, B47, B53, IB2, IP15, T8, TP2.	154	158	242	Forbidden	30 L	D	53, 58, 66, 74, 89, 90
	Nitric acid *other than red fuming, with more than 20 percent and less than 65 percent nitric acid.*	8	UN2031	II	8	A6, A212, B2, B47, B53, IB2, IP15, T8, TP2.	154	158	242	Forbidden	30 L	D	44, 66, 53, 58, 74, 89, 90
	Nitric acid *other than red fuming with not more than 20 percent nitric acid.*	8	UN2031	II	8	A6, B2, B47, B53, IB2, T8, TP2.	154	158	242	1 L	30 L	D	53, 58
	*		*		*		*	*		*	*		
	Octafluorobut-2-ene *or* Refrigerant gas R 1318.	2.2	UN2422		2.2		306	304	314, 315	75 kg	150 kg	A.	
	Octafluorocyclobutane, *or* Refrigerant gas RC 318.	2.2	UN1976		2.2	T50	306	304	314, 315	75 kg	150 kg	A.	
	Octafluoropropane *or* Refrigerant gas R 218.	2.2	UN2424		2.2	T50	306	304	314, 315	75 kg	150 kg	A.	
	*		*		*		*	*		*	*		
G	Organometallic substance, liquid, water-reactive.	4.3	UN3398	I	4.3	T13, TP2, TP7, TP36, TP47, W31.	None	201	244	Forbidden	1 L	D	13, 40, 52, 148
				II	4.3	IB1, IP2, T7, TP2, TP7, TP36, TP47, W31.	151	202	243	1 L	5 L	D	13, 40, 52, 148

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations (see §§ 173.27 and 175.75) Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
				III	4.3	IB2, IP4, T7, TP2, TP7, TP36, TP47, W31.	151	203	242	5 L	60 L	E	13, 40, 52, 148
G	Organometallic substance, liquid, water-reactive, flammable.	4.3	UN3399	I	4.3, 3	T13, TP2, TP7, TP36, TP47, W31.	None	201	244	Forbidden	1 L	D	13, 40, 52, 148
				II	4.3, 3	IB1, IP2, T7, TP2, TP7, TP36, TP47, W31.	151	202	243	1 L	5 L	D	13, 40, 52, 148
				III	4.3, 3	IB2, IP4, T7, TP2, TP7, TP36, TP47, W31.	151	203	242	5 L	60 L	E	13, 40, 52, 148
		*	*		*		*	*		*	*		
G	Organometallic substance, solid, water-reactive, self-heating.	4.3	UN3397	I	4.3, 4.2	N40, T9, TP7, TP33, TP36, TP47, W31.	None	211	242	Forbidden	15 kg	E	13, 40, 52, 148
				II	4.3, 4.2	IB4, T3, TP33, TP36, TP47, W31.	151	212	242	15 kg	50 kg	E	13, 40, 52, 148
				III	4.3, 4.2	IB6, T1, TP33, TP36, TP47, W31.	151	213	241	25 kg	100 kg	E	13, 40, 52, 148
		*	*		*		*	*		*	*		
G	Oxidizing liquid, corrosive, n.o.s.	5.1	UN3098	I	5.1, 8	62, A6	None	201	244	Forbidden	2.5 L	D	13, 56, 58, 138
				II	5.1, 8	62, IB1	152	202	243	1 L	5 L	B	13, 56, 58, 138
				III	5.1, 8	62, IB2	152	203	242	2.5 L	30 L	B	13, 56, 58, 138
		*	*		*		*	*		*	*		
G	Oxidizing solid, water reactive, n.o.s.	5.1	UN3121	I	5.1, 4.3	62	None	214	214	Forbidden	Forbidden		13, 148
				II	5.1, 4.3	62	152	214	214	Forbidden	Forbidden		13, 148
	Perchloric acid *with not more than 50 percent acid by mass.*	8	UN1802	II	8, 5.1	IB2, N41, T7, TP2.	154	202	243	Forbidden	30 L	C	53, 58, 66
		*	*		*		*	*		*	*		
	Peroxides, inorganic, n.o.s.	5.1	UN1483	II	5.1	A7, A20, IB6, IP2, N34, T3, TP33, W100.	152	212	242	5 kg	25 kg	C	13, 52, 66, 75, 148
				III	5.1	A7, A20, B134, IB8, IP21, N34, T1, TP33, W100.	152	213	240	25 kg	100 kg	C	13, 52, 66, 75, 148
		*	*		*		*	*		*	*		
	Phosphorus heptasulfide, *free from yellow or white phosphorus.*	4.1	UN1339	II	4.1	A20, IB4, N34, T3, TP33, W31.	151	212	240	15 kg	50 kg	B	13, 74, 147, 148
		*	*		*		*	*		*	*		
	Phosphorus, amorphous.	4.1	UN1338	III	4.1	A1, A19, B1, B9, B26, IB8, IP3, T1, TP33.	151	213	243	25 kg	100 kg	A	74
		*	*		*		*	*		*	*		
	Phosphorus oxybromide.	8	UN1939	II	8	B8, IB8, IP2, IP4, N41, N43, T3, TP33.	154	212	240	Forbidden	50 kg	C	12, 25, 40, 53, 58
		*	*		*		*	*		*	*		
	Phosphorus pentachloride.	8	UN1806	II	8	A7, IB8, IP2, IP4, N34, T3, TP33.	154	212	240	Forbidden	50 kg	C	40, 44, 53, 58, 89, 100, 141
	Phosphorus sesquisulfide, *free from yellow or white phosphorus.*	4.1	UN1341	II	4.1	A20, IB4, N34, T3, TP33, W31.	151	212	240	15 kg	50 kg	B	74
	Phosphorus tribromide	8	UN1808	II	8	A3, A6, A7, B2, B25, IB2, N34, N43, T7, TP2.	154	202	242	Forbidden	30 L	C	40, 53, 58
		*	*		*		*	*		*	*		
	Phosphorus trisulfide, *free from yellow or white phosphorus.*	4.1	UN1343	II	4.1	A20, IB4, N34, T3, TP33, W31.	151	212	240	15 kg	50 kg	B	13, 74, 147, 148
		*	*		*		*	*		*	*		
	Propionitrile	3	UN2404	II	3, 6.1	IB2, T7, TP1, TP13.	150	202	243	Forbidden	60 L	E	40
		*	*		*		*	*		*	*		
	1,2-Propylenediamine	8	UN2258	II	8, 3	A3, A6, IB2, N34, T7, TP2.	154	202	243	1 L	30 L	A	40, 52

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations (see §§ 173.27 and 175.75) Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*		*	*		*	*		
	Pyridine	3	UN1282	II	3	IB2, T4, TP2	150	202	242	5 L	60 L	B	21, 100
	*		*		*		*	*		*	*		
	Silicon powder, amorphous.	4.1	UN1346	III	4.1	A1, IB8, IP3, T1, TP33.	151	213	240	25 kg	100 kg	A	74
	*		*		*		*	*		*	*		
	Sludge, acid	8	UN1906	II	8	A3, A7, B2, IB2, N34, T8, TP2, TP28.	154	202	242	Forbidden	30 L	C	14, 53, 58
	*		*		*		*	*		*	*		
	Sodium chlorite	5.1	UN1496	II	5.1	A9, IB8, IP2, IP4, N34, T3, TP33.	152	212	242	5 kg	25 kg	A	56, 58
	*		*		*		*	*		*	*		
I	Sulfur	4.1	UN1350	III	4.1	30, B120, IB8, IP3, T1, TP33.	151	None	240	25 kg	100 kg	A	25, 74
	*		*		*		*	*		*	*		
	Sulfuric acid, spent	8	UN1832	II	8	A3, A7, B2, B83, B84, IB2, N34, T8, TP2.	154	202	242	Forbidden	30 L	C	14, 53, 58
	Tetrafluoromethane or Refrigerant gas R 14.	2.2	UN1982		2.2		306	302	None	75 kg	150 kg	A	
	*		*		*		*	*		*	*		
	Tetrahydrofuran	3	UN2056	II	3	IB2, T4, TP1	150	202	242	5 L	60 L	B	
	Thiophosphoryl chloride.	8	UN1837	II	8	A3, A7, B2, B8, B25, IB2, N34, T7, TP2.	154	202	242	Forbidden	30 L	C	40, 53, 58
	*		*		*		*	*		*	*		
	Titanium hydride	4.1	UN1871	II	4.1	A19, A20, IB4, N34, T3, TP33, W31, W40.	151	212	241	15 kg	50 kg	E	
	*		*		*		*	*		*	*		
	Titanium powder, wetted *with not less than 25 percent water (a visible excess of water must be present) (a) mechanically produced, particle size less than 53 microns; (b) chemically produced, particle size less than 840 microns.*	4.1	UN1352	II	4.1	A19, A20, IB6, IP2, N34, T3, TP33, W31, W40.	151	212	240	15 kg	50 kg	E	74
	Titanium sponge granules *or* Titanium sponge powders.	4.1	UN2878	III	4.1	A1, B134, IB8, IP21, T1, TP33, W100.	151	213	240	25 kg	100 kg	D	13, 74, 147, 148
	*		*		*		*	*		*	*		
G	Toxic liquids, water-reactive, n.o.s.	6.1	UN3123	I	6.1, 4.3	A4	None	201	243	Forbidden	1 L	E	13,40, 148
				II	6.1, 4.3	IB2	153	202	243	1 L	5 L	E	13, 40, 148
	*		*		*		*	*		*	*		
G	Toxins, extracted from living sources, liquid, n.o.s.	6.1	UN3172	I	6.1	141	None	201	243	1 L	30 L	B	40
				II	6.1	141, IB2	153	202	243	5 L	60 L	B	40
				III	6.1	141, IB3	153	203	241	60 L	220 L	B	40
G	Toxins, extracted from living sources, solid, n.o.s.	6.1	UN3462	I	6.1	141, IB7, IP1, T6, TP33.	None	211	243	5 kg	50 kg	B	
				II	6.1	141, IB8, IP2, IP4, T3 TP33.	153	212	243	25 kg	100 kg	B	
				III	6.1	141, IB8, IP3, T1 TP33.	153	213	241	100 kg	200 kg	A	
	*		*		*		*	*		*	*		
G	Toxins, extracted from living sources, solid, n.o.s.	6.1	UN3462	I	6.1	141, IB7, IP1, T6, TP33.	None	211	243	5 kg	50 kg	B	G
				II	6.1	141, IB8, IP2, IP4, T3 TP33.	153	212	243	25 kg	100 kg	B	
				III	6.1	141, IB8, IP3, T1 TP33.	153	213	241	100 kg	200 kg	A	
	*		*		*		*	*		*	*		
	Triallylamine	3	UN2610	III	3, 8	B1, IB3, T4, TP1.	150	203	242	5 L	60 L	A	40, 52
	*		*		*		*	*		*	*		
G	Water-reactive liquid, corrosive, n.o.s.	4.3	UN3129	I	4.3, 8	T14, TP2, TP7, TP13.	None	201	243	Forbidden	1 L	D	13, 148
				II	4.3, 8	IB1, T11, TP2, TP7.	151	202	243	1 L	5 L	E	13, 85, 148
				III	4.3, 8	IB2, T7, TP2, TP7.	151	203	242	5 L	60 L	E	13, 148

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations (see §§ 173.27 and 175.75) Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
G	Water-reactive liquid, n.o.s.	4.3	UN3148	I	4.3	T13, TP2, TP7, TP41, W31.	None	201	244	Forbidden	1 L	E	13, 40, 148
				II	4.3	IB1, T7, TP2, TP7, W31.	151	202	243	1 L	5 L	E	13, 40, 148
				III	4.3	IB2, T7, TP2, TP7, W31.	151	203	242	5 L	60 L	E	13, 40, 148
G	Water-reactive liquid, toxic, n.o.s.	4.3	UN3130	I	4.3, 6.1	A4	None	201	243	Forbidden	1 L	D	13, 148
				II	4.3, 6.1	IB1	151	202	243	1 L	5 L	E	13, 85, 148
				III	4.3, 6.1	IB2	151	203	242	5 L	60 L	E	13, 85, 148
		*	*		*		*	*		*	*		
G	Water-reactive, solid, oxidizing, n.o.s.	4.3	UN3133	II	4.3, 5.1		151	214	214	Forbidden	Forbidden	E	13, 40, 148
				III	4.3, 5.1		151	214	214	Forbidden	Forbidden	E	13, 40, 148
		*	*		*		*	*		*	*		
	Zinc ammonium nitrite	5.1	UN1512	II	5.1	IB8, IP4, T3, TP33.	152	212	242	5 kg	25 kg	E	
		*	*		*		*	*		*	*		
	Zinc chloride, anhydrous.	8	UN2331	III	8	IB8, IP3, T1, TP33.	154	213	240	25 kg	100 kg	A	53, 58
		*	*		*		*	*		*	*		
	Zirconium hydride	4.1	UN1437	II	4.1	A19, A20, IB4, N34, T3, TP33, W31, W40.	151	212	240	15 kg	50 kg	E	
		*	*		*		*	*		*	*		
	Zirconium powder, wetted *with not less than 25 percent water (a visible excess of water must be present) (a) mechanically produced, particle size less than 53 microns; (b) chemically produced, particle size less than 840 microns.*	4.1	UN1358	II	4.1	A19, A20, IB6, IP2, N34, T3, TP33, W31, W40.	151	212	241	15 kg	50 kg	E	13, 74, 147, 148
		*	*		*		*	*		*	*		
	Zirconium suspended in a liquid.	3	UN1308	I	3		None	201	243	Forbidden	Forbidden	B	
				II	3	IB2	150	202	242	5 L	60 L	B	
				III	3	B1, IB2	150	203	242	60 L	220 L	B	
		*	*		*		*	*		*	*		

§ 172.102 [Amended]

■ 10. In § 172.102, amend paragraph (c)(1) by removing special provision 103.

■ 11. In § 172.302, revise paragraph (b)(2) to read as follows:

§ 172.302 General marking requirements for bulk packagings.

* * * * *

(b) * * *

(2) Have a width of at least 4.0 mm (0.16 inch) and a height of at least 12 mm (0.47 inch) for portable tanks with capacities of less than 3,785 L (1,000 gallons) and a width of at least 4.0 mm (0.16 inch) and a height of 25 mm (one inch) for IBCs; and

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 12. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 13. In § 173.5b, revise paragraph (b) to read as follows:

§ 173.5b Portable and mobile refrigeration systems.

* * * * *

(b) *Refrigeration systems placed into service prior to June 1, 1991.* (1) For refrigeration systems placed into service prior to June 1, 1991, each pressure vessel and associated piping must be rated at a MAWP of not less than 250 psig. During transportation, pressure in the components that are part of the evaporating line may not exceed 150 psig.

(2) Each pressure vessel and associated piping that is part of the evaporating line must be marked ''LOW SIDE'' in a permanent and clearly visible manner. The evaporating line must have a pressure gauge with corresponding temperature markings mounted in a manner that is easily readable when standing on the ground. The gauge must be permanently marked or tagged ''SATURATION GAUGE.''

(3) Each pressure vessel and associated piping containing liquid anhydrous ammonia must be isolated using appropriate means from piping and components marked ''LOW SIDE.''

(4) Prior to transportation, each pressure vessel and associated piping must be relieved of enough gaseous lading to ensure that the MAWP is not exceeded at transport temperatures up to 54 °C (130 °F).

* * * * *

■ 14. In § 173.28, revise paragraph (c)(1)(i) to read as follows:

§ 173.28 Reuse, reconditioning and remanufacture of packagings.

* * * * *

(c) * * *

(1) * * *

(i) Cleaning to base material of construction, with all former contents, internal and external corrosion removed, and any external coatings and labels sufficiently removed to expose any metal deterioration that adversely affects transportation safety;

* * * * *

■ 15. In § 173.31, add paragraph (a)(6)(v) and revise paragraph (e) to read as follows:

§ 173.31 Use of tank cars.

* * * * *

(a) * * *

(6) * * *

(v) When a tank car delimiter is a ''H'', offerors may not use a tank car with any other delimiter.

* * * * *

(e) *Special requirements for poisonous by inhalation (PIH) material*—(1) *Interior heater coils.* Tank cars used for PIH material may not have interior heater coils.

(2) *Tank car specifications.* A tank car used for a PIH material must have a tank test pressure of 20.7 Bar (300 psig) or greater, head protection, and a metal jacket (*e.g.,* DOT 105S300W), except that—

(i) A higher test pressure is required if otherwise specified in this subchapter; and

(ii) Each tank car constructed on or after March 16, 2009, and used for the transportation of PIH materials must meet the applicable authorized tank car specifications and standards listed in §§ 173.244(a)(2) or (3) and 173.314(c) or (d).

(iii) A tank car owner retiring or otherwise removing a tank car from service transporting PIH material, other than because of damage to the car, must retire or remove cars constructed of non-normalized steel in the head or shell before removing any car in service transporting PIH materials constructed of normalized steel meeting the applicable DOT specification.

(3) *Phase-out of non-normalized steel tank cars.* After December 31, 2020, tank cars manufactured with non-normalized steel for head or shell construction may not be used for the transportation of PIH material.

(4) *Phase-out of legacy tank cars.* After December 31, 2027, tank cars not meeting the requirements of §§ 173.244(a)(2) or (3) and 173.314(c) or (d) may not be used for the transportation of PIH material.

* * * * *

■ 16. In § 173.56, revise paragraph (b) introductory text to read as follows:

§ 173.56 New explosives—definition and procedures for classification and approval.

* * * * *

(b) *Examination, classification and approval.* Except as provided in §§ 173.64, 173.65, and 173.67, no person may offer a new explosive for transportation unless that person has specified to the examining agency the ranges of composition of ingredients and compounds, showing the intended manufacturing tolerances in the composition of substances or design of articles which will be allowed in that material or device, and unless it has been examined, classed and approved as follows:

* * * * *

■ 17. In § 173.59, revise the definition of ''consumer firework'' to read as follows:

§ 173.59 Description of terms for explosives.

* * * * *

Consumer firework. Any finished firework device that is in a form intended for use by the public that complies with any limits and requirements of the APA Standard 87–1A (IBR, see § 171.7 of this subchapter) and the construction, performance, chemical composition, and labeling requirements codified by the U.S. Consumer Product Safety Commission in 16 CFR parts 1500 and 1507. A consumer firework does not include firework devices, kits or components banned by the U.S. Consumer Product Safety Commission in 16 CFR 1500.17(a)(8).

* * * * *

■ 18. In § 173.64, revise paragraphs (a)(1) and (3) to read as follows:

§ 173.64 Exceptions for Division 1.3 and 1.4 fireworks.

(a) * * *

(1) The fireworks are manufactured in accordance with the applicable requirements in APA 87–1A, 87–1B, and 87–1C (IBR, see § 171.7 of this subchapter);

* * * * *

(3) The manufacturer applies in writing to the Associate Administrator following the applicable requirements in APA 87–1A, 87–1B, and 87–1C and is notified in writing by the Associate Administrator that the fireworks have been classed, approved, and assigned an EX number. Each application must be complete and include all relevant background data and copies of all applicable drawings, test results, and any other pertinent information on each device for which approval is being requested. The manufacturer must sign the application and certify that the device for which approval is requested conforms to the appropriate APA Standard, that the descriptions and technical information contained in the application are complete and accurate, and with respect to APA 87–1A that no duplicate application has been submitted to a fireworks certification agency. If the application is denied, the manufacturer will be notified in writing of the reasons for the denial. The Associate Administrator may require that the fireworks be examined by an agency listed in § 173.56(b)(1) of this part.

* * * * *

■ 19. In § 173.65, revise paragraphs (a)(1), (a)(3)(i), and (a)(4)(iv) to read as follows:

§ 173.65 Exceptions for Division 1.4G consumer fireworks.

(a) * * *

(1) The fireworks are manufactured in accordance with the applicable requirements in APA 87–1A (IBR, see § 171.7 of this subchapter);

* * * * *

(3) * * *

(i) Certified that it complies with APA 87–1A, and meets the requirements of this section; and

* * * * *

(4) * * *

(iv) Signed certification declaring that the device for which certification is requested conforms to the APA 87–1A, that the descriptions and technical information contained in the application are complete and accurate, and that no duplicate applications have been submitted to PHMSA. If the application is denied, the Fireworks Certification Agency must notify the manufacturer in writing of the reasons for the denial. As detailed in the DOT-approval issued to the Fireworks Certification Agency, following the issuance of a denial from a Fireworks Certification Agency, a manufacturer may seek reconsideration from the Fireworks Certification Agency, or may appeal the reconsideration decision of the Fireworks Certification Agency to the PHMSA Administrator.

* * * * *

■ 20. Add § 173.67 to subpart C to read as follows:

§ 173.67 Exceptions for Division 1.1 jet perforating guns.

(a) Notwithstanding the requirements of § 173.56(b), Division 1.1 jet perforating guns may be classed and approved by the Associate Administrator without prior examination and offered for transportation if the following conditions are met:

(1) The jet perforating guns are manufactured in accordance with the applicable requirements in AESC/IME JPG Standard (IBR, see § 171.7 of this subchapter);

(2) The jet perforating gun must be of a type described in the AESC/IME JPG Standard;

(3) The applicant applies in writing to the Associate Administrator following

the applicable requirements in the AESC/IME JPG Standard, and is notified in writing by the Associate Administrator that the jet perforating gun has been classed, approved, and assigned an EX number. Each application must be complete and include all relevant background data, the applicable drawings, and any other pertinent information as described in the AESC/IME JPG Standard on each jet perforating gun for which approval is being requested. The manufacturer must sign the application and certify that the jet perforating gun for which approval is requested conforms to the AESC/IME JPG Standard and that the descriptions and technical information contained in the application are complete and accurate. If the application is denied, the applicant will be notified in writing of the reasons for the denial. The Associate Administrator may require that the jet perforating gun be examined as provided under § 173.56(b)(1).

(b) [Reserved]

■ 21. In § 173.151, revise paragraphs (b)(1)(i) and (ii) to read as follow:

§ 173.151 Exceptions for Class 4

* * * * *

(b) * * *

(1) * * *

(i) For flammable solids in Packing Group II, inner packagings not over 1.0 kg (2.2 pounds) or 1 L (0.3 gallon) net capacity each, packed in a strong outer packaging.

(ii) For flammable solids in Packing Group III, inner packagings not over 5.0 kg (11 pounds) or 5.0 L (1.3 gallon) net capacity each, packed in a strong outer packaging.

* * * * *

■ 22. In § 173.244, revise the table in paragraph (a)(2) to read as follows:

§ 173.244 Bulk packaging for certain pyrophoric liquids (Division 4.2), dangerous when wet (Division 4.3) materials, and poisonous liquids with inhalation hazards (Division 6.1).

* * * * *

(a) * * *

(2) * * *

TABLE 1 TO PARAGRAPH (a)(2)

Proper shipping name	Authorized tank car specification
Acetone cyanohydrin, stabilized (Note 1)	105H500W, 112H500W
Acrolein (Note 1)	105H600W
Allyl Alcohol	105H500W, 112H500W
Bromine	105H500W
Chloropicrin	105H500W, 112H500W
Chlorosulfonic acid	105H500W, 112H500W
Dimethyl sulfate	105H500W, 112H500W
Ethyl chloroformate	105H500W, 112H500W
Hexachlorocyclopentadiene	105H500W, 112H500W
Hydrocyanic acid, aqueous solution *or* Hydrogen cyanide, aqueous solution *with not more than 20% hydrogen cyanide (Note 2).*	105H500W, 112H500W
Hydrogen cyanide, stabilized (Note 2)	105H600W
Hydrogen fluoride, anhydrous	105H500W, 112H500W
Poison inhalation hazard, Zone A materials not specifically identified in this table	105H600W
Poison inhalation hazard, Zone B materials not specifically identified in this table	105H500W, 112H500W
Phosphorus trichloride	105H500W, 112H500W
Sulfur trioxide, stabilized	105H500W, 112H500W
Sulfuric acid, fuming	105H500W, 112H500W
Titanium tetrachloride	105H500W, 112H500W

Note 1 to table 1 to paragraph (a)(2): Each tank car must have a reclosing pressure relief device having a start-to-discharge pressure of 10.34 Bar (150 psig). Restenciling to a lower test pressure is not authorized.

Note 2 to table 1 to paragraph (a)(2): Each tank car must have a reclosing pressure relief device having a start-to-discharge pressure of 15.51 Bar (225 psig). Restenciling to a lower test pressure is not authorized.

* * * * *

■ 23. In § 173.302, revise paragraph (a) to read as follows:

§ 173.302 Filling of cylinders with non-liquefied (permanent) compressed gases or adsorbed gases.

(a) *General requirements.* (1) Except as provided in § 171.23(a)(3) of this subchapter, a cylinder filled with a non-liquefied compressed gas (except gas in solution) must be offered for transportation in accordance with the requirements of this section and § 173.301 of this subpart. In addition, a DOT specification cylinder must meet the requirements in §§ 173.301a, 173.302a, and 173.305 of the subpart, as applicable. UN pressure receptacles must meet the requirements in §§ 173.301b and 173.302b of this subpart, as applicable. Where more than one section applies to a cylinder, the most restrictive requirements must be followed.

(2) *Adsorbed gas.* Except as provided in § 171.23(a)(3) of this subchapter, a cylinder filled with an adsorbed gas must be offered for transportation in accordance with the requirements of paragraph (d) of this section, and §§ 173.301, and 173.302c of this subpart. UN cylinders must meet the requirements in §§ 173.301b and 173.302b of this subpart, as applicable. Where more than one section applies to a cylinder, the most restrictive requirements must be followed.

* * * * *

■ 24. In § 173.304, revise paragraph (a) introductory text to read as follows:

§ 173.304 Filling of cylinders with liquefied compressed gases.

(a) *General requirements.* Except as provided in § 171.23(a)(3) of this subchapter, a cylinder filled with a liquefied compressed gas (except gas in solution) must be offered for transportation in accordance with the requirements of this section and the general requirements in § 173.301 of this subpart. In addition, a DOT specification cylinder must meet the requirement in §§ 173.301a, 173.304a, and 173.305 of this subpart, as applicable. UN pressure receptacles must be shipped in accordance with the requirements in §§ 173.301b and 173.304b of this subpart, as applicable.

* * * * *

■ 25. In § 173.308, revise paragraph (d) to read as follows:

§ 173.308 Lighters.

* * * * *

(d) *Shipping paper and marking requirements.* (1) In addition to the requirements of subpart C of part 172, shipping papers must be annotated with the lighter design test report identifier (see paragraph (b)(4)(i)(C) of this section) traceable to the test report assigned to the lighters or, if applicable, the previously issued approval number (*i.e.,* T* * *), in association with the basic description.

(2) In addition to the requirements of subpart D of part 172, a lighter design test report identifier (see paragraph (b)(4)(i)(C) of this section) or, if applicable, the previously issued approval number (*i.e.,* T* * *), must be marked on a package containing lighters.

* * * * *

■ 26. In § 173.314, amend paragraph (c) by revising the table to read as follows:

§ 173.314 Compressed gases in tank cars and multi-unit tank cars.

* * * * *

(c) * * *

TABLE 1 TO PARAGRAPH (c)

Proper shipping name	Outage and filling limits (see note 1)	Authorized tank car class (see note 11)	Authorized tank car specification (see note 12)
Ammonia, anhydrous, or ammonia solutions >50 percent ammonia	Notes 2, 10	105, 112, 114, 120	105H500W, 112H500W
	Note 3	106	
Ammonia solutions with >35 percent, but ≤50 percent ammonia by mass	Note 3	105, 109, 112, 114, 120	
Argon, compressed	Note 4	107	
Boron trichloride	Note 3	105, 106	
Carbon dioxide, refrigerated liquid	Note 5	105	
Chlorine	Note 6	105	105H600W
	125	106	
Chlorine trifluoride	Note 3	106, 110	
Chlorine pentafluoride	Note 3	106, 110	
Dimethyl ether	Note 3	105, 106, 110, 112, 114, 120.	
Dimethylamine, anhydrous	Note 3	105, 106, 112	
Dinitrogen tetroxide, inhibited	Note 3	105, 106, 112	105H500W
Division 2.1 materials not specifically identified in this table	Notes 9, 10	105, 106, 110, 112, 114, 120.	
Division 2.2 materials not specifically identified in this table	Note 3	105, 106, 109, 110, 112, 114, 120.	
Division 2.3 Zone A materials not specifically identified in this table	None	See § 173.245.	105H600W
Division 2.3 Zone B materials not specifically identified in this table	Note 3	105, 106, 110, 112, 114, 120.	105H600W
Division 2.3 Zone C materials not specifically identified in this table	Note 3	105, 106, 110, 112, 114, 120.	105H500W
Division 2.3 Zone D materials not specifically identified in this table	Note 3	105, 106, 109, 110, 112, 114, 120.	105H500W, 112H500H
Ethylamine	Note 3	105, 106, 110, 112, 114, 120.	
Helium, compressed	Note 4	107	
Hydrogen	Note 4	107	
Hydrogen chloride, refrigerated liquid	Note 7	105	105H600W, 112H600W
Hydrogen sulfide	Note 3	105, 106, 110, 112, 114, 120.	105H600W
Hydrogen sulfide, liquefied	68	106	
Methyl bromide	Note 3	105, 106	105H500W
Methyl chloride	Note 3	105, 106, 112	
Methyl mercaptan	Note 3	105, 106	105H500W
Methylamine, anhydrous	Note 3	105, 106, 112	
Nitrogen, compressed	Note 4	107	
Nitrosyl chloride	124	105	105H500W
	110	106	
Nitrous oxide, refrigerated liquid	Note 5	105	
Oxygen, compressed	Note 4	107	
Phosgene	Note 3	106	
Sulfur dioxide, liquefied	125	105, 106, 110	105H500W
Sulfuryl fluoride	120	105	
Vinyl fluoride, stabilized	Note 8	105	

Notes to table 1 to paragraph (c): 1. The percent filling density for liquefied gases is hereby defined as the percent ratio of the mass of gas in the tank to the mass of water that the tank will hold. For determining the water capacity of the tank in kilograms, the mass of 1 L of water at 15.5 °C in air is 1 kg. (the mass of one gallon of water at 60 °F in air is 8.32828 pounds).

2. The liquefied gas must be loaded so that the outage is at least two percent of the total capacity of the tank at the reference temperature of 46 °C (115 °F) for a noninsulated tank; 43 °C (110 °F) for a tank having a thermal protection system incorporating a metal jacket that provides an overall thermal conductance at 15.5 °C (60 °F) of no more than 10.22 kilojoules per hour per square meter per degree Celsius (0.5 Btu per hour/per square foot/per degree F) temperature differential; and 41 °C (105 °F) for an insulated tank having an insulation system incorporating a metal jacket that provides an overall thermal conductance at 15.5 °C (60 °F) of no more than 1.5333 kilojoules per hour per square meter per degree Celsius (0.075 Btu per hour/per square foot/per degree F) temperature differential.

3. The requirements of § 173.24b(a) apply.

4. The gas pressure at 54.44 °C (130 °F.) in any non-insulated tank car may not exceed 7/10 of the marked test pressure, except that a tank may be charged with helium to a pressure 10 percent in excess of the marked maximum gas pressure at 54.44 °C (130 °F.) of each tank.
5. The liquid portion of the gas at −17.77 °C (0 °F.) must not completely fill the tank.
6. The maximum permitted filling density is 125 percent. The quantity of chlorine loaded into a single unit-tank car may not be loaded in excess of the normal lading weights nor in excess of 81.65 Mg (90 tons).
7. 89 percent maximum to 80.1 percent minimum at a test pressure of 6.2 Bar (90 psig).
8. 59.6 percent maximum to 53.6 percent minimum at a test pressure of 7.2 Bar (105 psig).
9. For a liquefied petroleum gas, the liquefied gas must be loaded so that the outage is at least one percent of the total capacity of the tank at the reference temperature of 46 °C (115 °F) for a noninsulated tank; 43 °C (110 °F) for a tank having a thermal protection system incorporating a metal jacket that provides an overall thermal conductance at 15.5 °C (60 °F) of no more than 10.22 kilojoules per hour per square meter per degree Celsius (0.5 Btu per hour/per square foot/per degree F) temperature differential; and 41 °C (105 °F) for an insulated tank having an insulation system incorporating a metal jacket that provides an overall thermal conductance at 15.5 °C (60 °F) of no more than 1.5333 kilojoules per hour per square meter per degree Celsius (0.075 Btu per hour/per square foot/per degree F) temperature differential.
10. For liquefied petroleum gas and anhydrous ammonia, during the months of November through March (winter), the following reference temperatures may be used: 38 °C (100 °F) for a noninsulated tank; 32 °C (90 °F) for a tank having a thermal protection system incorporating a metal jacket that provides an overall thermal conductance at 15.5 °C (60 °F) of no more than 10.22 kilojoules per hour per square meter per degree Celsius (0.5 Btu per hour/per square foot/per degree F) temperature differential; and 29 °C (85 °F) for an insulated tank having an insulation system incorporating a metal jacket and insulation that provides an overall thermal conductance at 15.5 °C (60 °F) of no more than 1.5333 kilojoules per hour per square meter per degree Celsius (0.075 Btu per hour/per square foot/per degree F) temperature differential. The winter reference temperatures may only be used for a tank car shipped directly to a consumer for unloading and not stored in transit. The offeror of the tank must inform each customer that the tank car was filled based on winter reference temperatures. The tank must be unloaded as soon as possible after March in order to retain the specified outage and to prevent a release of hazardous material which might occur due to the tank car becoming liquid full at higher temperatures.
11. For materials poisonous by inhalation, the single unit tank car tanks authorized are only those cars approved by the Tank Car Committee for transportation of the specified material and built prior to March 16, 2009.
12. Except as provided by paragraph (d) of this section, for materials poisonous by inhalation, fusion-welded tank car tanks built on or after March 16, 2009 used for the transportation of the PIH materials noted, must meet the applicable authorized tank car specification and must be equipped with a head shield as prescribed in § 179.16(c)(1).

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 27. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 28. In § 178.35, revise paragraphs (b)(2) and (c) as follows:

§ 178.35 General requirements for specification cylinders.

* * * * *

(b) * * *

(2) For DOT Specifications 3B, 3BN, 3E, 4B, 4BA, 4B240ET, 4AA480, 4L, 8, 8AL, 4BW, 4E, 4D (with a water capacity less than 1,100 cubic inches) and Specification 39 (with a marked service pressure 900 psig or lower), and manufactured within the United States, a competent inspector of the manufacturer.

(c) *Duties of inspector.* The inspector shall determine that each cylinder made is in conformance with the applicable specification. Inspections shall conform to CGA C–11 (IBR, see § 171.7 of this subchapter) except as otherwise specified in the applicable specification.

(1) *Seamless cylinders.* Seamless cylinders shall be inspected in accordance with Section 5 of CGA C–11. For cylinders made by the billet-piercing process, billets must be inspected and shown to be free from piping (laminations), cracks, excessive segregation and other injurious defects after parting or, when applicable, after nick and cold break.

(2) *Welded cylinders.* Welded cylinders shall be inspected in accordance with Section 6 of CGA C–11. Note: The recommended locations for test specimens are depicted in Figures 1 through 5 in appendix A to subpart C of part 178.

(3) *Non-refillable cylinders.* Non-refillable cylinders shall be inspected in accordance with Section 7 of CGA C–11

(4) *Inspector's report.* The inspector shall prepare a report containing, at a minimum, the applicable information listed in CGA C–11. Any additional information or markings that are required by the applicable specification must be shown on the test report. The signature of the inspector on the reports certifies that the processes of manufacture and heat treatment of cylinders were observed and found satisfactory. The inspector must furnish the completed test reports required by this subpart to the maker of the cylinder and, upon request, to the purchaser. The test report must be retained by the inspector for 15 years from the original test date of the cylinder.

* * * * *

■ 29. In § 178.521, revise paragraph (b)(4) as follows:

§ 178.521 Standards for paper bags.

* * * * *

(b) * * *

(4) UN5M1 and UN5M2 multi-wall paper bags that have paper wall basis weights that vary by not more than plus or minus 10 percent from the nominal basis weight reported in the initial design qualification test report.

PART 179—SPECIFICATIONS FOR TANK CARS.

■ 30. The authority citation for part 179 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 31. In § 179.22, revise paragraph (e) as follows:

§ 179.22 Marking.

* * * * *

(e) Each tank car manufactured after March 16, 2009, and before December 28, 2020, to meet the requirements of §§ 173.244(a)(2) or (3) or 173.314(c) or (d) that is marked with the letter ''I'' in the specification marking, following the test pressure, shall be re-marked with the letter ''W'' with a delimeter of letter ''H'' at the tank car's next qualification. (Example: DOT 105J600I would be remarked as 105H600W.) Each new tank car manufactured after December 28, 2020 shall be marked with the letter ''W'' following the test pressure and with a delimiter of ''H''. (Example: 105H600W).

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

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

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 33. In § 180.209, revise paragraph (l)(2) to read as follows:

§ 180.209 Requirements for requalification of specification cylinders.

* * * * *

(l) * * *

(2) It is offered for transportation in conformance with the requirements of §§ 171.12(a)(4) or 171.23(a)(5) of this subchapter.

* * * * *

■ 34. In § 180.213, revise paragraph (d)(2) to read as follows:

§ 180.213 Requalification markings.

* * * * *

(d) * * *

(2) Exception: A cylinder subject to the requirements of § 171.23(a)(5) of this subchapter may not be marked with a RIN.

* * * * *

■ 35. In § 180.417, revise the paragraph (a)(3) subject heading to read as follows:

§ 180.417 Reporting and record retention requirements.

* * * * *

(a) * * *

(3) *DOT Specification cargo tanks.*

* * * * *

Issued in Washington, DC, on October 21, 2020, under authority delegated in 49 CFR 1.97.

Howard R. Elliott,

Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2020–23712 Filed 11–24–20; 8:45 am]

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Part IV

Department of Health and Human Services

Regulatory Relief to Support Economic Recovery; Request for Information (RFI); Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Regulatory Relief To Support Economic Recovery; Request for Information (RFI)

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Request for information.

SUMMARY: Under an Executive Order that directs federal agencies to address the economic emergency created by the COVID–19 pandemic by rescinding, modifying, waiving, or providing exemptions from regulations and other requirements that may inhibit economic recovery, consistent with applicable law and with protection of the public health and safety, with national and homeland security, and with budgetary priorities and operational feasibility. The Order directs agencies to ''identify regulatory standards that may inhibit economic recovery'' and to take appropriate action such as rescission or suspension of regulations, including by use of good cause or emergency authorities where appropriate. Agencies have likewise been called on to assess the various temporary deregulatory actions they have taken to fight COVID–19 and its impact on our economy to determine which temporary regulatory actions should be made permanent. The Order directs agencies to assist businesses and other entities in complying with the law through prompt issuance of pre-enforcement rulings and to formulate policies of enforcement discretion that recognize such entities' efforts to comply with the law.

DATES: To be assured consideration, comments must be received at the address provided below, no later than 11:59 p.m. on December 28, 2020.

ADDRESSES: Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Comments, including mass comment submissions, must be submitted electronically at *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Allison Beattie, Department of Health and Human Services, 200 Independence Avenue SW, Room 713F, Washington, DC 20201. Email: *COVID.Regs@hhs.gov.* Telephone: (202) 690–7741.

SUPPLEMENTARY INFORMATION: Executive Order 13924, *Regulatory Relief To Support Economic Recovery,* 85 FR 31353 (May 19, 2020) calls on agencies to address the economic emergency caused by the COVID–19 pandemic by rescinding, modifying, waiving, or providing exemptions from regulations and other requirements that may inhibit economic recovery, consistent with applicable law and with protection of the public health and safety, with national and homeland security, and with budgetary priorities and operational feasibility. To implement the directives of E.O. 13924, the U.S. Department of Health and Human Services (''HHS'' or ''the Department'') identified in in response to this E.O. 382 regulatory actions that it is considering to make permanent or keep as temporary made in response to the COVID–19 crisis to improve access to care and reduce costs that it is considering to make permanent or keep as temporary. *See* Attachment A (this list is not intended to be comprehensive: Additional actions have been made by the Department and will continue to occur in response to the PHE and pandemic) HHS is issuing this Request for Information (RFI) to collect information for the purpose of considering the costs and benefits, consistent with applicable law and with protection of the public health and safety, of retaining these particular regulatory changes beyond the COVID–19 public health emergency. In addition to the costs and benefits of these actions, the Department seeks input on any barriers that may exist to making these deregulatory actions permanent including any evidence or experience that commenters have.

Invitation to Comment: HHS invites comments regarding the questions included in this notice. To ensure that your comments are clearly stated, please identify the specific question, or other section of this notice, that your comments address. Please also refer to any specific HHS policy or policies listed in the Appendix to this notice (*see* Attachment A), if applicable, by reference to the numbers associated in the Appendix with these policies.[1]

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *https://www.regulations.gov.* Follow the search instructions on that website to view public comments.

I. Background

In December 2019, a novel coronavirus known as SARS–CoV–2 (''the virus'') was first noted by the People's Republic of China as having been detected in Wuhan, Hubei Province, People's Republic of China, causing an outbreak of the disease COVID–19, which has now spread globally. The Secretary of Health and Human Services declared a public health emergency (PHE) effective January 27, 2020, under section 319 of the Public Health Service Act (42 U.S.C. 247d), in response to COVID–19, and has extended the declaration several times, most recently on October 2, 2020 effective October 23. In Proclamation 9994 of March 13, 2020 (Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak), President Trump declared that the COVID–19 outbreak in the United States constituted a national emergency, beginning March 1, 2020.

The federal government has taken sweeping action to control the spread of the virus in the United States. HHS and its federal partners are working together with state, local, tribal and territorial governments, public health officials, healthcare providers, researchers, private sector organizations and the public to execute a whole-of-America response to the COVID–19 pandemic to protect the health and safety of the American people.

In February 2020, Secretary Azar declared that circumstances justified the authorization of emergency use for tests to detect and diagnose COVID–19. In March 2020, the Secretary declared that circumstances justified the authorization of emergency use for drugs and biological products during the COVID–19 pandemic. Emergency Use Authorizations (EUAs) allow medical countermeasures to be authorized by the U.S. Food and Drug Administration (FDA), pursuant to certain criteria, during emergencies.[2] Operation Warp Speed is a partnership among components of HHS, the Department of Defense, and industry

[1] Commenters on FDA guidance may also wish to *refer to FDA's website* COVID–19-Related Guidance Documents for Industry, FDA Staff, and Other Stakeholders, *available at https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-related-guidance-documents-industry-fda-staff-and-other-stakeholders and submit comments to the relevant docket associated with each guidance listed, in addition to responding to this RFI.*

[2] *Coronavirus (COVID–19) Testing,* U.S. Dep't of Health and Human Serv.'s, *https://www.hhs.gov/coronavirus/testing/index.html* (last updated Aug. 19, 2020).

and academic partners with a goal to produce and deliver 300 million doses of safe and effective vaccines, with the initial doses available by January 2021, as part of a broader strategy to accelerate the development, manufacturing, and distribution of COVID–19 vaccines, therapeutics, and diagnostics (collectively known as countermeasures).[3] The CDC is providing $10.25 billion to states, territories, and local jurisdictions, and the Indian Health Service is providing $750 million to tribal health programs for COVID–19 testing.[4] The CARES Act Provider Relief Fund supports American families, workers, and healthcare providers in the battle against the COVID–19 pandemic. HHS is distributing $175 billion to hospitals and healthcare providers on the front lines of the coronavirus response.[5]

During the COVID–19 PHE, HHS has taken steps to make it easier to provide telehealth services so patients may receive care without going to healthcare facilities.[6] For example, the HHS Office for Civil Rights (OCR) has issued guidance stating that OCR will not impose penalties for violations of the HIPAA Privacy, Security, and Breach Notification Rules when healthcare providers covered by the Health Insurance Portability and Accountability Act (HIPAA) in good faith, provide telehealth services to patients using remote communication technologies, such as commonly used apps—including FaceTime, Facebook Messenger, Google Hangouts, Zoom, or Skype—for telehealth services. CMS has issued temporary measures to make it easier for people enrolled in Medicare, Medicaid, and the Children's Health Insurance Program (CHIP) to receive medical care through telehealth services during the COVID–19 PHE. It also significantly expanded the list of covered telehealth services that can be covered by Medicare providers through telehealth. During the public health emergency, Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs) may serve as distant telehealth sites and provide telehealth services to patients in their homes.[7]

Likewise, FDA established a process to more rapidly disseminate and implement agency recommendations and policies related to COVID–19.[8]

To continue the federal response to the COVID–19 pandemic, President Trump signed Executive Order 13924 on May 19, 2020, to direct agencies to continue to remove regulatory barriers that could be stymying American economic recovery.[9] HHS is fulfilling this obligation by reviewing certain regulatory practices that could aid in economic recovery in ways that improve healthcare delivery.

II. Request for Information

To respond to the COVID–19 pandemic and its impact on the healthcare industry, HHS made changes to numerous regulations, agency guidance materials, or compliance obligations, or announced enforcement discretion (*see* Attachment A for a list of 382 of these actions) on either a temporary or permanent basis. Looking to the future, HHS intends that some of these regulatory changes (inclusive in this context of Agency guidance) will remain temporary and some will be made permanent, or permanent with modification. It may not be possible to make some of these changes permanent absent statutory changes, but HHS is still interested in comments to help us gauge the need for such changes. HHS will also consider phasing out or discontinuing regulatory changes that commenters show through evidence have negative impacts that outweigh the benefit of the regulatory change on a temporary basis or would have negative impacts that outweigh the benefits if continued beyond the PHE. Through this RFI, HHS seeks to gather feedback and relevant evidence from our stakeholders—healthcare providers and advocacy groups; industry trade groups; Medicare and Medicaid beneficiaries and caregivers; primary care and specialty providers; health insurance issuers offering health insurance coverage in the individual and group markets, group health plans sponsored by non-federal governmental entities, and supplemental insurers;[10] state, local, and territorial governments; research and policy experts; industry and professional associations; patients and patient advocacy groups; long-term care facilities, hospice providers, pharmacists, and pharmacy associations; nonprofit human services providers; and other interested members of the public. The information gathered in response to the RFI will be used to better inform HHS' decisions regarding which regulatory flexibilities used in the COVID–19 response should be kept temporary or made permanent. HHS and the entire U.S. government are committed to a healthy and resilient America. COVID–19 has had a sizable impact on the healthcare industry, which was forced to adjust to, among other things, remote and contactless care of patients in addition to caring for those directly affected by the virus, as well as on human services and other agencies working to promote well-being and economic mobility. Evidence-based feedback on how the 382 regulatory actions identified in Attachment A affect commenters' ability to provide or receive healthcare and services is welcome. Please note, however, that the Department may take or have taken steps to institutionalize or terminate items listed in Attachment A independent of the results of this RFI.

III. Key Questions

1. Of the regulatory changes that have been made by the HHS in response to the COVID–19 PHE and the pandemic, please identify which changes;

a. Have been beneficial to healthcare or human services providers, healthcare or human services systems, or to the patients and clients using these providers and systems, and under what circumstances; or

b. Have been detrimental to healthcare or human services providers, healthcare or human services systems, or to the patients and clients using these providers and systems, and under what circumstances; or

c. Have been beneficial to healthcare or human services providers, healthcare or human services systems, or to the patients and clients using these providers and systems on a temporary basis, but would be detrimental if continued, absent the exigencies of the COVID–19 PHE and pandemic.

Please explain and provide any evidence you have of benefit or detriment.

2. Of the regulatory changes that have been made by the Department of Health and Human Services in response to the COVID–19 PHE and the pandemic, please identify which changes:

a. Should be maintained only for the duration of the PHE and pandemic;

[3] *Fact Sheet: Explaining Operation Warp Speed,* U.S. Dep't of Health and Human Serv.'s *https://www.hhs.gov/coronavirus/explaining-operation-warp-speed/index.html* (last updated Sep. 1, 2020).

[4] *Id.*

[5] *CARES Act Provider Relief Fund,* U.S. Dep't of Health and Human Serv.'s, *https://www.hhs.gov/coronavirus/cares-act-provider-relief-fund/index.html* (last updated Aug. 14, 2020).

[6] *Telehealth: Delivering Care Safely During COVID–19,* U.S. Dep't of Health and Human Serv.'s, *https://www.hhs.gov/coronavirus/telehealth/index.html* (last updated Jul. 15, 2020).

[7] *Id.*

[8] United States, Food and Drug Administration. ''Process for Making Available Guidance Documents Related to Coronavirus Disease 2019.'' 85 FR 16949 (March 25, 2020).

[9] Exec. Order No. 13924 (May 19, 2020).

[10] *FAQs on Availability and Usage of Telehealth Services through Private Health Insurance Coverage in Response to Coronavirus Disease 2019 (COVID–19),* Ctrs. for Medicare & Medicaid Servs. Ctr. for Consumer Info. and Ins. Oversight (Mar. 24, 2020), *https://www.cms.gov/files/document/faqs-telehealth-covid-19.pdf.*

b. Should be maintained after the expiration of the PHE or the end of the pandemic; *i.e.,* made permanent;

c. Should be extended for a period of time after the expiration of the PHE or the end of the pandemic without being made permanent;

d. Should be modified but maintained after the expiration of the PHE or the end of the pandemic, and thus made permanent with modifications, and what modifications are being proposed; or

e. Should be discontinued immediately.

Please explain and provide the rationale for your recommendation, including evidence for or against the short-term or long-term suitability of these regulatory changes. Please describe all suggested modifications for those changes that should be maintained with modification. Of the regulatory changes that have been made or been issued by the Department of Health and Human Services in response to the COVID–19 PHE, please identify which changes should be discontinued only following a transition period, and what type of transition period is recommended.

IV. Submission of Comments and Collection of Information Requirements Exemption

Commenters may respond to any and all of the key questions as they pertain to any of the regulatory changes with which commenters have experience. HHS requests that commenters provide any evidence or experience they may have to support their recommendations. HHS asks that commenters identify by number the regulatory action(s) from Attachment A to which they are responding and submit their comments to the docket associated with this notice.[11] Commenters may otherwise provide their responses in any format compatible with the instructions in this Request for Information they believe is appropriate for presenting their responses. Finally, HHS asks commenters to provide feedback and evidence explaining any unintended consequences of the particular regulatory actions.

Please note, this is a 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. Responders are advised that the U.S. Government will not pay for any information or administrative costs incurred in response to this RFI; all costs associated with responding to this RFI will be solely at the interested party's expense. 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. In addition, we note that HHS will not respond to questions about potential policy issues raised in this RFI.

We will actively consider all input as we develop future regulatory proposals or future policy guidance. We may or may not choose to contact individual responders. Such communications would be for the sole purpose of clarifying statements in the responders' 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. Respondents should not include any information that might be considered proprietary or confidential. 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. In addition, we may publicly post the public comments received or a summary of those public comments.

Dated: November 5, 2020.

Eric D. Hargan,

Deputy Secretary, Department of Health and Human Services.

ATTACHMENT A

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
1	HHS	SAMHSA	Other regulatory action.		42 CFR part 2 statement	SAMHSA provided guidance as to how 42 CFR part 2 may apply during the COVID–19 emergency (*https://www.samhsa.gov/sites/default/files/covid-19-42-cfr-part-2-guidance-03192020.pdf*).
2	HHS	SAMHSA	Guidance		Take home medication	SAMHSA provided a blanket exception to opioid treatment programs to permit take-home medication for patients receiving medication-assisted treatment of up to 28 days.
3	HHS	OIG	Guidance	n/a	FAQs–Application of OIG's Administrative Enforcement Authorities to Arrangements Directly Connected to the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.	OIG is accepting inquiries from the health care community regarding the application of OIG's administrative enforcement authorities, including the Federal anti-kickback statute and civil monetary penalty (CMP) provision prohibiting inducements to beneficiaries. On this website, OIG responds to fact-specific inquiries regarding arrangements that are directly connected to the public health emergency and implicate these authorities.
4	HHS	OCR	Other regulatory action.		Notification of Enforcement Discretion for Telehealth Remote Communications.	Exercise of enforcement discretion to not impose penalties for HIPAA violations against healthcare providers in connection with their good faith provision of telehealth using remote communication technologies during the COVID–19 nationwide public health emergency.

[11] Commenters on FDA guidance may also wish to *refer to FDA's website* COVID–19-Related Guidance Documents for Industry, FDA Staff, and Other Stakeholders, *available at https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-related-guidance-documents-industry-fda-staff-and-other-stakeholders and submit comments to the relevant docket associated with each guidance listed, in addition to responding to this RFI.*

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
5	HHS	OCR	Other regulatory action.		Notification of Enforcement Discretion for Business Associates.	Exercise of enforcement discretion to not impose penalties for violations of certain provisions of the HIPAA Privacy Rule against covered health care providers or their business associates for the good faith uses and disclosures of protected health information (PHI) by business associates for public health and health oversight activities during the COVID–19 nationwide public health emergency.
6	HHS	OCR	Other regulatory action.		Notification of Enforcement Discretion for Community-Based Testing Sites.	Exercise of enforcement discretion to not impose penalties for violations of the HIPAA Rules against covered entities or business associates in connection with the good faith participation in the operation of COVID–19 testing sites during the COVID–19 nationwide public health emergency.
7	HHS	NIH	Waiver		Flexibility with System for Awards Management ''SAM'' Registration (2 CFR § 200.205).	Allows applicants to submit applications for Federal awards without an active SAM registration. Provided automatic extension to expiring SAM registrations.
8	HHS	NIH	Waiver		Flexibility with Application Deadlines (2 CFR § 200.202).	Allows agencies to accept late applications due to the COVID–19 emergency.
9	HHS	NIH	Waiver		Waiver for Notice of Funding Opportunities (NOFOs) Publication. (2 CFR § 200.203).	Awarding agencies can publish emergency Notice of Funding Opportunities (NOFOs) for less than thirty (30) days without separately justifying shortening the timeframe for each NOFO.
10	HHS	NIH	Waiver		No-cost extensions on expiring awards. (2 CFR § 200.308).	Awarding agencies may extend awards which are active as of March 31, 2020 and scheduled to expire prior or up to December 31, 2020, automatically at no-cost for a period up to twelve (12) months.
11	HHS	NIH	Waiver		Abbreviated non-competitive continuation requests. (2 CFR § 200.308).	For continuation requests scheduled to come in from April 1, 2020 to December 31, 2020, from projects with planned future support, awarding agencies may accept a brief statement from recipients to verify that they are in a position to: (1) Resume or restore their project activities; and (2) accept a planned continuation award.
12	HHS	NIH	Waiver		Allowability of salaries and other project activities. (2 CFR § 200.403, 2 CFR § 200.404, 2 CFR § 200.405).	Awarding agencies may allow recipients to continue to charge salaries and benefits to currently active Federal awards consistent with the recipients' policy of paying salaries (under unexpected or extraordinary circumstances) from all funding sources, Federal and non-Federal.
13	HHS	NIH	Waiver		Allowability of Costs not Normally Chargeable to Awards. (2 CFR § 200.403, 2 CFR § 200.404, 2 CFR § 200.405).	Agencies may allow recipients to charge full cost of cancellation when the event, travel, or other activities are conducted under the auspices of the grant. Awarding agencies must advise recipients that they should not assume additional funds will be available should the charging of cancellation or other fees result in a shortage of funds to eventually carry out the event or travel.
14	HHS	NIH	Waiver		Prior approval requirement waivers. (2 CPR § 200.407).	Awarding agencies are authorized to waive prior approval requirements as necessary to effectively address the response.
15	HHS	NIH	Waiver		Exemption of certain procurement requirements. (2 CPR§ 200.319(b), 2 CPR§ 200.321).	Awarding agencies may waive the procurement requirements contained in 2 CPR§ 200.319(b) regarding geographical preferences and 2 CPR§ 200.321 regarding contracting small and minority businesses, women's business enterprises, and labor surplus area firms.
16	HHS	NIH	Waiver		Extension of financial, performance, and other reporting. (2 CPR§ 200.327, 2 CPR§ 200.328).	Awarding agencies may allow grantees to delay submission of financial, performance and other reports up to three (3) months beyond the normal due date.
17	HHS	NIH	Waiver		Extension of currently approved indirect cost rates. (2 CPR§ 200.414(c)).	Awarding agencies may allow grantees to continue to use the currently approved indirect cost rates (*i.e.,* predetermined, fixed, or provisional rates) to recover their indirect costs on Federal awards.
18	HHS	NIH	Waiver		Extension of closeout. (2 CPR§ 200.343).	Awarding agencies may allow the grantee to delay submission of any pending financial, performance and other reports required by the terms of the award for the closeout of expired projects, provided that proper notice about the reporting delay is given by the grantee to the agency.
19	HHS	NIH	Waiver		Extension of Single Audit submission. (2 CFR § 200.512).	Awarding agencies, in their capacity as cognizant or oversight agencies for audit, should allow recipients and subrecipients that have not yet filed their single audits with the Federal Audit Clearinghouse as of the date of the issuance of this memorandum that have fiscal year-ends through June 30, 2020, to delay the completion and submission of the Single Audit reporting package, as required under Subpart F of 2 CFR § 200.501—Audit Requirements, to six (6) months beyond the normal due date.
20	HHS	NIH	Waiver		OMB Memo M–20–20: Repurposing Existing Federal Financial Assistance Programs.	OMB is issuing a class exception that allows Federal awarding agencies to repurpose their federal assistance awards (in whole or part) to support the COVID–19 response, as consistent with applicable laws—includes donation of personal protective equipment.
21	HHS	NIH	Waiver		National Research Service Awards.	NIH has provided flexibility to NRSA recipients to continue charging stipends to NIH awards while no worked is performed due to COVID–19. This flexibility is in separate from salary flexibilities provided to employees of recipient institutions.
22	HHS	FDA	Guidance	N/A	Enforcement Policy for Clinical Electronic Thermometers During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.	FDA issued this guidance to provide a policy to help expand the availability of clinical electronic thermometers to address this public health emergency.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
23	HHS	FDA	Guidance	N/A	Enforcement Policy for Imaging Systems During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.	FDA issued this guidance to provide a policy to help expand the availability and capability of medical x-ray, ultrasound, and magnetic resonance imaging systems, and image analysis software that are used to diagnose and monitor medical conditions while mitigating circumstances that could lead to patient, healthcare provider, and healthcare technology management (HTM) exposure to COVID–19 for the duration of the COVID–19 public health emergency (PHE).
24	HHS	FDA	Guidance	N/A	Enforcement Policy for Face Masks and Respirators During the Coronavirus Disease (COVID–19) Public Health Emergency (Revised).	FDA issued this guidance to provide a policy to help expand the availability of general use face masks for the general public and particulate filtering face piece respirators (including N95 respirators) for healthcare personnel (HCP)1 for the duration of the COVID–19 public health emergency.
25	HHS	FDA	Guidance	N/A	Temporary Policy on Prescription Drug Marketing Act Requirements for Distribution of Drug Samples During the COVID–19 Public Health Emergency.	FDA issued this guidance to address questions FDA has received asking for clarification regarding FDA's enforcement of certain requirements relating to the distribution of drug samples under the Prescription Drug Marketing Act of 1987 (PDMA) during the COVID–19 public health emergency (PHE). PDMA is part of the Federal Food, Drug, and Cosmetic Act (FD&C Act), and the relevant implementing regulations regarding drug samples are in 21 CFR part 203 (part 203), subpart D.
26	HHS	FDA	Guidance	N/A	Returning Refrigerated Transport Vehicles and Refrigerated Storage Units to Food Uses After Using Them to Preserve Human Remains During the COVID–19 Pandemic.	FDA has been asked whether refrigerated food transport vehicles and refrigerated food storage units used for the temporary preservation of human remains during the COVID–19 pandemic subsequently can be used to transport and store human and animal food. FDA issued this guidance to provide information and resources related to the cleaning and disinfection of such vehicles and storage units to address food safety before they are used again to transport and store food. The recommendations in this guidance are intended to supplement existing food safety regulations and guidance.
27	HHS	FDA	Guidance	N/A	CVM GFI #271 Reporting and Mitigating Animal Drug Shortages during the COVID–19 Public Health Emergency.	FDA has been closely monitoring the animal drug supply chain for supply disruptions or shortages in the United States during the COVID–19 pandemic. FDA issued this guidance to assist sponsors in providing FDA timely, informative notifications about changes in the production of animal drugs that will, in turn, help the Agency in its efforts to prevent or mitigate shortages of these products.
28	HHS	FDA	Guidance	N/A	CVM GFI #270—Guidance on the Conduct and Review of Studies to Support New Animal Drug Development during the COVID–19 Public Health Emergency.	FDA issued this guidance to provide recommendations for sponsors conducting studies to support new animal drug development to help ensure the safety of animals, their owners, and study personnel, maintain compliance with good laboratory practice regulations and good clinical practice, and maintain the scientific integrity of the data during the COVID–19 pandemic.
29	HHS	FDA	Guidance	N/A	Notifying FDA of a Permanent Discontinuance or Interruption in Manufacturing Under Section 506C of the FD&C Act Guidance for Industry.	Due to the COVID–19 pandemic, FDA has been closely monitoring the medical product supply chain with the expectation that it may be impacted by the COVID–19 outbreak, potentially leading to supply disruptions or shortages of drug and biological products in the United States. FDA issued this guidance to assist applicants and manufacturers in providing FDA timely, informative notifications about changes in the production of certain drugs and biological products that will, in turn, help the Agency in its efforts to prevent or mitigate shortages of such products. The guidance discusses the requirement under section 506C of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 356c) and FDA's implementing regulations for applicants and manufacturers to notify FDA of a permanent discontinuance in the manufacture of certain products or an interruption in the manufacture of certain products that is likely to lead to a meaningful disruption in supply of that product in the United States. This guidance also recommends that applicants and manufacturers provide additional details and follow additional procedures to ensure FDA has the specific information it needs to help prevent or mitigate shortages. In addition, the guidance explains how FDA communicates information about products in shortage to the public.
30	HHS	FDA	Guidance	N/A	Exemption and Exclusion from Certain Requirements of the Drug Supply Chain Security Act During the COVID–19 Public Health Emergency.	Due to the COVID–19 pandemic, FDA has been monitoring requests related to provisions of the Drug Supply Chain Security Act (DSCSA) because the provisions may affect the prescription drug supply chain during the COVID–19 outbreak. FDA issued this guidance to clarify the scope of the public health emergency exemption and exclusion under the DSCSA for the duration of the COVID–19 public health emergency (PHE), to help ensure adequate distribution of finished prescription drug products throughout the supply chain to combat COVID–19. In addition, this guidance announces FDA's policy regarding the exercise of its discretion in the enforcement of authorized trading partner requirements under section 582(b)(3), (c)(3), (d)(3), and (e)(3) of the FD&C Act for certain distributions during the COVID–19 PHE involving other trading partners that may not be authorized trading partners.
31	HHS	FDA	Guidance	N/A	Alternative Procedures for Blood and Blood Components During the COVID–19 Public Health Emergency.	FDA issued this guidance to provide a notice of exceptions and alternatives to certain requirements in Title 21 of the Code of Federal Regulations (CFR) regarding blood and blood components. This notice of exception or alternatives to certain requirements is being issued under 21 CFR 640.120(b) to respond to a national public health need and address the urgent and immediate need for blood and blood components. We expect that the alternative procedures will improve availability of blood and blood components while helping to ensure adequate protections for donor health and maintaining a safe blood supply for patients.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
32	HHS	FDA	Guidance	N/A	Postmarketing Adverse Event Reporting for Medical Products and Dietary Supplements During a Pandemic.	This guidance provides recommendations to industry regarding postmarketing adverse event reporting for drugs, biologics, medical devices, combination products, and dietary supplements during a pandemic. FDA anticipates that during a pandemic, industry and FDA workforces may be reduced because of high employee absenteeism while reporting of adverse events related to widespread use of medical products indicated for the treatment or prevention of the pathogen causing the pandemic may increase. The extent of these possible changes is unknown. This guidance discusses FDA's intended approach to enforcement of adverse event reporting requirements for medical products and dietary supplements during a pandemic.
33	HHS	FDA	Guidance	N/A	Institutional Review Board (IRB) Review of Individual Patient Expanded Access Requests for Investigational Drugs and Biological Products During the COVID–19 Public Health Emergency.	During the COVID–19 public health emergency, FDA has received a substantially increased volume of individual patient expanded access requests for COVID–19 investigational drugs. Although FDA has issued guidance on expanded access requests, including expanded access for individual patients, the Agency is aware that Institutional Review Boards (IRBs) seek clarity regarding the key factors and procedures IRBs should consider when reviewing individual patient expanded access submissions, including for reviews conducted by a single member of the IRB, to fulfill its obligations under 21 CFR part 56. Therefore, FDA issued this guidance to provide recommendations regarding the key factors and procedures IRBs should consider when reviewing expanded access submissions for individual patient access to investigational drugs for treating COVID–19.
34	HHS	FDA	Guidance	N/A	FDA Guidance on Conduct of Clinical Trials of Medical Products during COVID–19 Public Health Emergency.	FDA issued this guidance to provide general considerations to assist sponsors in assuring the safety of trial participants, maintaining compliance with good clinical practice (GCP), and minimizing risks to trial integrity for the duration of the COVID–19 public health emergency. The appendix to this guidance further explains those general considerations by providing answers to questions that the Agency has received about conducting clinical trials during the COVID–19 public health emergency.
35	HHS	FDA	Guidance	N/A	COVID–19: Developing Drugs and Biological Products for Treatment or Prevention.	FDA issued this guidance to assist sponsors in the clinical development of drugs for the treatment or prevention of COVID–19. Preventative vaccines and convalescent plasma are not within the scope of this guidance.
36	HHS	FDA	Guidance	N/A	Investigational COVID–19 Convalescent Plasma; Guidance for Industry (Updated: May 1, 2020).	FDA issued this guidance to provide recommendations to health care providers and investigators on the administration and study of investigational convalescent plasma collected from individuals who have recovered from COVID–19 (COVID–19 convalescent plasma) during the public health emergency. The guidance also provides recommendations to blood establishments on the collection of COVID–19 convalescent plasma.
37	HHS	FDA	Guidance	N/A	Revised Recommendations for Reducing the Risk of Human Immunodeficiency Virus Transmission by Blood and Blood Products.	This revised guidance document provides blood establishments that collect blood or blood components, including Source Plasma, with FDA's revised donor deferral recommendations for individuals with increased risk for transmitting human immunodeficiency virus (HIV) infection. We (FDA) are also recommending that you make corresponding revisions to your donor educational materials, donor history questionnaires and accompanying materials, along with revisions to your donor requalification and product management procedures. This guidance also incorporates certain other recommendations related to donor educational materials and supersedes the December 2015 guidance of the same title (Notice of Availability, 80 FR 79913 (December 17, 2015)). The recommendations contained in this guidance apply to the collection of blood and blood components, including Source Plasma. The recommendations in this revised guidance reflect the Agency's current thinking on donor deferral recommendations for individuals with increased risk for transmitting HIV infection. Based on the Agency's careful evaluation of the available data, including data regarding the detection characteristics of nucleic acid testing, FDA expects implementation of these revised recommendations will not be associated with any adverse effect on the safety of the blood supply. Furthermore, early implementation of the recommendations in this guidance may help to address significant blood shortages that are occurring as a result of a current and ongoing public health emergency.
38	HHS	FDA	Guidance	N/A	Revised Recommendations to Reduce the Risk of Transfusion-Transmitted Malaria.	The recommendations in this revised guidance reflect the Agency's current thinking on recommendations for reducing the risk of Transfusion-Transmitted Malaria (TTM). Based on the Agency's careful evaluation of the available scientific and epidemiological data on malaria risk, and data on FDA-approved pathogen reduction devices, FDA expects implementation of these revised recommendations will not be associated with any adverse effect on the safety of the blood supply. Furthermore, early implementation of the recommendations in this guidance may help to address significant blood shortages that are occurring as a result of a current and ongoing public health emergency.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
39	HHS	FDA	Guidance	N/A	CVM GFI #269—Enforcement Policy Regarding Federal VCPR Requirements to Facilitate Veterinary Telemedicine During the COVID–19 Outbreak.	FDA recognizes the vital role veterinarians play in protecting public health. FDA is aware that during the COVID–19 outbreak some States are modifying their requirements for veterinary telemedicine, including State requirements regarding the veterinarian-client-patient relationship (VCPR). Given that the Federal VCPR definition requires animal examination and/or medically appropriate and timely visits to the premises where the animal(s) are kept, the Federal VCPR definition cannot be met solely through telemedicine. To further facilitate veterinarians' ability to utilize telemedicine to address animal health needs during the COVID–19 outbreak, FDA intends to temporarily suspend enforcement of a portion of the Federal VCPR requirements. Specifically, FDA generally intends not to enforce the animal examination and premises visit VCPR requirements relevant to FDA regulations governing Extralabel Drug Use in Animals (21 CFR part 530) and Veterinary Feed Directive Drugs (21 CFR 558.6). Given the temporary nature of this policy, we plan to reassess it periodically and provide revision or withdrawal of this guidance as necessary.
40	HHS	FDA	Guidance	N/A	Temporary Policy Regarding Accredited Third-Party Certification Program Onsite Observation and Certificate Duration Requirements During the COVID–19 Public Health Emergency.	The Accredited Third-Party Certification Program regulation (21 CFR part 1, subpart M) establishes a voluntary program for the recognition of accreditation bodies (ABs) that accredit third-party certification bodies (CBs) to conduct food safety audits and issue food or facility certifications to eligible foreign entities for the purposes specified in sections 801(q) and 806 of the FD&C Act (21 U.S.C. 381 and 384b). The regulation requires that recognized ABs and accredited CBs perform certain onsite observations and examinations. Due to the impact of the public health emergency related to COVID–19, FDA issued this guidance to provide the Accredited Third-Party Certification Program's currently-recognized ABs and accredited CBs flexibility, in certain circumstances, regarding certain requirements.
41	HHS	FDA	Guidance	N/A	Temporary Policy Regarding Preventive Controls and FSVP Food Supplier Verification Onsite Audit Requirements During the COVID–19 Public Health Emergency.	The purpose of this guidance is to state the current intent of the Food and Drug Administration (FDA, we, or the Agency), in certain circumstances related to the impact of the coronavirus outbreak (COVID–19), not to enforce requirements in three foods regulations to conduct onsite audits of food suppliers if other supplier verification methods are used instead. The three regulations are Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food (21 CFR part 117) (''part 117''), Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals (21 CFR part 507) (''part 507''), and Foreign Supplier Verification Programs for Importers of Food for Humans and Animals (21 CFR part 1 subpart L) (''FSVP regulation'').
42	HHS	FDA	Guidance	N/A	Temporary Policy During the COVID–19 Public Health Emergency Regarding the Qualified Exemption from the Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption.	FDA issued this guidance to announce flexibility in the eligibility criteria for the qualified exemption from the Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption (Produce Safety Rule) (21 CFR part 112) due to disruptions to the supply chain for the duration of the COVID–19 public health emergency.
43	HHS	FDA	Guidance	N/A	Reporting a Temporary Closure or Significantly Reduced Production by a Human Food Establishment and Requesting FDA Assistance During the COVID–19 Public Health Emergency.	FDA issued this guidance to provide certain FDA-regulated food establishments (*i.e.,* human food facilities and farms, but not restaurants and retail food establishments), with a convenient mechanism to voluntarily report to FDA if they have temporarily ceased or significantly reduced production or if they are considering doing so. This reporting mechanism may also be used to request dialogue with FDA on issues related to continuing or restarting safe food production during the pandemic.
44	HHS	FDA	Guidance	N/A	Temporary Policy Regarding Nutrition Labeling of Certain Packaged Food During the COVID–19 Public Health Emergency.	FDA issued this guidance to provide restaurants and food manufacturers with flexibility regarding nutrition labeling so that they can sell certain packaged foods during the COVID–19 pandemic. This guidance does not apply to foods prepared by restaurants.
45	HHS	FDA	Guidance	N/A	Temporary Policy Regarding Certain Food Labeling Requirements During the COVID–19 Public Health Emergency: Minor Formulation Changes and Vending Machines.	FDA issued this guidance to food manufacturers to provide temporary and limited flexibilities in food labeling requirements under certain circumstances. Our goal is to provide regulatory flexibility, where fitting, to help minimize the impact of supply chain disruptions associated with the current COVID–19 pandemic on product availability. For example, we are providing flexibility for manufacturers to use existing labels, without making otherwise required changes, when making minor formula adjustments due to unforeseen shortages or supply chain disruptions brought about by the COVID–19 pandemic. Additionally, this guidance will provide temporary flexibility to the vending machine industry regarding the vending machine labeling requirements under section 403(q)(5)(H)(viii) of the FD&C Act (21 U.S.C. 343(q)(5)(H)(viii)) and 21 CFR 101.8 during the duration of the public health emergency.
46	HHS	FDA	Guidance	N/A	Temporary Policy Regarding Enforcement of 21 CFR Part 118 (the Egg Safety Rule) During the COVID–19 Public Health Emergency.	We encourage all shell egg producers to continue to comply with applicable requirements of 21 CFR part 118 (the Egg Safety Rule). However, due to the increased consumer demand for eggs in the table egg market (*e.g.,* sold directly to consumers in retail establishments), we are providing temporary flexibility to allow producers who currently only sell eggs to facilities for further processing (*e.g.,* into ''egg products'') to sell to the table egg market, provided certain circumstances are present.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
47	HHS	FDA	Guidance	N/A	Temporary Policy Regarding Nutrition Labeling of Standard Menu Items in Chain Restaurants and Similar Retail Food Establishments During the COVID–19 Public Health Emergency.	FDA issued this guidance to provide restaurants and food manufacturers with flexibility regarding nutrition labeling so that they can sell certain packaged foods during the COVID–19 pandemic. This guidance does not apply to foods prepared by restaurants.
48	HHS	FDA	Guidance	N/A	Temporary Policy Regarding Packaging and Labeling of Shell Eggs Sold by Retail Food Establishments During the COVID–19 Public Health Emergency.	FDA issued this guidance to provide temporary flexibility regarding certain packaging and labeling requirements for shell eggs sold in retail food establishments so that industry can meet the increased demand for shell eggs during the COVID–19 pandemic.
49	HHS	FDA	Guidance	N/A	Enforcement Policy for Gowns, Other Apparel, and Gloves During the Coronavirus Disease (COVID–19) Public Health Emergency.	FDA issued this guidance to provide a policy to help expand the availability of surgical apparel for health care professionals, including gowns (togas), hoods, and surgeon's and patient examination gloves during this pandemic.
50	HHS	FDA	Guidance	N/A	Enforcement Policy for Sterilizers, Disinfectant Devices, and Air Purifiers During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.	FDA issued this guidance to provide a policy to help expand the availability and capability of sterilizers, disinfectant devices, and air purifiers during this public health emergency.
51	HHS	FDA	Guidance	N/A	Recommendations for Sponsors Requesting EUAs for Decontamination and Bioburden Reduction Systems for Face Masks and Respirators During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.	FDA issued this guidance to provide recommendations for sponsors of decontamination and bioburden reduction systems about what information should be included in a pre-Emergency Use Authorization (pre-EUA) and/or EUA request to help facilitate FDA's efficient review of such request. This guidance provides these recommendations based on the device's intended use with respect to the level (tier) of decontamination or bioburden reduction, based on the sponsor's available data. Decontamination and bioburden reduction systems play an important role in the ongoing efforts to help address shortages of surgical masks and respirators intended for a medical purpose during COVID–19 or reduce the bioburden of surgical masks and filtering face piece respirators (including N95 respirators) used as personal protective equipment (PPE) by healthcare personnel for the duration of the COVID–19 public health emergency.
52	HHS	FDA	Guidance	N/A	Enforcement Policy for Digital Health Devices For Treating Psychiatric Disorders During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.	FDA issued this guidance to provide a policy to help expand the availability of digital health therapeutic devices for psychiatric disorders to facilitate consumer and patient use while reducing user and healthcare provider contact and potential exposure to COVID–19 during this pandemic.
53	HHS	FDA	Guidance	N/A	Enforcement Policy for Extracorporeal Membrane Oxygenation and Cardiopulmonary Bypass Devices During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.	FDA issued this guidance to provide a policy to help expand the availability of devices used in extracorporeal membrane oxygenation (ECMO) therapy to address this public health emergency.
54	HHS	FDA	Guidance	N/A	Enforcement Policy for Infusion Pumps and Accessories During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.	FDA issued this guidance to provide a policy to help expand the availability and remote capabilities of infusion pumps and their accessories for health care professionals during the COVID–19 pandemic.
55	HHS	FDA	Guidance	N/A	Enforcement Policy for Non-Invasive Fetal and Maternal Monitoring Devices Used to Support Patient Monitoring During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.	FDA issued this guidance to provide a policy to help expand the availability and capability of non-invasive fetal and maternal monitoring devices to facilitate patient monitoring while reducing patient and healthcare provider contact and potential exposure to COVID–19 during this pandemic.
56	HHS	FDA	Guidance	N/A	Enforcement Policy for Non-Invasive Remote Monitoring Devices Used to Support Patient Monitoring During the Coronavirus Disease-2019 (COVID–19) Public Health Emergency.	FDA issued this guidance to provide a policy to help expand the availability and capability of non-invasive remote monitoring devices to facilitate patient monitoring while reducing patient and healthcare provider contact and exposure to COVID–19 for the duration of the COVID–19 public health emergency.
57	HHS	FDA	Guidance	N/A	Enforcement Policy for Remote Digital Pathology Devices During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.	FDA issued this guidance to provide a policy to help expand the availability of devices for remote reviewing and reporting of scanned digital images of pathology slides (''digital pathology slides'') during this pandemic.
58	HHS	FDA	Guidance	N/A	Enforcement Policy for Remote Ophthalmic Assessment and Monitoring Devices During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.	FDA issued this guidance to provide a policy to help expand the capability of remote ophthalmic assessment and monitoring devices to facilitate patient care while reducing patient and healthcare provider contact and exposure to COVID–19 during this pandemic.
59	HHS	FDA	Guidance	N/A	Enforcement Policy for Telethermographic Systems During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.	FDA issued this guidance to provide a policy to help expand the availability of telethermographic systems used for body temperature measurements for triage use for the duration of the public health emergency declared by the Secretary of Health and Human Services (HHS) on January 31, 2020.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
60	HHS	FDA	Guidance	N/A	Enforcement Policy for Ventilators and Accessories and Other Respiratory Devices During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.	FDA issued this guidance to provide a policy to help expand the availability of ventilators as well as other respiratory devices and their accessories during this pandemic.
61	HHS	FDA	Guidance	N/A	Notifying CDRH of a Permanent Discontinuance or Interruption in Manufacturing of a Device Under Section 506J of the FD&C Act During the COVID–19 Public Health Emergency.	FDA issued this guidance to implement section 506J of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 351 et seq.), as added by section 3121 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), as it relates to device shortages and potential device shortages occurring during the COVID–19 pandemic, for the duration of the COVID–19 public health emergency. Section 506J of the FD&C Act requires manufacturers to notify FDA of a permanent discontinuance in the manufacture of certain devices or an interruption in the manufacture of certain devices that is likely to lead to a meaningful disruption in supply of that device in the United States. This guidance is intended to assist manufacturers in providing FDA timely, informative notifications about changes in the production of certain medical device products that will help the Agency prevent or mitigate shortages of such devices during the COVID–19 public health emergency. This guidance also recommends that manufacturers voluntarily provide additional details to better ensure FDA has the specific information it needs to help prevent or mitigate shortages during the COVID–19 public health emergency.
62	HHS	FDA	Guidance	N/A	COVID–19 Public Health Emergency: General Considerations for Pre-IND Meeting Requests for COVID–19 Related Drugs and Biological Products.	FDA issued this guidance to provide general considerations to assist sponsors in preparing pre-investigational new drug application (pre-IND) meeting requests for COVID–19 related drugs for the duration of the COVID–19 public health emergency. As described in further detail in this guidance, FDA recommends that sponsors initiate all drug development interactions for COVID–19 related drugs through pre-IND meeting requests.
63	HHS	FDA	Guidance	N/A	Effects of the COVID–19 Public Health Emergency on Formal Meetings and User Fee Applications—Questions and Answers.	FDA issued this guidance to provide answers to frequently asked questions about regulatory and policy issues related to drug development for the duration of the COVID–19 public health emergency.
64	HHS	FDA	Guidance	N/A	Policy for Certain REMS Requirements During the COVID–19 Public Health Emergency Guidance for Industry and Health Care Professionals.	FDA issued this guidance to communicate its temporary policy for certain risk evaluation and mitigation strategies (REMS) requirements for the duration of the public health emergency (PHE) declared by the Secretary of Health and Human Services (HHS)1 on January 31, 2020.
65	HHS	FDA	Guidance	N/A	Policy for the Temporary Use of Portable Cryogenic Containers Not in Compliance With 21 CFR 211.94(e)(1) For Oxygen and Nitrogen During the COVID–19 Public Health Emergency.	FDA issued this guidance to communicate its policy for the temporary use of certain gas containers for oxygen and nitrogen intended for medical use for the duration of the current public health emergency.
66	HHS	FDA	Guidance	N/A	Temporary Policy on Repackaging or Combining Propofol Drug Products During the COVID–19 Public Health Emergency.	FDA issued this guidance to communicate its temporary policy regarding the repackaging or combining of propofol drug products by a licensed pharmacist in a State licensed pharmacy, a Federal facility, or an outsourcing facility registered pursuant to section 503B of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 353b) as outlined in this guidance for the duration of the public health emergency declared by the Secretary of Health and Human Services (HHS) on January 31, 2020, or for such shorter time as FDA may announce through updated guidance.
67	HHS	FDA	Guidance	N/A	Temporary Policy for Compounding of Certain Drugs for Hospitalized Patients by Outsourcing Facilities During the COVID–19 Public Health Emergency (Revised).	FDA issued this guidance to communicate its temporary policy for the compounding of certain human drug products for hospitalized patients by outsourcing facilities that have registered with FDA under section 503B of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 353b).
68	HHS	FDA	Guidance	N/A	Temporary Policy for Compounding of Certain Drugs for Hospitalized Patients by Pharmacy Compounders not Registered as Outsourcing Facilities During the COVID–19 Public Health Emergency Guidance for Industry (Revised).	FDA has received a number of reports related to increased demand and supply interruptions involving FDA-approved drug products used in the treatment of hospitalized patients with COVID–19. Many of these drug products are needed to support COVID–19 patients who have been intubated, or for other procedures involved in the care of such patients. Some reports involve drug products that appear on the drug shortage list in effect under section 506E of the FD&C Act (21 U.S.C. 356e) (''FDA's drug shortage list''). In addition, with respect to certain other drug products needed to support hospitalized COVID–19 patients but that do not appear on FDA's drug shortage list, certain hospitals have concerns about accessing them due, for example, to regional disparities in COVID–19 infection rates, or other regional conditions that may evolve quickly during the public health emergency. FDA is working with manufacturers in the global pharmaceutical supply chain to prevent and mitigate drug shortages and access problems, using all of the Agency's authorities to restore or increase the supply of FDA-approved drug products.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
69	HHS	FDA	Guidance	N/A	Temporary Policy Regarding Non-Standard PPE Practices for Sterile Compounding by Pharmacy Compounders not Registered as Outsourcing Facilities During the COVID–19 Public Health Emergency.	Due to the COVID–19 pandemic, FDA has received a number of queries from compounders related to the impact of supply interruptions of face masks, gowns, gloves, and other garb, which we refer to collectively in this document as *personal protective equipment (PPE).* FDA issued this guidance to communicate its temporary policy related to PPE use during human drug compounding at State-licensed pharmacies or Federal facilities that are not registered with FDA as outsourcing facilities.
70	HHS	FDA	Guidance	N/A	Supplements for Approved Premarket Approval (PMA) or Humanitarian Device Exemption (HDE) Submissions During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency.	FDA issued this guidance to provide a policy to help address current manufacturing limitations or supply chain issues due to disruptions caused by the COVID–19 public health emergency.
71	HHS	FDA	Guidance	N/A	Policy for Temporary Compounding of Certain Alcohol-Based Hand Sanitizer Products During the Public Health Emergency.	The Agency issued this guidance to communicate its policy for the temporary compounding of certain alcohol-based hand sanitizer products by pharmacists in State-licensed pharmacies or Federal facilities and registered outsourcing facilities (referred to collectively in this guidance as compounders) for the duration of the public health emergency.
72	HHS	FDA	Guidance	N/A	Temporary Policy for Manufacture of Alcohol for Incorporation Into Alcohol-Based Hand Sanitizer Products During the Public Health Emergency (COVID–19).	FDA issued this guidance in response to a number of queries from entities that are not currently registered drug manufacturers that would like to produce alcohol (ethanol) for incorporation into alcohol-based hand sanitizers. This policy does not extend to other types of active ingredients for incorporation into alcohol-based hand sanitizers, such as isopropyl alcohol. The Agency issued this guidance to communicate its policy for the temporary manufacture of ethanol products by firms that manufacture alcohol for incorporation into alcohol-based hand sanitizer products under the circumstances described in this guidance (alcohol production firms) for the duration of the public health emergency. At such time when the public health emergency is over, as declared by the Secretary, FDA intends to discontinue this enforcement discretion policy and withdraw this guidance. FDA is continually assessing the needs and circumstances related to this temporary policy, and as relevant needs and circumstances evolve, FDA intends to update, modify, or withdraw this policy as appropriate.
73	HHS	FDA	Guidance	N/A	Temporary Policy for Preparation of Certain Alcohol-Based Hand Sanitizer Products During the Public Health Emergency (COVID–19).	FDA issued this guidance in response to a number of queries from entities that are not currently licensed or registered drug manufacturers that would like to prepare alcohol-based hand sanitizers, either for public distribution or for their own internal use. The Agency issued this guidance to communicate its policy for the temporary preparation of certain alcohol-based hand sanitizer products by firms that register their establishment with FDA as an over-the-counter (OTC) drug manufacturer, repackager, or re-labeler to prepare alcohol-based hand sanitizers under the circumstances described in this guidance (''firms'') for the duration of the public health emergency. At such time when the public health emergency is over, as declared by the Secretary, FDA intends to discontinue this enforcement discretion policy and withdraw this guidance.
74	HHS	FDA	Guidance	N/A	Policy for Coronavirus Disease-2019 Tests During the Public Health Emergency (Revised).	FDA issued this guidance to provide a policy to help accelerate the availability of novel coronavirus (COVID–19) tests developed by laboratories and commercial manufacturers for the duration of the public health emergency. Rapid detection of COVID–19 cases in the United States requires wide availability of testing to control the emergence of this rapidly spreading, severe illness. This guidance describes a policy for laboratories and commercial manufacturers to help accelerate the use of tests they develop in order to achieve more rapid and widespread testing capacity in the United States.
75	HHS	CDC	Interim Final Rule	0920–AA76	Control of Communicable Diseases; Foreign Quarantine: Suspension of Introduction of Persons into the US from Designated Foreign Countries or Places for Public Health.	Suspends the introduction of persons from designated countries into the U.S. for public health reasons.
76	HHS	CDC	Other regulatory action.		No Sail Order and Suspension of Further Embarkation.	Order applies to all cruise ships that do not voluntarily suspend operation.
77	HHS	ACF	Guidance		New Guidance on Caseworker Visits.	Modified policy to permit monthly child welfare caseworker visits to be conducted via videoconference instead of in-person; postponing title IV–E eligibility reviews and National Youth in Transition Database reviews.
78	HHS	ACF	Guidance		Permit provisional licensure of foster family homes.	Allows for abbreviated licensing and re-licensing process for foster family homes, so that the agency does not need to assess the home's safety and appropriateness during the pandemic in as rigorous of a fashion, which requires in-person interaction.
79	HHS	ACF	Guidance		Permit name-based criminal background checks on prospective foster parents and other care providers.	Allowed name-based background checks only, in the absence of FBI fingerprint checks, when fingerprint sites are unavailable.
80	HHS	ACF	Guidance		Simplify process for title IV–E assistance to youth age 18 and older.	Administrative streamlining allows for quicker access to title IV–E assistance for youth who may be aging out of the child welfare system in the absence of a permanent family, using the Stafford Act.
81	HHS	ACF	Guidance		Modify requirement for older youth to meet education or employment requirement.	Using Stafford Act flexibility, ACF temporarily waived the requirement that youth aging out of the foster care system be actively engaged in education and/or employment.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
82	HHS	ACF	Guidance		Qualified Residential Treatment Program claiming exemption.	Using Stafford Act flexibilities, this allows title IV–E agencies to continue claiming federal reimbursement for children in QRTP settings, even if the facility has not completed statutorily required accreditation due to the pandemic.
83	HHS	ACF	Guidance		Delegating authority to State CSBG agencies to approve equipment purchases.	Same as title. Prior internal practice required federal approval for CSBG-funded equipment purchases, even when states served as pass-through entities. The authority exists for pass-through entities to approve such purchases, and ACF would further emphasize this authority and encourage pass-through entities to utilize it.
84	HHS	ACF	Waiver		Allowability of Costs not Normally Chargeable to Awards (Item 7 from OMB M–20–17).	*Note:* Not an ACF regulation. Modify 45 CFR 75.405 (and 2 CFR 200.405) to allow the awarding agency to set an amount that may be charged that would not normally be allowed in dollar or percentage terms, with a reporting requirement if exercised. Alternatively, a class-wide exemption for CSBG may also address the issue (75.102).
85	HHS	ACF	Guidance		Streamlining CSBG eligibility determinations.	Guidance was provided to states that streamlined certain eligibility requirements, such as attestation to, rather than production of, documentation for emergency food assistance.
86	HHS	ACF	Guidance		Non-Competing Continuation (NCC) Grants application.	Allows abbreviated application process for grantees and eliminates burdens for non-competing continuation grant awards.
87	HHS	ACF	Guidance		Ability to pay salaries and other project activities.	Allows programs to continue paying salaries to grantee staff during business disruptions, and activities aligned with grant purpose but not in SOW, to do so. M–20–17.
88	HHS	ACF	Guidance		Increase in micro-purchase threshold.	HHS authorized an increase in the simplified acquisition thresholds for all COVID–19 acquisitions (to $20k for micro-purchase and $750k for simplified acquisition threshold).
89	HHS	ACF	Guidance		Waiver of detail and formality of acquisition plans above the simplified acquisition threshold.	HHS authorized this waiver for all COVID–19 related contracts and only required them to have an informal acquisition plan.
90	HHS	ACF	Guidance		Flexibility with Application Deadlines (2 CFR § 200.202).	This was applied by multiple ACF programs to provide relief during the period of the pandemic by providing additional time to complete grant applications.
91	HHS	ACF	Guidance		Enforcement discretion for Work Participation Rate failures during the pandemic.	Signals that ACF will exercise maximum enforcement discretion in levying financial penalties against states for their failure to meet the Temporary Assistance for Needy Families (TANF) program's work participation rate during the period of the pandemic, when such failure is attributable to the pandemic.
92	HHS	ACF	Waiver		Waiver of on-site health and safety inspections.	This waived the requirement that annual inspections of child care facilities occur, with an on-site component.
93	HHS	ACF	Waiver		Fingerprint background check waivers.	Waive the requirement that FBI fingerprint-based background checks be evaluated for child care workers, if fingerprinting sites are unavailable and name-based checks return no red flags.
94	HHS	ACF	Waiver		Waiver of 12 month continuing eligibility requirement.	Waives the requirement that those receiving CCDF child care support retain eligibility for not less than 12 months. This was used, for example, to provide short-term eligibility for emergency workers who did not require long-term services.
95	HHS	ACF	Waiver		Waive co-pays for all families	Allows states to fully pay for child care costs for parents, without cost-sharing.
96	HHS	ACF	NPRM		Provisional hire flexibility	Waiver allowed individuals who have not completed the comprehensive (7 component) inter-state background check process to start work as child care workers, to ensure adequate staffing in emergent situations.
97	HHS	ACF	Other regulatory action.		Grant match requirements	Provide Secretary authority to waive matching requirements in 42 U.S.C. 10407(a)(2)(A) in situations of public health emergencies.
98	HHS	ACF	Waiver		Waive declaration requirements for refugee assistance.	Allows waiver of requirements at 45 CFR 400.43, which require written attestation and documentation of certain eligibility requirements; allows for telephonic attestation until such time as providing this documentation and written declaration is possible.
99	HHS	ACF	Waiver		Waive certain income requirements for refugee assistance.	Allows waiver of certain components of 45 CFR 400.59 and § 400.66, such that one-time payments (*e.g.,* Economic Impact Payments) do not preclude eligibility based on income. Also, allows waiver of employment requirements at 45 CFR 400.75 when services are unavailable due to the public health emergency.
100	HHS	ACF	Waiver		Waive restrictions on Refugee Support Services funds use.	Allows funds for RSS to be used to meet emergent needs associated with the COVID–19 pandemic (*e.g.,* food, shelter). Waives requirements at 45 CFR 400.146.
101	HHS	ACF	Waiver		Extend eligibility period for Refugee Supportive Services.	Allows individuals receiving RSS support/services to continue receiving services if they would otherwise have exhausted the program's 60 month time limit at 45 CFR 400.152(b) during the period of the pandemic.
102	HHS	ACF	Waiver		Refugee medical screening timeframes.	Waive 90 day timeline for the medical screening to take place (at 45 CFR 400.107), if that is not possible given availability of medical services. Also encourage telehealth options as alternative if in-person screening is unavailable.
103	HHS	ACF	Waiver		Permitting virtual refugee consultations.	Quarterly stakeholder consultations are required in the refugee program. This flexibility allows such consultations to take place virtually rather than in-person.
104	HHS	ACF	NPRM		Various timeframe and administrative elements, Child Support Enforcement.	Utilizing Stafford Act flexibilities, OCSE granted waivers to many states on a host of service-related timeline requirements (separate attachment). Some of these timelines are in regulation, but the regulations do not provide authority to waive certain regulatory provisions in other disasters or health emergency situations. This rulemaking would provide such a provision in existing regulation.
105	HHS	ACF	Other regulatory action.		Raise prior approval requirement at 45 CFR § 75.407; 2 CFR § 200.407.	Raise prior approval threshold for purchases from $5k to $25k in the normal course.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
106	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Merit-based Incentive Payment System (MIPS) Updates.	BB. MIPS Improvement Activities Inventory Update to add new or make modifications to existing improvement activities in the Inventory through notice-and-comment rulemaking. 1. Table 1 in RIN 0938–AU31 outlines the new improvement activity: COVID–19 Clinical Trials. 2. To provide additional relief to individual clinicians, groups, and virtual groups for whom sufficient MIPS measures and activities may not be available for the 2019 MIPS performance period due to the PHE for the COVID–19 pandemic, extending the deadline to submit an application for reweighting the quality, cost and improvement activities performance categories based on extreme and uncontrollable circumstances from 12/31/19 to 4/30/20. Also, modifying existing policy for the 2019 performance period/2021 MIPS payment year only.
107	HHS	CMS	Interim Final Rule	RIN 0938–AU32	Update to the Hospital Value-Based Purchasing (VBP) Program Extraordinary Circumstance Exception (ECE) Policy.	The Hospital Value-Based Purchasing (VBP) Program Extraordinary Circumstance Exception (ECE) policy was revised to allow CMS to grant an exception to hospitals located in an entire region or locale without having to make an individual request and we codified the updated policy at CFR 412.165(c). This policy was updated as a permanent change in the interim final rule with comment period when it became effective on April 30, 2020.
108	HHS	CMS	Interim Final Rule	RIN 0938–AU33	Quality Reporting: Updates to the Extraordinary Circumstances Exceptions (ECE) Granted for Four Value-Based Purchasing Programs in Response to the PHE for COVID–19, and Update to the Performance Period for the FY 2022 SNF VBP Program.	This IFC updates the extraordinary circumstances exceptions (ECEs) we granted on March 22, 2020 for the ESRD Quality Incentive Program (QIP), Hospital-Acquired Condition (HAC) Reduction Program, Hospital Readmissions Reduction Program, and Hospital Value-Based Purchasing (VBP) Program in response to the COVID–19 PHE, revises the FY 2022 performance period under the Skilled Nursing Facility (SNF) VBP Program as a result of the COVID–19 PHE, and changes the Extraordinary Circumstances Exception (ECE) policies for the Hospital VBP, HAC Reduction, Hospital Readmissions Reduction, ESRD QIP, and SNF VBP Programs, to provide that if, as a result of the extension of the ECE for the whole country or the submission of individual ECE requests, we do not have enough data to reliably compare national performance on measures, we would not score facilities based on such limited data or make the associated payment adjustments for the affected program year.
109	HHS	CMS	Interim Final Rule	RIN 0938–AU31	National Coverage Determination.	National Coverage Determinations (NCDs) and Local Coverage Determinations (LCDs) on Respiratory Related Devices, Oxygen and Oxygen Equipment, Home Infusion Pumps and Home Anticoagulation Therapy: Clinicians now have maximum flexibility in determining patient needs for respiratory related devices and equipment and the flexibility for more patients to manage their treatments at the home. The current NCDs and LCDs that restrict coverage of these devices and services to patients with certain clinical characteristics do not apply during the public health emergency.
110	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Independent Lab Payment for Specimen collection.	During the PHE, Medicare established two new level II HCPCS Codes for Medicare payment of a nominal specimen collection fee and associated travel allowance. Independent labs must use one of these HCPCS codes when billing Medicare for the nominal specimen fee for COVID–19 testing for the duration of the PHE for COVID–19 pandemic.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
111	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Communication Technology-Based Services (CTBBS).	D. Medicare routinely pays for many kinds of services that are furnished via telecommunications technology (83 FR 59482), but are not considered Medicare telehealth services. These communication technology-based services (CTBS) include, for example, certain kinds of remote patient monitoring (either as separate services or as parts of bundled services), and interpretations of diagnostic tests when furnished remotely. In the context of the PHE for the COVID–19 pandemic, when brief communications with practitioners and other non-face-to-face services might mitigate the need for an in-person visit that could represent an exposure risk for vulnerable patients, we believe that these services should be available to as large a population of Medicare beneficiaries as possible. During the PHE for the COVID–19 pandemic, we are finalizing that these services, which may only be reported if they do not result in a visit, including a telehealth visit, can be furnished to both new and established patients. Consent to receive these services can be documented by auxiliary staff under general supervision. We are finalizing on an interim basis during the PHE for the COVID–19 pandemic that, while consent to receive these services must be obtained annually, it may be obtained at the same time that a service is furnished. We are re-emphasizing that this consent may be obtained by auxiliary staff under general supervision, as well as by the billing practitioner. In the context of the PHE for the COVID–19 pandemic, where communications with practitioners might mitigate the need for an in-person visit that could represent an exposure risk for vulnerable patients, we do not believe the limitation of these services to established patients is warranted. While some of the code descriptors refer to ''established patient,'' during the PHE, we are exercising enforcement discretion on an interim basis to relax enforcement of this aspect of the code descriptors. We will not conduct review to consider whether those services were furnished to established patients. On an interim basis, during the PHE for the COVID–19 pandemic, we are also broadening the availability of HCPCS codes G2010 and G2012 that describe remote evaluation of patient images/video and virtual check-ins. We recognize that in the context of the PHE for the COVID–19 pandemic, practitioners such as licensed clinical social workers, clinical psychologists, physical therapists, occupational therapists, and speech-language pathologists might also utilize virtual check-ins and remote evaluations instead of other, in-person services within the relevant Medicare benefit to facilitate the best available appropriate care while mitigating exposure risks. We note that this is not an exhaustive list and we are seeking input on other kinds of practitioners who might be furnishing these kinds of services as part of the Medicare services they furnish in the context of the PHE for the COVID–19 pandemic. To facilitate billing of the CTBS services by therapists for the reasons described above, we are designating HCPCS codes G2010, G2012, G2061, G2062, or G2063 as CTBS ''sometimes therapy'' services that would require the private practice occupational therapist, physical therapist, and speech-language pathologist to include the corresponding GO, GP, or GN therapy modifier on claims for these services. CTBS therapy services include those furnished to a new or established patients that the occupational therapist, physical therapist, and speech-language pathologist practitioner is currently treating under a plan of care.
112	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Direct Supervision by Interactive Telecommunications Technology.	For the duration of the PHE for the COVID–19 pandemic, for purposes of limiting exposure to COVID–19, we adopted an interim final policy revising the definition of direct supervision to include virtual presence of the supervising physician or practitioner using interactive audio/video real-time communications technology (85 FR 19245). We recognized that in some cases, the physical proximity of the physician or practitioner might present additional infection exposure risk to the patient and/or practitioner.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
113	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Telephone Evaluation and Management (E/M) Services Codes.	S. We are finalizing, on an interim basis for the duration of the PHE for the COVID–19 pandemic, separate payment for CPT codes 98966–98968 and CPT codes 99441–99443. For these codes, we are finalizing on an interim basis for the duration of the PHE for the COVID–19 pandemic, work RVUs as recommended by the AMA Health Care Professionals Advisory Committee (HCPAC), and work RVUs as recommended by the AMA Relative Value Scale Update Committee (RUC). We are finalizing the HCPAC and RUC-recommended direct PE inputs which consist of 3 minutes of post-service RN/LPN/MTA clinical labor time for each code. Similar to the CTBS described in section II.D. of this IFC, we believe it is important during the PHE to extend these services to both new and established patients. While some of the code descriptors refer to ''established patient,'' during the PHE we are exercising enforcement discretion on an interim basis to relax enforcement of this aspect of the code descriptors. Specifically, we will not conduct review to consider whether those services were furnished to established patients. CPT codes 98966–98968 described assessment and management services performed by practitioners who cannot separately bill for E/Ms. We are noting that these services may be furnished by, among others, LCSWs, clinical psychologists, and physical therapists, occupational therapists, and speech language pathologists when the visit pertains to a service that falls within the benefit category of those practitioners. To facilitate billing of these services by therapists, we are designating CPT codes 98966–98968 as CTBS ''sometimes therapy'' services that would require the private practice occupational therapist, physical therapist, and speech-language pathologist to include the corresponding GO, GP, or GN therapy modifier on claims for these services.
114	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Clarification of Homebound Status under the Medicare Home Health Benefit.	Homebound Definition: Broadening homebound definition to include beneficiaries whose physician advises them not to leave the home because of a confirmed or suspected COVID–19 diagnosis or if patient has a condition that makes them more susceptible to contract COVID–19.
115	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Use of Telecommunications Technology Under the Medicare Home Health Benefit.	H. For the duration of the PHE for the COVID–19 pandemic, we are amending the hospice regulations at 42 CFR 418.204 on an interim basis to specify that when a patient is receiving routine home care, hospices may provide services via a telecommunications system if it is feasible and appropriate to do so to ensure that Medicare patients can continue receiving services that are reasonable and necessary for the palliation and management of a patients' terminal illness and related conditions without jeopardizing the patients' health or the health of those who are providing such services during the PHE for the COVID–19 pandemic. To appropriately recognize the role of technology in furnishing services under the hospice benefit, the use of such technology must be included on the plan of care. The inclusion of technology on the plan of care must continue to meet the requirements at § 418.56, and must be tied to the patient-specific needs as identified in the comprehensive assessment and the measurable outcomes that the hospice anticipates will occur as a result of implementing the plan of care. There is no payment beyond the per diem amount for the use of technology in providing services under the hospice benefit. For the purposes of the hospice claim submission, only in-person visits (with the exception of social work telephone calls) should be reported on the claim. However, hospices can report the costs of telecommunications technology used to furnish services under the routine home care level of care during the PHE for the COVID–19 pandemic as ''other patient care services'' using Worksheet A, cost center line 46, or a subscript of line 46 through 46.19, cost center code 4600 through 4619, and identifying this cost center as ''PHE for COVID–19''.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
116	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Use of Telecommunications Technology Under the Medicare Hospice Benefit.	H. For the duration of the PHE for the COVID–19 pandemic, we are amending the hospice regulations at 42 CFR 418.204 on an interim basis to specify that when a patient is receiving routine home care, hospices may provide services via a telecommunications system if it is feasible and appropriate to do so to ensure that Medicare patients can continue receiving services that are reasonable and necessary for the palliation and management of a patients' terminal illness and related conditions without jeopardizing the patients' health or the health of those who are providing such services during the PHE for the COVID–19 pandemic. To appropriately recognize the role of technology in furnishing services under the hospice benefit, the use of such technology must be included on the plan of care. The inclusion of technology on the plan of care must continue to meet the requirements at § 418.56, and must be tied to the patient-specific needs as identified in the comprehensive assessment and the measurable outcomes that the hospice anticipates will occur as a result of implementing the plan of care. There is no payment beyond the per diem amount for the use of technology in providing services under the hospice benefit. For the purposes of the hospice claim submission, only in-person visits (with the exception of social work telephone calls) should be reported on the claim. However, hospices can report the costs of telecommunications technology used to furnish services under the routine home care level of care during the PHE for the COVID–19 pandemic as ''other patient care services'' using Worksheet A, cost center line 46, or a subscript of line 46 through 46.19, cost center code 4600 through 4619, and identifying this cost center as ''PHE for COVID–19''.
117	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Frequency Limitations on Subsequent Care Services in Inpatient and Nursing Facility Settings, and Critical Care Consultations and Required ''Hands-on'' Visits for ESRD Monthly Capitation Payments.	B. Given our assessment that under the PHE for the COVID–19 pandemic, there is a patient population that would otherwise not have access to clinically appropriate in-person treatment, we do not believe these frequency limitations are appropriate or necessary. In our prior analysis, for example, we were concerned that patients might not receive the necessary in-person services for nursing facility or hospital inpatient services. Since in the context of this PHE, telehealth visits mitigate exposure risk, fewer in-person visits may reflect the most appropriate care, depending on the needs of individual patients. Consequently, on an interim basis, we are removing the frequency restrictions for each of the following listed codes for subsequent inpatient visits and subsequent NF visits furnished via Medicare telehealth for the duration of the PHE for the COVID–19 pandemic. Similarly, we note that we previously limited critical care consultations through telehealth to only once per day, given the patient acuity involved in critical care. However, we also understand that critical care patients have significant exposure risks such that more frequent services furnished via telehealth may reflect the best available care in the context and for the duration of the PHE for the COVID–19 pandemic. For this reason, we are also removing the restriction that critical care consultation codes may only be furnished to a Medicare beneficiary once per day. These restrictions were established through rulemaking and implemented through systems edits.
118	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Inpatient Hospital Services Furnished Under Arrangements Outside the Hospital.	CC. Understanding that our current policy may inhibit use of capacity in settings that might otherwise be effective in the efforts to mitigate the impact of the pandemic on Medicare beneficiaries and the American public, we are changing our arrangements policy during the PHE for the COVID–19 pandemic so that hospitals are allowed broader flexibilities to furnish inpatient services, including routine services outside the hospital. We are changing our under arrangements policy during the PHE for the COVID–19 pandemic beginning March 1, 2020, so that hospitals are allowed broader flexibilities to furnish inpatient services, including routine services outside the hospital. Hospitals would be treating patients in locations outside the hospital for a variety of reasons, including limited beds and/or limited specialized equipment such as ventilators, and for a limited time period. While we are changing our under arrangements policy during the PHE for the COVID–19 pandemic to allow hospitals broader flexibilities in furnishing inpatient services, we emphasize that we are not changing our policy that a hospital needs to exercise sufficient control and responsibility over the use of hospital resources in treating patients, as discussed in the FY 2012 IPPS/LTCH PPS final rule and Section 10.3 of Chapter 5 of the Medicare General Information, Eligibility, and Entitlement Manual (Pub. 100–01). Nothing in the current PHE for the COVID–19 pandemic has changed our policy or thinking with respect to this issue and we are making no modifications to this aspect of the policy. Hospitals need to continue to exercise sufficient control and responsibility over the use of hospital resources in treating patients regardless of whether that treatment occurs in the hospital or outside the hospital under arrangements. If a hospital cannot exercise sufficient control and responsibility over the use of hospital resources in treating patients outside the hospital under arrangements, the hospital should not provide those services outside the hospital under arrangements.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
119	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Modification of the Inpatient Rehabilitation Facility (IRF) Face-to-Face Requirement.	J. During the PHE for the COVID–19 pandemic, we believe that it is essential to temporarily allow the face-to-face visit requirements at §§ 412.622(a)(3)(iv) and 412.29(e) to be conducted via telehealth to safeguard the health and safety of Medicare beneficiaries and the rehabilitation physicians treating them. This allows rehabilitation physicians to use telehealth services as defined in section 1834(m)(4)(F) of the Act, to conduct the required 3 physician visits per week during the PHE for the COVID–19 pandemic. By increasing access to telehealth, this IFC will provide the necessary flexibility for Medicare beneficiaries to be able to receive medically necessary services without jeopardizing their health or the health of those who are providing those services, while minimizing the overall risk to public health. To effectuate these changes, on an interim basis we are finalizing revisions to the regulations at §§ 412.622(a)(3)(iv) and 412.29(e) during the PHE for the COVID–19 pandemic. In § 412.622(a)(3)(iv), we are revising this paragraph to state that physician supervision by a rehabilitation physician is required, except that during the PHE, as defined in § 400.200, such visits may be conducted using telehealth services (as defined in section 1834(m)(4)(F) of the Act). In § 412.29(e), we are revising this paragraph to state that a procedure must be in effect to ensure that patients receive close medical supervision, as evidenced by at least 3 face-to-face visits per week by a licensed physician with specialized training and experience in inpatient rehabilitation to assess the patient both medically and functionally, as well as to modify the course of treatment as needed to maximize the patient's capacity to benefit from the rehabilitation process, except that during the PHE, as defined in § 400.200, such visits may be conducted using telehealth services (as defined in section 1834(m)(4)(F) of the Act).
120	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Removal of the IRF Post-Admission Physician Evaluation Requirement.	K. We are removing the post-admission physician evaluation requirement at § 412.622(a)(4)(ii) for all IRFs during the PHE for the COVID–19 pandemic. We believe that removal of this requirement will greatly reduce the amount of time rehabilitation physicians in IRFs spend on completing paperwork requirements when a patient is admitted to the IRF, and will free up their time to focus instead on caring for patients and helping where they may be needed with the PHE for the COVID–19 pandemic. Accordingly, we are amending § 412.622(a)(4)(ii) to note that the post-admission physician evaluation is not required during the PHE for the COVID–19 pandemic. To effectuate this change, on an interim basis, we are revising § 412.622(a)(4)(ii) to specify that the post-admission physician evaluation is not required during the PHE for the COVID–19 pandemic.
121	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Requirements for Opioid Treatment Programs (OTP).	N. In light of the PHE for the COVID–19 pandemic, during which the public has been instructed to practice self-isolation or social distancing, and because interactive audio-video communication technology may not be available to all beneficiaries, we are revising § 410.67(b)(3) and (4) to allow the therapy and counseling portions of the weekly bundles, as well as the add-on code for additional counseling or therapy, to be furnished using audio-only telephone calls rather than via two-way interactive audio-video communication technology during the PHE for the COVID–19 pandemic if beneficiaries do not have access to two-way audio/video communications technology, provided all other applicable requirements are met.
122	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Physician Supervision Flexibility for Outpatient Hospitals—Outpatient Hospital Therapeutic Services Assigned to the Non-Surgical Extended Duration Therapeutic Services (NSEDTS) Level of Supervision.	T. We changed the minimum default level of supervision to general supervision for NSEDTS during the initiation of the service to give providers additional flexibility they need to handle the burdens created by the PHE for the COVID–19 pandemic. We assigned, on an interim basis, all outpatient hospital therapeutic services that fall under § 410.27(a)(1)(iv)(E), a minimum level of general supervision to be consistent with the minimum default level of general supervision that applies for most outpatient hospital therapeutic services, and we revised § 410.27(a)(1)(iv)(E) to reflect this change in the minimum level of supervision. General supervision, as defined in our regulation at § 410.32(b)(3)(i) means that the procedure is furnished under the physician's overall direction and control, but that the physician's presence is not required during the performance of the procedure.
123	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Rural Health Clinics (RHC) and Federally Qualified Health Centers (FQHC) Telehealth.	Allow Professionals working at Rural Health Clinics (RHCs) and Federally-Qualified Health Centers (FQHCs) to furnish telehealth services. We are expanding the services that can be included in the payment for HCPCS code G0071, and update payment rates of other codes.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
						We are finalizing that all virtual communication services that are billable using HCPCS code G0071 will also be available to new patients that have not been seen in the RHC or FQHC within the previous 12 months. Also, in situations where obtaining prior beneficiary consent would interfere with the timely provision of these services, or the timely provision of the monthly care management services, during the PHE for the COVID–19 pandemic consent can obtained when the services are furnished instead of prior to the service being furnished, but must be obtained before the services are billed. We will also allow patient consent to be acquired by staff under the general supervision of the RHC or FQHC practitioner for the virtual communication and monthly care management codes during the PHE for the COVID–19 pandemic.
124	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Change to Medicare Shared Savings Program Extreme and Uncontrollable Circumstances Policy.	V. The 2019 MIPS data submission deadline will be extended by 30 days until April 30, 2020, to give eligible clinicians more time to report quality and other data for purposes of MIPS. The MIPS automatic extreme and uncontrollable circumstances policy will apply to MIPS eligible clinicians, who do not submit their MIPS data by the extended timeline. Under this automatic extreme and uncontrollable circumstances policy, MIPS eligible clinicians, who are not participants in APMs, who do not submit any MIPS data will have all performance categories reweighted to zero percent, resulting in a score equal to the performance threshold, and a neutral MIPS payment adjustment. However, under the policy, if a MIPS eligible clinician submits data on two or more MIPS performance categories, they will be scored and receive a 2021 MIPS payment adjustment based on their final score.
125	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Payment for Medicare Telehealth Services Under Section 1834(m) of the Act.	A. To facilitate the use of telecommunications technology as a safe substitute for in-person services, we are, on an interim basis, adding many services to the list of eligible Medicare telehealth services, eliminating frequency limitations and other requirements associated with particular services furnished via telehealth, and clarifying several payment rules that apply to other services that are furnished using telecommunications technologies that can reduce exposure risks. The list of telehealth services, including the additions described later in this section, can be located on the CMS website at *https://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/index.html.* Additional CPT Codes and explanations provided in the IFC.
126	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Telehealth and the Medicare Hospice Face-to-Face Encounter Requirement.	I. We are amending the regulations at § 418.22(a)(4) on an interim basis to allow the use of telecommunications technology by the hospice physician or NP for the face-to-face visit when such visit is solely for the purpose of recertifying a patient for hospice services during the PHE for the COVID–19 pandemic. By telecommunications technology, we mean the use of multimedia communications equipment that includes, at a minimum, audio and video equipment permitting two-way, real-time interactive communication between the patient (from home, or any other site permissible for receiving services under the hospice benefit) and distant site hospice physician or hospice NP.
127	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Home Health Orders from APPs	Z. Allow a home health patient to be under the care of a NP or clinical nurse specialist or a PA and allow such practitioner to: (1) Order home health services; (2) establish and periodically review a plan of care for home health services; and (3) certify and re-certify that the patient is eligible for Medicare home health services.
128	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Health Insurance Issuer Standards under the ACA, Including Standards related to Exchanges: Separate Billing and Segregation of Funds for Abortion Services.	X. For Qualified health plan (QHP) issuers to devote resources to respond to the COVID–19 PHE, revising 45 CFR 156.280(e)(2)(ii) to delay implementation of the separate billing policy for 60 days from the effective date for those offering coverage of non-Hyde abortion services for the portion of their premium. Under the Program Integrity rule, issuers of individual market QHPs are required to begin separately billing policy holders for the portion of the policy holder's premium attributable to non-Hyde abortion services on or before the QHP issuer's first billing cycle following June 27, 2020. The date has been changed to the QHP issuer's first billing cycle following August 26, 2020.
129	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Updates to the Quality Payment Program: Merit-based Incentive Payment System (MIPS) Third Party Intermediary Approval Criteria.	R. Delaying the implementation by 1 year that beginning with the 2022 performance period, QCDRs are required to collect data on a QCDR measure, appropriate to the measure type, prior to submitting the QCDR measure for CMS consideration during the self-nomination period so that they can complete QCDR measure testing and collect data.
130	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Application of Certain National Coverage Determination and Local Coverage Determination Requirements: CGMs.	S. Continuous Glucose Monitors: CMS will not enforce certain clinical criteria in LCDs that limit access to therapeutic continuous glucose monitors for beneficiaries with diabetes.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
131	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Reporting Requirement for Facilities to Report Nursing Home Residents and Staff Infections, Potential Infections, and Deaths.	Y. Revising the requirements to establish explicit reporting requirements for confirmed or suspected cases. Specifically, we are revising our requirements by adding a new provision at § 483.80(g)(1), to require facilities to electronically report information about COVID–19 in a standardized format specified by the Secretary. The report includes, but is not limited to, information on: Suspected and confirmed COVID–19 infections among residents and staff, including residents previously treated for COVID–19; total deaths and COVID–19 deaths among residents and staff; personal protective equipment and hand hygiene supplies in the facility; ventilator capacity and supplies available in the facility; resident beds and census; access to COVID–19 testing while the resident is in the facility; staffing shortages; and other information specified by the Secretary. At § 483.80(g)(3), we are adding a new provision to require facilities to inform residents, their representatives, and families of those residing in facilities of confirmed or suspected COVID–19 cases in the facility among residents and staff. This reporting requirement supports the overall health and safety of residents by ensuring they are informed participants in the care that they receive as well as providing assurances of the mitigating steps the facility is taking to prevent and control the spread of COVID–19. Facilities must inform residents, their representatives, and families by 5 p.m. the next calendar day following the occurrence of either: A single confirmed infection of COVID–19; or three or more residents or staff with new-onset of respiratory symptoms that occur within 72 hours of each other. Also, cumulative updates to residents, their representatives, and families must be provided at least weekly by 5 p.m. the next calendar day following the subsequent occurrence of either: Each time a confirmed infection of COVID–19 is identified; or whenever three or more residents or staff with new onset of respiratory symptoms occur within 72 hours of each other.
132	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Delayed Adoption of the Transfer of Health (TOH) Information Measures and Standard Patient Assessment Data Elements (SPADEs).	T. We are delaying the compliance date by which IRFs, LTCH, and HHAs must collect and report data on two Transfer of Health (TOH) Information quality measures and certain Standardized Patient Assessment Data Elements (SPADEs) adopted for the IRF QRP, LTCH QRP, and HH QRP. Specifically, we will require IRFs to use IRF–PAI V4.0 and LTCHs to use LTCH CARE Data Set V5.0 to begin collecting data on the two TOH Information Measures beginning with discharges on October 1st of the year that is at least 1 full fiscal year after the end of the COVID–19 PHE. For example, if the COVID–19 PHE ends on September 20, 2020, IRFs and LTCHs will be required to begin collecting data on these measures beginning with patients discharged on October 1, 2021. We will also require IRFs and LTCHs to begin collecting data on the SPADEs for admissions and discharges (except for the hearing, vision, race, and ethnicity SPADEs, which would be collected for admissions only) on October 1st of the year that is at least 1 full fiscal year after the end of the COVID–19 PHE. HHAs will be required to use OASIS–E to begin collecting data on the two TOH Information Measures beginning with discharges and transfers on January 1st of the year that is at least 1 full calendar year after the end of the COVID–19 PHE. For example, if the COVID–19 PHE ends on September 20, 2020, HHAs will be required to begin collecting data on those measures beginning with patients discharged or transferred on January 1, 2022.
133	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Care Planning for Medicare Home Health Services.	J. NPs, CNSs, and PAs would be able to practice to the top of their state licensure to certify eligibility for home health services, as well as establish and periodically review the home health plan of care. We are also amending the regulations at parts 409, 424, and 484 to define a NP, a CNS, and a PA (as such qualifications are defined at §§ 410.74 through 410.76) as an ''allowed practitioner''. This means that in addition to a physician, as defined at section 1861(r) of the Act, an ''allowed practitioner'' may certify, establish and periodically review the plan of care, as well as supervise the provision of items and services for beneficiaries under the Medicare home health benefit. Additionally, we are amending the regulations to reflect that we would expect the allowed practitioner to also perform the face-to-face encounter for the patient for whom they are certifying eligibility; however, if a face-to-face encounter is performed by an allowed NPP, as set out at 42 CFR 424.22(a)(1)(v)(A), in an acute or post-acute facility, from which the patient was directly admitted to home health, the certifying practitioner may be different from the provider performing the face-to-face encounter. These regulation changes will become permanent and are not time limited to the period of the PHE for COVID–19.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
134	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Inpatient Rehabilitation—Intensity of Therapy Requirement (''3-Hour Rule'') and Related IRF Coverage Requirements.	K. In the March 31st COVID–19 IFC (85 FR 19252, 19287), we provided a clarification regarding § 412.622(a)(3)(ii) (commonly referred to as the ''3-hour rule''). On March 27, 2020, the CARES Act was enacted and further addressed § 412.622(a)(3)(ii). Specifically, section 3711(a) of the CARES Act requires the Secretary to waive § 412.622(a)(3)(ii) during the emergency period described in section 1135(g)(1)(B) of the Act. This waiver was issued on April 15 2020, and is available at *https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf*. We note that the clarification provided in the March 31st COVID–19 IFC does not address section 3711(a) of the CARES Act as it was developed prior to the enactment of the CARES Act. Because § 412.622(a)(3)(ii) is more directly and comprehensively addressed by section 3711(a) of the CARES Act, the clarification provided in the March 31st COVID–19 IFC is moot and hereby rescinded.
135	HHS	CMS	Interim Final Rule	RIN 0938–AU31	IRF Coverage Criteria—Surge Capacity.	C. We are amending § 412.622(a)(3)(i), (ii), (iii), and (iv) to state that these IRF coverage criteria continue to be required, except for care furnished to patients in a freestanding IRF hospital solely to relieve acute care hospital capacity in a state (or region, as applicable) that is experiencing a surge during the PHE, as defined in § 400.200. Similarly, in § 412.622(a)(4), we are amending this paragraph to state that the IRF documentation requirements must be present in the IRF medical record, except for care furnished to patients in a freestanding IRF hospital solely to relieve acute care hospital capacity in a state (or region, as applicable) that is experiencing a surge during the PHE, as defined in § 400.200. In § 412.622(a)(5), we are amending this paragraph to state that an interdisciplinary team approach to care is required, except for care furnished to patients in a freestanding IRF hospital solely to relieve acute care hospital capacity in a state (or region, as applicable) that is experiencing a surge during the PHE, as defined in § 400.200.
136	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Laboratory Tests: Payment for COVID–19 Specimen Collection to Physicians, Non-Physician Practitioners and Hospitals.	BB. We are providing additional payment for assessment and COVID–19 specimen collection to support testing by HOPDs, and physicians and other practitioners, to recognize the significant resources involved in safely collecting specimens from many beneficiaries during a pandemic. We are also allowing physicians and practitioners to bill for services provided by clinical staff to assess symptoms and take specimens for COVID–19 laboratory testing for all patients, not just established patients. We are creating and updating payment codes to account for these changes.
137	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Indirect Medical Education	Indirect Medical Education. Beds temporarily added during the COVID–19 PHE do not reduce a teaching hospital's Indirect Medical Education payments.
138	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Medical Education: Time Spent by Residents at Another Hospital during the COVID–19 PHE.	Direct Graduate Medical Education and Indirect Medical Education. During the COVID–19 PHE, hospitals may claim time spent by residents training at another hospital so that a hospital which sends residents to another hospital can claim those FTE residents on its Medicare cost report while they are training at another hospital in its FTE count, if certain conditions are met. Also the presence of residents in the receiving hospital would not trigger per-resident amounts.
139	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Medicare Shared Savings Programs.	L. We are modifying Shared Savings Program policies to: (1) Allow ACOs whose current agreement periods expire on December 31, 2020, the option to extend their existing agreement period by 1-year, and allow ACOs in the BASIC track's glide path the option to elect to maintain their current level of participation for PY 2021; (2) clarify the applicability of the program's extreme and uncontrollable circumstances policy to mitigate shared losses for the period of the COVID–19 PHE; (3) adjust program calculations to mitigate the impact of COVID–19 on ACOs; and (4) expand the definition of primary care services for purposes of determining beneficiary assignment to include telehealth codes for virtual check-ins, e-visits, and telephonic communication. We are revising our policies under the Shared Savings Program to exclude from Shared Savings Program calculations all Parts A and B FFS payment amounts for an episode of care for treatment of COVID–19, triggered by an inpatient service, and as specified on Parts A and B claims with dates of service during the episode. We are relying on our authority under section 1899(d)(1)(B)(ii) of the Act to adjust benchmark expenditures for other factors in order to remove COVID–19-related expenditures from the determination of benchmark expenditures. As discussed elsewhere in this section, we are also exercising our authority under section 1899(i)(3) of the Act to apply this adjustment to certain other program calculations, including the determination of performance year expenditures.
140	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Opioid Treatment Programs (OTP)—Furnishing Periodic Assessments via Communication Technology.	D. Allow telehealth in place of required visits for opioid treatment programs (OTP).

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
141	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Furnishing Hospital Outpatient Services Remotely.	F. Hospital and CMHC staff can furnish certain outpatient therapy, counseling, and educational services (including PHP services) incident to a physician's service during the COVID–19 PHE to a beneficiary in their home or other temporary expansion location using telecommunications technology. In these circumstances, the hospital can furnish services to a beneficiary in a temporary expansion location (including the beneficiary's home) if that beneficiary is registered as an outpatient; and the CMHC can furnish services in an expanded CMHC (including the beneficiary's home) to a beneficiary who is registered as an outpatient. We also clarified that hospitals can furnish clinical staff services (for example, drug administration) in the patient's home, which is considered provider-based to the hospital during the COVID–19 PHE, and to bill and be paid for these services when the patient is registered as a hospital outpatient. Further, we clarified that when a patient is receiving a professional service via telehealth in a location that is considered a hospital PBD, and the patient is a registered outpatient of the hospital, the hospital in which the patient is registered may bill the originating site facility fee for the service. Finally, we clarified the applicability of section 603 of the BBA 2015 to hospitals furnishing care in the beneficiaries' homes (or other temporary expansion locations), and whether those locations are considered relocated, partially relocated, or new PBDs.
142	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Treatment of New and Certain Relocating Provider-Based Departments.	E. We are adopting a temporary extraordinary circumstances relocation exception policy for excepted off-campus PBDs that relocate off-campus during the COVID–19 PHE. We are extending that temporary policy to on-campus PBDs that relocate off-campus during the COVID–19 PHE, and permitting the relocating PBDs to continue to be paid under the OPPS. Finally, we are streamlining the process for relocating PBDs to obtain the temporary extraordinary circumstances policy exception.
143	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Payment for Remote Physiologic Monitoring (RPM) Services.	CC. We are establishing a policy on an interim final basis for the duration of the COVID–19 PHE to allow RPM codes to be billed for a minimum of 2 days of data collection over a 30-day period, rather than the required 16 days of data collection over a 30-day period as provided in the CPT code descriptors.
144	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Rural Health Clinics (RHC)	H. Due to the COVID–19 pandemic, health care providers such as hospitals have been or are planning to increase inpatient bed capacity to address the surge in need for inpatient care. Given this, we do not believe that RHCs that are currently exempt from the national per-visit payment limit should now be subject to the per-visit payment limit due to the COVID–19 PHE, and we do not want to discourage them from increasing bed capacity if needed. Allowing for these provider-based RHCs to continue to receive the payment amounts they would otherwise receive in the absence of the PHE will help maintain their ability to provide necessary health care services to underserved communities. We are implementing, on an interim basis, a change to the period of time used to determine the number of beds in a hospital at § 412.105(b) for purposes of determining which provider-based RHCs are subject to the payment limit. For the duration of the PHE, we will use the number of beds from the cost reporting period prior to the start of the PHE as the official hospital bed count for application of this policy. As such, RHCs with provider-based status that were exempt from the national per-visit payment limit in the period prior to the effective date of the PHE (January 27, 2020) would continue to be exempt for the duration of the PHE for the COVID–19 pandemic, as defined at § 400.200.
145	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Scope of Practice: Supervision of Diagnostic Tests by Certain Non-Physician Practitioners.	Allow nurse practitioners (NPs), clinical nurse specialists (CNSs), physician assistants (PAs) and certified nurse-midwives (CNMs) to supervise the performance of diagnostic tests in addition to physicians.
146	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Scope of Practice: Pharmacists Working Incident to a Physicians' Service.	B. 4. We are clarifying explicitly that pharmacists fall within the regulatory definition of auxiliary personnel under our regulations at § 410.26. As such, pharmacists may provide services incident to the services, and under the appropriate level of supervision, of the billing physician or NPP, if payment for the services is not made under the Medicare Part D benefit. This includes providing the services incident to the services of the billing physician or NPP and in accordance with the pharmacist's state scope of practice and applicable state law.
147	HHS	CMS	Interim Final Rule	RIN 0938–AU31	COVID–19 Serology Testing	Section V of the rule. Antibody Testing: Medicare will cover certain serology (antibody) tests, which may aid in determining whether a person may have developed an immune response and may not be at immediate risk for COVID–19 reinfection. FDA approved or cleared COVID–19 serology testing as a Medicare covered diagnostic test for patients that have reason to believe they have been exposed to COVID–19. The serology test for COVID–19 is a covered service under Medicare Parts A and B and may be considered a hospital service (section 1861(b) of the Act) or diagnostic laboratory test (section 1861(s)(3) of the Act).

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
148	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Additional Flexibility under the Teaching Physician Regulations.	M. Allow the teaching physician to meet the requirement to review the service with the resident, during or immediately after the visit, through virtual or remote means via interactive audio/video real-time communications technology. Given the circumstances of the COVID–19 PHE, the teaching physician may be under quarantine or otherwise not physically available to review the service with the resident. We are reinstating the former paragraph (b) and adding a new paragraph (c) to allow that, on an interim basis for the duration of the PHE for the COVID–19 pandemic, the teaching physician may not only direct the care furnished by residents, but also review the services provided with the resident, during or immediately after the visit, remotely through virtual means via audio/video real time communications technology.
149	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Updating the Medicare Telehealth List on a Sub-regulatory Basis.	AA. Due to the urgency of minimizing unnecessary contact between beneficiaries and practitioners, we believe that, for purposes of the PHE for the COVID–19 pandemic, we should modify the process we established for adding or deleting services from the Medicare telehealth services list under our regulation at § 410.78(f) to allow for an expedited process during the PHE that does not involve notice and comment rulemaking. Therefore, for the duration of the PHE for the COVID–19 pandemic, we are revising our regulation at § 410.78(f) to specify that, during a PHE, as defined in § 400.200 of this chapter, we will use a subregulatory process to modify the services included on the Medicare telehealth list. While we are not codifying a specific process to be in effect during the PHE for the COVID–19 pandemic, we note that we could add services to the Medicare telehealth list on a subregulatory basis by posting new services to the web listing of telehealth services when the agency receives a request to add (or identifies through internal review) a service that can be furnished in full, as described by the relevant code, by a distant site practitioner to a beneficiary in a manner that is similar to the in-person service. We also note that any additional services added using the revised process would remain on the list only during the PHE for the COVID–19 pandemic.
150	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Therapy—Therapy Assistants Furnishing Maintenance Therapy (PFS).	B. 2. To increase availability of needed health care services during the COVID–19 PHE, we believe it is appropriate to synchronize our Part B payment policies as suggested by the stakeholders, and to permit the PT or OT who established the maintenance program to delegate the performance of maintenance therapy services to a PTA or OTA when clinically appropriate. We believe that, by allowing PTAs and OTAs to perform maintenance therapy services, PTs and OTs will be freed up to furnish other services, including such services as non-medication pain management therapies that may reduce reliance on opioids or other medications, as well as those services related to the COVID–19 PHE that require a therapist's assessment and evaluation skills, including communication technology-based services (CTBS) that were made available for PTs, OTs and speech-language pathologists (SLPs) during the PHE in the March 31st COVID–19 IFC (85 FR 19245 and 19265 through 19266).

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
151	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Modification to Medicare Provider Enrollment Provision Concerning Certification of Home Health Services.	W. Several of our previous provider enrollment rulemaking efforts have focused on strengthening existing enrollment procedures and eliminating existing vulnerabilities; in other words, the objectives have been to enhance our ability to: (1) Conduct strict screening activities; (2) take prompt action against problematic providers and suppliers; and (3) implement important safeguards against improper Medicare payments. Yet we believe that the current COVID–19 PHE requires us to undertake provider enrollment rulemaking for a different reason; specifically, the need to help providers and suppliers concentrate their resources on treating those beneficiaries affected by COVID–19. Therefore, as discussed in section III. of this IFC, ''Waiver of Proposed Rulemaking,'' we believe the urgency of this COVID–19 PHE constitutes good cause to waive the normal notice-and-comment process under the Administrative Procedure Act and statute. Accordingly, this IFC contains an important revision to part 424, subpart P that will give providers and suppliers certain flexibilities in their activities during the existing COVID–19 PHE. Section 3708 of the CARES Act made several important amendments to sections 1814(a)(2) and 1835(a)(2) of the Act (as well as other related sections of the statute). One amendment was that NPs, CNSs, and PAs (as those terms are defined in section 1861(aa)(5) of the Act) working in accordance with state law may also certify the need for home health services. Section 3708(f) of the CARES Act authorizes us to promulgate an interim final rule, if necessary, to implement the provisions in section 3708 by the statutory deadline. Further, given the need for flexibility in the provision of health care services in the COVID–19 PHE, we believe it is appropriate to implement these statutory changes in this IFC, rather than through notice-and-comment rulemaking. Consequently, we are revising § 424.507(b)(1) to include ordering/certifying physicians, PAs, NPs, and CNSs as individuals who can certify the need for home health services. We note that, for reasons similar to those related to our other modifications to Medicare rules concerning the certification and provision of home health services, this change to § 424.507 is final and applicable to services provided on or after March 1, 2020.We will review and respond to any comments thereon in the CY 2021 HH PPS final rule or in another future rule.
152	HHS	CMS	Waiver		Verbal Orders	Waiving the requirements of 42 CFR § 482.23, § 482.24 and § 485.635(d)(3) to provide additional flexibility related to verbal orders where read-back verification is required, but authentication may occur later than 48 hours. This will allow more efficient treatment of patients in surge situations.
153	HHS	CMS	Waiver		Medical Records	Waiving requirements under 42 CFR § 482.24(a) through (c), which cover the subjects of the organization and staffing of the medical records department, requirements for the form and content of the medical record, and record retention requirements, and these flexibilities may be implemented so long as they are not inconsistent with a state's emergency preparedness or pandemic plan. CMS is waiving § 482.24(c)(4)(viii) related to medical records to allow flexibility in completion of medical records within 30 days following discharge from a hospital. This flexibility will allow clinicians to focus on the patient care at the bedside during the pandemic. CMS is waiving § 482.24(c)(4)(viii) related to medical records to allow flexibility in completion of medical records within 30 days following discharge from a hospital. This flexibility will allow clinicians to focus on the patient care at the bedside during the pandemic.
154	HHS	CMS	Waiver		Nursing Care Plan	Waiving the requirements at 42 CFR § 482.23(b)(4), which requires the nursing staff to develop and keep current a nursing care plan for each patient, and § 482.23(b)(7), which requires the hospital to have policies and procedures in place establishing which outpatient departments are not required to have a registered nurse present. These waivers allow nurses increased time to meet the clinical care needs of each patient and allow for the provision of nursing care to an increased number of patients. In addition, we expect that hospitals will need relief for the provision of inpatient services and as a result, the requirement to establish nursing-related policies and procedures for outpatient departments is likely of lower priority. These flexibilities apply to both hospitals and CAHs § 485.635(d)(4), and may be implemented so long as they are not inconsistent with a state's emergency preparedness or pandemic plan.
155	HHS	CMS	Waiver		Upkeep of current therapeutic diet manual.	Food and Dietetic Services—Manual. CMS is waiving the requirement at paragraph 42 CFR § 482.28(b)(3), which requires providers to have a current therapeutic diet manual approved by the dietitian and medical staff readily available to all medical, nursing, and food service personnel. Such manuals would not need to be maintained at surge capacity sites. These flexibilities may be implemented so long as they are not inconsistent with a state's emergency preparedness or pandemic plan. Removing these administrative requirements will allow hospitals to focus more resources on providing direct patient care.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
156	HHS	CMS	Waiver		Written policies and procedures for appraisal of emergencies at off campus hospital departments.	Waiving 42 CFR § 482.12(f)(3), emergency services, with respect to surge facilities only, such that written policies and procedures for staff to use when evaluating emergencies are not required for surge facilities. This removes the burden on facilities to develop and establish additional policies and procedures at their surge facilities or surge sites related to the assessment, initial treatment, and referral of patients. These flexibilities may be implemented so long as they are not inconsistent with a state's emergency preparedness or pandemic plan.
157	HHS	CMS	Waiver		Emergency Preparedness Policies and Procedures.	Waiving 42 CFR § 482.15(b) and § 485.625(b), which requires the hospital and CAH to develop and implement emergency preparedness policies and procedures, and § 482.15(c)(1)–(5) and § 485.625(c)(1)–(5) which requires that the emergency preparedness communication plans for hospitals and CAHs to contain specified elements with respect to the surge site. The requirement under the communication plan requires hospitals and CAHs to have specific contact information for staff, entities providing services under arrangement, patients' physicians, other hospitals and CAHs, and volunteers. This would not be an expectation for the surge site. This waiver applies to both hospitals and CAHs, and removes the burden on facilities to establish these policies and procedures for their surge facilities or surge sites.
158	HHS	CMS	Waiver		Emergency Preparedness	CMS is waiving the requirements at 42 CFR § 494.62(d)(1)(iv) which requires ESRD facilities to demonstrate as part of their Emergency Preparedness Training and Testing Program, that staff can demonstrate that, at a minimum, its patient care staff maintains current CPR certification. CMS is waiving the requirement for maintenance of CPR certification during the COVID–19 emergency due to the limited availability of CPR classes.
159	HHS	CMS	Waiver		Reporting Requirements	Waiving the requirements at 42 CFR § 482.13(g)(1)(i)–(ii), which require that hospitals report patients in an intensive care unit whose death is caused by their disease, but who required soft wrist restraints to prevent pulling tubes/IVs, no later than the close of business on the next business day. Due to current hospital surge, CMS is waiving this requirement to ensure that hospitals are focusing on increased patient care demands and increased patient census, provided any death where the restraint may have contributed is still reported within standard time limits (*i.e.,* close of business on the next business day following knowledge of the patient's death).
160	HHS	CMS	Waiver		Extension for Inpatient Prospective Payment System (IPPS) Wage Index Occupational Mix Survey Submission.	CMS collects data every 3 years on the occupational mix of employees for each short-term, acute care hospital participating in the Medicare program. Completed 2019 Occupational Mix Surveys, Hospital Reporting Form CMS–10079, for the Wage Index Beginning FY 2022, are due to the Medicare Administrative Contractors (MACs) on the Excel hospital reporting form available at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/Wage-Index-Files.html* by July 1, 2020. CMS is currently granting an extension for hospitals nationwide affected by COVID–19 until August 3, 2020. If hospitals encounter difficulty meeting this extended deadline date, hospitals should communicate their concerns to CMS via their MAC, and CMS may consider an additional extension if CMS determines it is warranted.
161	HHS	CMS	Waiver		HHA Reporting	CMS is providing relief to HHAs on the timeframes related to OASIS Transmission through the following actions below: • Extending the 5-day completion requirement for the comprehensive assessment to 30 days. • Waiving the 30-day OASIS submission requirement. Delayed submission is permitted during the PHE.
162	HHS	CMS	Waiver		SNF Reporting Minimum Data Set.	Waiving 42 CFR 483.20 to provide relief to SNFs on the timeframe requirements for Minimum Data Set assessments and transmission.
163	HHS	CMS	Waiver		SNF Staffing Data Submission	Waiving 42 CFR 483.70(q) to provide relief to long-term care facilities on the requirements for submitting staffing data through the Payroll-Based Journal system.
164	HHS	CMS	Waiver		Physical Environment.	CMS is waiving certain requirements under the Medicare conditions of participation at 42 CFR § 482.41 and § 485.623 to allow for flexibilities during hospital, psychiatric hospital, and CAH surges. CMS will permit non-hospital buildings/space to be used for patient care and quarantine sites, provided that the location is approved by the state (ensuring that safety and comfort for patients and staff are sufficiently addressed) and so long as it is not inconsistent with a state's emergency preparedness or pandemic plan.
165	HHS	CMS	Waiver		CAH Status and Location	Waiving the requirement at 42 CFR § 485.610(b) that the CAH be located in a rural area or an area being treated as being rural, allowing the CAH flexibility in the establishment of surge site locations. CMS is also waiving the requirement at § 485.610(e) regarding the CAH's off-campus and co-location requirements, allowing the CAH flexibility in establishing temporary off-site locations. In an effort to facilitate the establishment of CAHs without walls, these waivers will suspend restrictions on CAHs regarding their rural location and their location relative to other hospitals and CAHs. These flexibilities may be implemented so long as they are not inconsistent with a state's emergency preparedness or pandemic plan.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
166	HHS	CMS	Waiver		Hospitals Classified as Sole Community Hospitals (SCH).	Waiving certain eligibility requirements at 42 CFR § 412.92(a) for hospitals classified as SCHs prior to the PHE. Specifically, CMS is waiving the distance requirements at paragraphs (a), (a)(1), (a)(2), and (a)(3) of 42 CFR § 412.92, and is also waiving the ''market share'' and bed requirements (as applicable) at 42 CFR § 412.92(a)(1)(i) and (ii). CMS is waiving these requirements for the duration of the PHE to allow these hospitals to meet the needs of the communities they serve during the PHE, such as to provide for increased capacity and promote appropriate cohorting of COVID–19 patients. MACs will resume their standard practice for evaluation of all eligibility requirements after the conclusion of the PHE period.
167	HHS	CMS	Waiver		RHC and FQHC Temporary Expansion Locations.	Waiving the requirements at 42 CFR § 491.5(a)(3)(iii) which require RHCs and FQHCs be independently considered for Medicare approval if services are furnished in more than one permanent location. Due to the current PHE, CMS is temporarily waiving this requirement removing the location restrictions to allow flexibility for existing RHCs/FQHCs to expand services locations to meet the needs of Medicare beneficiaries. This flexibility includes areas which may be outside of the location requirements 42 CFR § 491.5(a)(1) and (2) but will end when the HHS Secretary determines there is no longer a PHE due to COVID–19.
168	HHS	CMS	Waiver		Care for Excluded Inpatient Psychiatric and Inpatient Rehabilitation Unit Patients in the Acute Care Unit of a Hospital.	CMS is allowing acute care hospitals with excluded distinct part inpatient psychiatric units and inpatient rehabilitation units to relocate inpatients from the excluded distinct part psychiatric unit or inpatient rehabilitation unit to an acute care bed and unit as a result of a disaster or emergency. The hospital should continue to bill for inpatient psychiatric services or inpatient rehabilitation services under the Inpatient Psychiatric Facility Prospective Payment System or Inpatient Rehabilitation Facility Prospective Payment System for these patients and annotate the medical record to indicate the patient is a psychiatric inpatient being cared for in an acute care bed because of capacity or other exigent circumstances related to the COVID–19 emergency. This waiver may be utilized where the hospital's acute care beds are appropriate for psychiatric patients or rehabilitation patients and the staff and environment are conducive to safe care. For psychiatric patients, this includes assessment of the acute care bed and unit location to ensure those patients at risk of harm to self and others are safely cared for.
169	HHS	CMS	Waiver		Specific Life Safety Code (LSC) Waivers for Multiple Providers: Temporary Construction.	CMS is waiving requirements that would otherwise not permit temporary walls and barriers between patients. Refer to: 2012 LSC, sections 18/19.3.3.2.
170	HHS	CMS	Waiver		Community Mental Health Clinics (CMHC) Provision of Service.	42 CFR 485.918(b)(1)(iii). We are waiving the specific requirement at § 485.918(b)(1)(iii) that prohibits CMHCs from providing partial hospitalization services and other CMHC services in an individual's home so that clients can safely shelter in place during the PHE while continuing to receive needed care and services from the CMHC. This waiver is a companion to recent regulatory changes that clarify how CMHCs should bill for services provided in an individual's home, and how such services should be documented in the medical record. While this waiver will now allow CMHCs to furnish services in client homes, including through the use of using telecommunication technology, CMHCs continue to be, among other things, required to comply with the nonwaived provisions of 42 CFR Part 485, Subpart J, requiring that CMHCs: (1) Assess client needs, including physician certification of the need for partial hospitalization services, if needed; (2) implement and update each client's individualized active treatment plan that sets forth the type, amount, duration, and frequency of the services; and (3) promote client rights, including a client's right to file a complaint.
171	HHS	CMS	Waiver		RAPs	CMS is allowing Medicare Administrative Contractors (MACs) to extend the auto-cancellation date of Requests for Anticipated Payment (RAPs) during emergencies.
172	HHS	CMS	Waiver		Utilization Review (UR)	CMS is waiving certain requirements under 42 CFR § 482.1(a)(3) and 42 CFR § 482.30 which address the statutory basis for hospitals and includes the requirement that hospitals participating in Medicare and Medicaid must have a utilization review plan that meets specified requirements.
173	HHS	CMS	Waiver		Training Program and Periodic Audits.	CMS is waiving the requirement at 42 CFR § 494.40(a) related to the condition on Water & Dialysate Quality, specifically that on-time periodic audits for operators of the water/dialysate equipment are waived to allow for flexibilities.
174	HHS	CMS	Waiver		Appeals Extensions	CMS is allowing Medicare Administrative Contractors (MACs) and Qualified Independent Contractors (QICs) in the FFS program pursuant to 42 CFR § 405.942 and 42 CFR § 405.962 (including for MA and Part D plans), as well as the MA and Part D Independent Review Entities (IREs) under 42 CFR § 422.562, 42 CFR § 423.562, 42 CFR § 422.582 and 42 CFR § 423.582, to allow extensions to file an appeal. CMS is allowing MACs and QICs in the FFS program under 42 CFR § 405.950 and 42 CFR § 405.966 and the MA and Part D IREs to waive requests for timeliness requirements for additional information to adjudicate appeals.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
						• CMS is allowing MACs and QICs in the FFS program under 42 CFR § 405.910 and MA and Part D plans, as well as the MA and Part D IREs, to process an appeal even with incomplete Appointment of Representation forms as outlined under 42 CFR § 422.561 and 42 CFR § 423.560. However, any communications will only be sent to the beneficiary. • CMS is allowing MACs and QICs in the FFS program under 42 CFR § 405.950 and 42 CFR § 405.966 (also including MA and Part D plans), as well as the MA and Part D IREs, to process requests for appeals that do not meet the required elements using information that is available as outlined within 42 CFR § 422.561 and 42 CFR § 423.560. • CMS is allowing MACs and QICs in the FFS program under 42 CFR § 405.950 and 42 CFR § 405.966 (also including MA and Part D plans), as well as the MA and Part D IREs under 42 CFR § 422.562 and 42 CFR § 423.562 to utilize all flexibilities available in the appeal process as if good cause requirements are satisfied.
175	HHS	CMS	Waiver		Risk Adjusted Factor (RAF) Extensions.	CMS is allowing MACs and QICs in the FFS program 42 CFR 405.950 and 42 CFR 405.966 and the Part C and Part D IREs to waive requirements for timeliness for requests for additional information to adjudicate appeals; MA plans may extend the timeframe to adjudicate organization determinations and reconsiderations for medical items and services (but not Part B drugs) by up to 14 calendar days if: The enrollee requests the extension; the extension is justified and in the enrollee's interest due to the need for additional medical evidence from a noncontract provider that may change an MA organization's decision to deny an item or service; or, the extension is justified due to extraordinary, exigent, or other non-routine circumstances and is in the enrollee's interest 42 CFR § 422.568(b)(1)(i), § 422.572(b)(1) and § 422.590(f)(1).
176	HHS	CMS	Waiver		SNF 3-Day Prior Hospitalization and 60-day ''wellness period''.	Using the authority under Section 1812(f) of the Act, CMS is waiving the requirement for a 3-day prior hospitalization for coverage of a SNF stay, which provides temporary emergency coverage of SNF services without a qualifying hospital stay, for those people who experience dislocations, or are otherwise affected by COVID–19. In addition, for certain beneficiaries who recently exhausted their SNF benefits, it authorizes a one-time renewal of SNF coverage without first having to start a new benefit period (this waiver will apply only for those beneficiaries who have been delayed or prevented by the emergency itself from commencing or completing the process of ending their current benefit period and renewing their SNF benefits that would have occurred under normal circumstances).
177	HHS	CMS	Waiver		Supporting Care for Patients in Long-Term Care Acute Hospitals (LTCHs).	CMS has determined it is appropriate to issue a blanket waiver to long-term care hospitals (LTCHs) to exclude patient stays where an LTCH admits or discharges patients in order to meet the demands of the emergency from the 25-day average length of stay requirement, which allows these facilities to be paid as LTCHs. In addition, during the applicable waiver time period, we would also apply this waiver to facilities not yet classified as LTCHs, but seeking classification as an LTCH.
178	HHS	CMS	Waiver		CAH Bed Count and Length of Stay.	Waiving the requirements that CAHs limit the number of beds to 25, and that the length of stay be limited to 96 hours under the Medicare conditions of participation for number of beds and length of stay at 42 CFR § 485.620.
179	HHS	CMS	Waiver		Hospitals Classified as Medicare-Dependent, Small Rural Hospitals (MDH).	For hospitals classified as MDHs prior to the PHE, CMS is waiving the eligibility requirement at 42 CFR § 412.108(a)(1)(ii) that the hospital has 100 or fewer beds during the cost reporting period, and the eligibility requirement at 42 CFR § 412.108(a)(1)(iv)(C) that at least 60 percent of the hospital's inpatient days or discharges were attributable to individuals entitled to Medicare Part A benefits during the specified hospital cost reporting periods. CMS is waiving these requirements for the duration of the PHE to allow these hospitals to meet the needs of the communities they serve during the PHE, such as to provide for increased capacity and promote appropriate cohorting of COVID–19 patients. MACs will resume their standard practice for evaluation of all eligibility requirements after the conclusion of the PHE period.
180	HHS	CMS	Waiver		Hospice Aide Competency testing Allow Use of Pseudo Patients.	Temporarily modifying the requirement in § 418.76(c)(1) that a hospice aide must be evaluated by observing an aide's performance of certain tasks with a patient. This modification allows hospices to utilize pseudo patients such as a person trained to participate in a role-play situation or a computer-based mannequin device, instead of actual patients, in the competency testing of hospice aides for those tasks that must be observed being performed on a patient. This increases the speed of performing competency testing and allows new aides to begin serving patients more quickly without affecting patient health and safety during the public health emergency (PHE).
181	HHS	CMS	Waiver		Onsite Visits for Hospice Aide Supervision.	Waiving the requirements at 42 CFR § 418.76(h), which require a nurse to conduct an onsite supervisory visit every two weeks. This would include waiving the requirements for a nurse or other professional to conduct an onsite visit every two weeks to evaluate if aides are providing care consistent with the care plan, as this may not be physically possible for a period of time.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
182	HHS	CMS	Waiver		Patient Self Determination Act Requirements (Advance Directives).	Waiving the requirements at sections 1902(a)(58) and 1902(w)(1)(A) of the Act (for Medicaid); 1852(i) of the Act (for Medicare Advantage); and 1866(f) of the Act and 42 CFR § 489.102 (for Medicare), which require hospitals and CAHs to provide information about their advance directive policies to patients. CMS is waiving this requirement to allow staff to more efficiently deliver care to a larger number of patients.
183	HHS	CMS	Waiver		Resident Roommates and Grouping.	Waiving the requirements in 42 CFR 483.10(e) (5), (6), and (7) solely for the purposes of grouping or cohorting residents with respiratory illness symptoms and/or residents with a confirmed diagnosis of COVID–19, and separating them from residents who are asymptomatic or tested negative for COVID–19. This action waives a facility's requirements, under 42 CFR 483.10, to provide for a resident to share a room with his or her roommate of choice in certain circumstances, to provide notice and rationale for changing a resident's room, and to provide for a resident's refusal a transfer to another room in the facility. This aligns with CDC guidance to preferably place residents in locations designed to care for COVID–19 residents, to prevent the transmission of COVID–19 to other residents.
184	HHS	CMS	Waiver		Defer Equipment Maintenance & Fire Safety Inspections.	Waiving the requirement at 42 CFR § 494.60(b) for on-time preventive maintenance of dialysis machines and ancillary dialysis equipment. Additionally, CMS is also waiving the requirements under § 494.60(d) which requires ESRD facilities to conduct on-time fire inspections. These waivers are intended to ensure that dialysis facilities are able to focus on the operations related to the Public Health Emergency.
185	HHS	CMS	Waiver		Ability to Delay Some Patient Assessments.	CMS is not waiving subsections (a) or (c) of 42 CFR § 494.80, but is waiving the following requirements at 42 CFR § 494.80(b) related to the frequency of assessments for patients admitted to the dialysis facility. CMS is waiving the "on time" requirements for the initial and follow up comprehensive assessments within the specified timeframes as noted below. This waiver applies to assessments conducted by members of the interdisciplinary team, including: A registered nurse, a physician treating the patient for ESRD, a social worker, and a dietitian. These waivers are intended to ensure that dialysis facilities are able to focus on the operations related to the Public Health Emergency. Specifically, CMS is waiving: • § 494.80(b)(1): An initial comprehensive assessment must be conducted on all new patients (that is, all admissions to a dialysis facility), within the latter of 30 calendar days or 13 outpatient hemodialysis sessions beginning with the first outpatient dialysis session. • § 494.80(b)(2): A follow up comprehensive reassessment must occur within 3 months after the completion of the initial assessment to provide information to adjust the patient's plan of care specified in § 494.90.
186	HHS	CMS	Waiver		SNF-Waiving Pre-Admission Screening and Annual Resident Review (PASARR).	Waiving 42 CFR 483.20(k), allowing nursing homes to admit new residents who have not received Level 1 or Level 2 Preadmission Screening. Level 1 assessments may be performed post-admission. On or before the 30th day of admission, new patients admitted to nursing homes with a mental illness (MI) or intellectual disability (ID) should be referred promptly by the nursing home to State PASARR program for Level 2 Resident Review.
187	HHS	CMS	Waiver		Physician Self-Referral Regulations.	Waivers of Sanctions under the Stark Law. CMS will permit certain referrals and the submission of related claims that would otherwise violate the Stark Law. These flexibilities include: (1) Hospitals and other health care providers can pay above or below fair market value for the personal services of a physician (or an immediate family member of a physician), and parties may pay below fair market value to rent equipment or purchase items or services. (2) Health care providers can support each other financially to ensure continuity of health care operations. (3) Hospitals can provide benefits to their medical staffs, such as multiple daily meals, laundry service to launder soiled personal clothing, or child care services while the physicians are at the hospital and engaging in activities that benefit the hospital and its patients. (4) Health care providers may offer certain items and services that are solely related to COVID–19 Purposes (as defined in the waivers), even when the provision of the items or services would exceed the annual non-monetary compensation cap; (5) Physician-owned hospitals can temporarily increase the number of their licensed beds, operating rooms, and procedure rooms, even though such expansion would otherwise be prohibited under the Stark Law; (6) Some of the restrictions when a group practice can furnish medically necessary designated health services (DHS) in a patient's home are loosened. (7) Group practices can furnish medically necessary MRIs, CT scans or clinical laboratory services from locations like mobile vans in parking lots that the group practice rents on a part-time basis.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
188	HHS	CMS	Waiver		Medicare Graduate Medical Education (GME) Affiliation Agreement.	Due to the COVID–19 Public Health Emergency (PHE), under the authority of section 1135(b)(5) of the Social Security Act (the Act), CMS is waiving the July 1 submission deadline under 42 CFR 413.79(f)(1) for new Medicare GME affiliation agreements and the June 30 deadline under the May 12, 1998 Health Care Financing Administration Final Rule (63 FR 26318, 26339, 26341) for amendments of existing Medicare GME affiliation agreements. That is, during the COVID–19 PHE, instead of requiring that new Medicare GME affiliation agreements be submitted to CMS and the MACs by July 1, 2020 (for the academic year starting July 1, 2020), and that amendments to Medicare GME affiliation agreements be submitted to CMS and the MACS by June 30, 2020 (for academic year ending June 30, 2020), CMS is allowing hospitals to submit new and/or amended Medicare GME affiliation agreements as applicable to CMS and the MACs by October 1, 2020. As under existing procedures, hospitals should email new and/or amended agreements to CMS at *Medicare_GME_Affiliation_Agreement@cms.hhs.gov,* and indicate in the subject line whether the affiliation agreement is a new one or an amended one.
189	HHS	CMS	Waiver		Allow use of audio-only equipment to furnish audio-only telephone E/M, counseling, and educational services.	Pursuant to authority granted under the CARES Act, CMS is waiving the requirements of section 1834(m)(1) of the ACT and 42 CFR § 410.78(a)(3) for use of interactive telecommunications systems to furnish telehealth services, to the extent they require use of video technology, for certain services. This waiver allows the use of audio-only equipment to furnish services described by the codes for audio-only telephone evaluation and management services, and behavioral health counseling and educational services (see designated codes *https://www.cms.gov/Medicare/MedicareGeneral-Information/Telehealth/Telehealth-Codes*). Unless provided otherwise, other services included on the Medicare telehealth services list must be furnished using, at a minimum, audio and video equipment permitting two-way, real-time interactive communication between the patient and distant site physician or practitioner.
190	HHS	CMS	Waiver		Hospital Telemedicine	Waiving the provisions related to telemedicine at 42 CFR § 482.12(a)(8)–(9) for hospitals and § 485.616(c) for CAHs, making it easier for telemedicine services to be furnished to the hospital's patients through an agreement with an off-site hospital.
191	HHS	CMS	Waiver		Hospital Care of Patients	Waiving requirements under 42 CFR § 482.12(c)(1)–(2) and § 482.12(c)(4), which requires that Medicare patients be under the care of a physician. This waiver may be implemented so long as it is not inconsistent with a state's emergency preparedness or pandemic plan. This allows hospitals to use other practitioners to the fullest extent possible.
192	HHS	CMS	Waiver		Responsibilities of Physicians in Critical Access Hospitals (CAHs).	42 CFR § 485.631(b)(2). CMS is waiving the requirement for CAHs that a doctor of medicine or osteopathy be physically present to provide medical direction, consultation, and supervision for the services provided in the CAH at § 485.631(b)(2). CMS is retaining the regulatory language in the second part of the requirement at § 485.631(b)(2) that a physician be available ''through direct radio or telephone communication, or electronic communication for consultation, assistance with medical emergencies, or patient referral.'' Retaining this longstanding CMS policy and related longstanding subregulatory guidance that further described communication between CAHs and physicians will assure an appropriate level of physician direction and supervision for the services provided by the CAH. This will allow the physician to perform responsibilities remotely, as appropriate. This also allows CAHs to use nurse practitioners and physician assistants to the fullest extent possible, while ensuring necessary consultation and support as needed.
193	HHS	CMS	Waiver		Anesthesia Services	Waiving requirements under 42 CFR § 482.52(a)(5), § 485.639(c)(2), and § 416.42 (b)(2) that a certified registered nurse anesthetist (CRNA) is under the supervision of a physician in paragraphs § 482.52(a)(5) and § 485.639(c)(2). CRNA supervision will be at the discretion of the hospital and state law. This waiver applies to hospitals, CAHs, and Ambulatory Surgical Centers (ASCs). These waivers will allow CRNAs to function to the fullest extent of their licensure, and may be implemented so long as they are not inconsistent with a state's emergency preparedness or pandemic plan.
194	HHS	CMS	Waiver		Physician Supervision of NPs in RHCs and FQHCs.	42 CFR 491.8(b)(1). We are modifying the requirement that physicians must provide medical direction for the clinic's or center's health care activities and consultation for, and medical supervision of, the health care staff, only with respect to medical supervision of nurse practitioners, and only to the extent permitted by state law. The physician, either in person or through telehealth and other remote communications, continues to be responsible for providing medical direction for the clinic or center's health care activities and consultation for the health care staff, and medical supervision of the remaining health care staff. This allows RHCs and FQHCs to use nurse practitioners to the fullest extent possible and allows physicians to direct their time to more critical tasks.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
195	HHS	CMS	Waiver		Staffing Requirements for RCHs and FQHCs.	Waiving the requirement in the second sentence of § 491.8(a)(6) that a nurse practitioner, physician assistant, or certified nurse-midwife be available to furnish patient care services at least 50 percent of the time the RHC operates. CMS is not waiving the first sentence of § 491.8(a)(6) that requires a physician, nurse practitioner, physician assistant, certified nurse-midwife, clinical social worker, or clinical psychologist to be available to furnish patient care services at all times the clinic or center operates. This will assist in addressing potential staffing shortages by increasing flexibility regarding staffing mixes during the PHE.
196	HHS	CMS	Waiver		CAH Staff Licensure	Deferring to staff licensure, certification, or registration to state law by waiving 42 CFR § 485.608(d) regarding the requirement that staff of the CAH be licensed, certified, or registered in accordance with applicable federal, state, and local laws and regulations. This waiver will provide maximum flexibility for CAHs to use all available clinicians. These flexibilities may be implemented so long as they are not inconsistent with a state's emergency preparedness or pandemic plan.
197	HHS	CMS	Waiver		CAH Personnel Qualifications	Waiving the minimum personnel qualifications for clinical nurse specialists at paragraph 42 CFR § 485.604(a)(2), nurse practitioners at paragraph § 485.604(b)(1)–(3), and physician assistants at paragraph § 485.604(c)(1)–(3). Removing these Federal personnel requirements will allow CAHs to employ individuals in these roles who meet state licensure requirements and provide maximum staffing flexibility. These flexibilities should be implemented so long as they are not inconsistent with a state's emergency preparedness or pandemic plan.
198	HHS	CMS	Waiver		Physician Delegation of Tasks in SNFs.	42 CFR 483.30(e)(4). Waiving the requirement in § 483.30(e)(4) that prevents a physician from delegating a task when the regulations specify that the physician must perform it personally. This waiver gives physicians the ability to delegate any tasks to a physician assistant, nurse practitioner, or clinical nurse specialist who meets the applicable definition in 42 CFR 491.2 or, in the case of a clinical nurse specialist, is licensed as such by the State and is acting within the scope of practice laws as defined by State law. We are temporarily modifying this regulation to specify that any task delegated under this waiver must continue to be under the supervision of the physician. This waiver does not include the provision of § 483.30(e)(4) that prohibits a physician from delegating a task when the delegation is prohibited under State law or by the facility's own policy.
199	HHS	CMS	Waiver		Allow Occupational Therapists (OTs), Physical Therapists (PTs), and Speech Language Pathologists (SLPs) to Perform Initial and Comprehensive Assessment for all Patients.	CMS is waiving the requirements in 42 CFR § 484.55(a)(2) and § 484.55(b)(3) that rehabilitation skilled professionals may only perform the initial and comprehensive assessment when only therapy services are ordered. This temporary blanket modification allows any rehabilitation professional (OT, PT, or SLP) to perform the initial and comprehensive assessment for all patients receiving therapy services as part of the plan of care, to the extent permitted under state law, regardless of whether or not the service establishes eligibility for the patient to be receiving home care. The existing regulations at § 484.55(a) and (b)(2) would continue to apply; rehabilitation skilled professionals would not be permitted to perform assessments in nursing only cases. We would continue to expect HHAs to match the appropriate discipline that performs the assessment to the needs of the patient to the greatest extent possible. Therapists must act within their state scope of practice laws when performing initial and comprehensive assessments, and access a registered nurse or other professional to complete sections of the assessment that are beyond their scope of practice. Expanding the category of therapists who may perform initial and comprehensive assessments provides HHAs with additional flexibility that may decrease patient wait times for the initiation of home health services.
200	HHS	CMS	Waiver		Physician Visits	42 CFR 483.30(c)(3). CMS is waiving the requirement at § 483.30(c)(3) that all required physician visits (not already exempted in § 483.30(c)(4) and (f)) must be made by the physician personally. We are modifying this provision to permit physicians to delegate any required physician visit to a nurse practitioner (NPs), physician assistant, or clinical nurse specialist who is not an employee of the facility, who is working in collaboration with a physician, and who is licensed by the State and performing within the state's scope of practice laws.
201	HHS	CMS	Waiver		Practitioner Locations	42 CFR 424.510 (d)(2)(III)(A). CMS is temporarily waiving requirements that out-of-state practitioners be licensed in the state where they are providing services when they are licensed in another state. CMS will waive the physician or non-physician practitioner licensing requirements when the following four conditions are met: (1) Must be enrolled as such in the Medicare program; (2) must possess a valid license to practice in the state, which relates to his or her Medicare enrollment; (3) is furnishing services—whether in person or via telehealth—in a state in which the emergency is occurring in order to contribute to relief efforts in his or her professional capacity; and, (4) is not affirmatively excluded from practice in the state or any other state that is part of the 1135 emergency area.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
						• In addition to the statutory limitations that apply to 1135-based licensure waivers, an 1135 waiver, when granted by CMS, does not have the effect of waiving state or local licensure requirements or any requirement specified by the state or a local government as a condition for waiving its licensure requirements. Those requirements would continue to apply unless waived by the state. Therefore, in order for the physician or non-physician practitioner to avail him- or herself of the 1135 waiver under the conditions described above, the state also would have to waive its licensure requirements, either individually or categorically, for the type of practice for which the physician or non-physician practitioner is licensed in his or her home state.
202	HHS	CMS	Waiver		Waive Onsite Visits for HHA Aide Supervision.	CMS is waiving the requirements at 42 CFR § 484.80(h), which require a nurse to conduct an onsite visit every two weeks. This would include waiving the requirements for a nurse or other professional to conduct an onsite visit every two weeks to evaluate if aides are providing care consistent with the care plan, as this may not be physically possible for a period of time. This waiver is also temporarily suspending the 2-week aide supervision by a registered nurse for home health agencies requirement at § 484.80(h)(1), but virtual supervision is encouraged during the period of the waiver.
203	HHS	CMS	Waiver		ESRD Telemedicine and Report Patient Care.	For Medicare patients with End Stage Renal Disease (ESRD), clinicians no longer must have one ''hands on'' visit per month for the current required clinical examination of the vascular access site.
204	HHS	CMS	Waiver		ESRD Telemedicine and Report Patient Care.	For Medicare patients with ESRD, we are exercising enforcement discretion on the following requirement so that clinicians can provide this service via telehealth: Individuals must receive a face-to-face visit, without the use of telehealth, at least monthly in the case of the initial 3 months of home dialysis and at least once every 3 consecutive months after the initial 3 months.
205	HHS	CMS	Waiver		Medical Staff Eligibility	Waiving requirements under 42 CFR § 482.22(a)(1)–(4) to allow for physicians whose privileges will expire to continue practicing at the hospital and for new physicians to be able to practice before full medical staff/governing body review and approval to address workforce concerns related to COVID–19. CMS is waiving § 482.22(a)(1)–(4) regarding details of the credentialing and privileging process.
206	HHS	CMS	Waiver		Physician Visits in Skilled Nursing Facilities/Nursing Facilities.	CMS is waiving the requirement in 42 CFR 483.30 for physicians and non-physician practitioners to perform in-person visits for nursing home residents and allow visits to be conducted, as appropriate, via telehealth options.
207	HHS	CMS	Waiver		12 hour Annual in-service Training Requirement for Hospice Aides.	42 CFR 418.76(d). CMS is waiving the requirement that hospices must assure that each hospice aide receives 12 hours of in-service training in a 12 month period. This allows aides and the registered nurses (RNs) who teach in-service training to spend more time delivering direct patient care.
208	HHS	CMS	Waiver		Dialysis Patient Care Technician (PCT) Certification.	Modifying the requirement at 42 CFR § 494.140(e)(4) for dialysis PCTs that requires certification under a state certification program or a national commercially available certification program within 18 months of being hired as a dialysis PCT for newly employed patient care technicians. CMS is aware of the challenges that PCTs are facing with the limited availability and closures of testing sites during the time of this crisis. CMS will allow PCTs to continue working even if they have not achieved certification within 18 months or have not met on time renewals.
209	HHS	CMS	Waiver		Transferability of Physician Credentialing.	Modifying the requirement at 42 CFR § 494.180(c)(1) which requires that all medical staff appointments and credentialing are in accordance with state law, including attending physicians, physician assistants, nurse practitioners, and clinical nurse specialists. These waivers will allow physicians that are appropriately credentialed at a certified dialysis facility to function to the fullest extent of their licensure to provide care at designated isolation locations without separate credentialing at that facility, and may be implemented so long as they are not inconsistent with a state's emergency preparedness or pandemic plan.
210	HHS	CMS	Waiver		Remote Patient Monitoring Reporting.	Clinicians can provide remote patient monitoring services to both new and established patients. These services can be provided for both acute and chronic conditions and can now be provided for patients with only one disease. For example, remote patient monitoring can be used to monitor a patient's oxygen saturation levels using pulse oximetry. (CPT codes 99091, 99457–99458, 99473–99474, 99493–99494).
211	HHS	CMS	Waiver		Remote Evaluations, Virtual Check-Ins & E-Visits.	Medicare patients may have a brief communication service with practitioners via a number of communication technology modalities including synchronous discussion over a telephone or exchange of information through video or image. Clinicians can provide remote evaluation of patient video/images and virtual check-in services (HCPCS codes G2010, G2012) to both new and established patients. These services were previously limited to established patients.
212	HHS	CMS	Waiver		Remote Evaluations, Virtual Check-Ins & E-Visits.	111 E-visits are non-face-to-face communications with their practitioner by using online patient portals. (HCPCS codes G2061–G2063).

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
213	HHS	CMS	Waiver		Flexibility for IRF Regarding the ''60 Percent Rule''.	Allowing IRFs to exclude patients from the freestanding hospital's or excluded distinct part unit's inpatient population for purposes of calculating the applicable thresholds associated with the requirements to receive payment as an IRF (commonly referred to as the ''60 percent rule'') if an IRF admits a patient solely to respond to the emergency and the patient's medical record properly identifies the patient as such. In addition, during the applicable waiver time period, we would also apply the exception to facilities not yet classified as IRFs, but that are attempting to obtain classification as an IRF.
214	HHS	CMS	Waiver		LTCH Site Neutral Payment Rate Provisions.	As required by section 3711(b) of the CARES Act, during the Public Health Emergency (PHE) due to COVID–19, certain provisions of section 1886(m)(6) of the Social Security Act have been waived relating to certain site neutral payment rate provisions for long-term care hospitals (LTCHs). • Section 3711(b)(1) of the CARES Act waives the payment adjustment under section 1886(m)(6)(C)(ii) of the Act for LTCHs that do not have a discharge payment percentage (DPP) for the period that is at least 50 percent during the COVID–19 public health emergency period. Under this provision, for the purposes of calculating an LTCH's DPP, all admissions during the COVID–19 public health emergency period will be counted in the numerator of the calculation. In other words, LTCH cases that were admitted during the COVID–19 public health emergency period will be counted as discharges paid the LTCH PPS standard Federal payment rate. • Section 3711(b)(2) of the CARES Act provides a waiver of the application of the site neutral payment rate under section 1886(m)(6)(A)(i) of the Act for those LTCH admissions that are in response to the public health emergency and occur during the COVID–19 public health emergency period. Under this provision, all LTCH cases admitted during the COVID–19 public health emergency period will be paid the relatively higher LTCH PPS standard Federal rate. A new LTCH PPS Pricer software package released in April 2020 includes this temporary payment policy effective for claims with an admission date occurring on or after January 27, 2020 and continuing through the duration of the COVID–19 public health emergency period. Claims received on or after April 21, 2020, will be processed in accordance with this waiver. Claims received April 20, 2020, and earlier will be reprocessed. LTCHs should add the ''DR'' condition code to applicable claims.
215	HHS	CMS	Waiver		Eligibility for Telehealth	Pursuant to authority granted under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) that broadens the waiver authority under section 1135 of the Social Security Act, the Secretary has authorized additional telehealth waivers. CMS is waiving the requirements of section 1834(m)(4)(E) of the Act and 42 CFR 410.78 (b)(2) which specify the types of practitioners that may bill for their services when furnished as Medicare telehealth services from the distant site. The waiver of these requirements expands the types of health care professionals that can furnish distant site telehealth services to include all those that are eligible to bill Medicare for their professional services. This allows health care professionals who were previously ineligible to furnish and bill for Medicare telehealth services, including physical therapists, occupational therapists, speech language pathologists, and others, to receive payment for Medicare telehealth services.
216	HHS	CMS	Waiver		IRF Intensity of Therapy Requirement (''3-Hour Rule'').	As required by section 3711(a) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, during the COVID–19 public health emergency, the Secretary has waived 42 CFR 412.622(a)(3)(ii) which provides that payment generally requires that patients of an inpatient rehabilitation facility receive at least 15 hours of therapy per week. This waiver clarifies information provided in ''Medicare and Medicaid Programs; Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency'' (RIN 0938–AU31). (85 **Federal Register** 19252, 19287, April 6, 2020). The information in that rulemaking (RIN 0938–AU31) about Inpatient Rehabilitation Facilities was contemplated prior to the passage of the CARES Act.
217	HHS	CMS	Waiver		Emergency Medical Treatment & Labor Act (EMTALA) Section 1867(a).	Waiving the enforcement of section 1867(a) of the Act. This will allow hospitals, psychiatric hospitals, and critical access hospitals (CAHs) to screen patients at a location offsite from the hospital's campus to prevent the spread of COVID–19, so long as it is not inconsistent with a state's emergency preparedness or pandemic plan.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
218	HHS	CMS	Waiver		Quality Assessment and Performance Improvement (QAPI) Program.	Waiving 42 CFR 482.21(a)–(d) and (f), and 485.641(a), (b), and (d), which provide details on the scope of the program, the incorporation, and setting priorities for the program's performance improvement activities, and integrated Quality Assurance & Performance Improvement programs (for hospitals that are part of a hospital system). These flexibilities, which apply to both hospitals and CAHs, may be implemented so long as they are not inconsistent with a state's emergency preparedness or pandemic plan. We expect any improvements to the plan to focus on the Public Health Emergency (PHE). While this waiver decreases burden associated with the development of a hospital or CAH QAPI program, the requirement that hospitals and CAHs maintain an effective, ongoing, hospital-wide, data-driven quality assessment and performance improvement program will remain. This waiver applies to both hospitals and CAHs.
219	HHS	CMS	Waiver		Signature and Proof of Delivery Requirements.	CMS is waiving signature and proof of delivery requirements for Part B drugs and Durable Medical Equipment when a signature cannot be obtained because of the inability to collect signatures. Suppliers should document in the medical record the appropriate date of delivery and that a signature was not able to be obtained because of COVID–19.
220	HHS	CMS	Guidance		Accelerated/Advance Payments	In order to increase cash flow to providers impacted by COVID–19, CMS has expanded our current Accelerated and Advance Payment Program. An accelerated/advance payment is a payment intended to provide necessary funds when there is a disruption in claims submission and/or claims processing. CMS is authorized to provide accelerated or advance payments during the period of the public health emergency to any Medicare provider/supplier who submits a request to the appropriate Medicare Administrative Contractor (MAC) and meets the required qualifications. Each MAC will work to review requests and issue payments within seven calendar days of receiving the request. Traditionally repayment of these advance/accelerated payments begins at 90 days, however for the purposes of the COVID–19 pandemic, CMS has extended the repayment of these accelerated/advance payments to begin 120 days after the date of issuance of the payment. CMS has amended existing regulation to allow for the lowering of interest rates on overpayments related to accelerated and advance payments issued during the PHE associated with COVID–19.
221	HHS	CMS	Guidance		Part D ''Refill-Too-Soon'' Edits and Maximum Day Supply.	Consistent with section 3714 of the CARES Act, during the public health emergency for COVID–19, Part D sponsors must permit enrollees to obtain the total supply prescribed for a covered Part D drug up to a 90-day supply in one fill or refill if requested by the enrollee, prior authorization or step therapy requirements have been satisfied, and no safety edits otherwise limit the quantity or days' supply. Part D plan also sponsors must relax their ''refill-too-soon'' edits. Part D sponsors continue to have operational discretion as to how these edits are relaxed as long as access to Part D drugs is provided at the point of sale. For purposes of section 3714 of the CARES Act, relaxed refill-too-soon edits are safety edits, and Part D sponsors must not permit enrollees to obtain a single fill or refill that is inconsistent with a safety edit.
222	HHS	CMS	Guidance		Long-Term Care Dispensing	CMS intends to exercise enforcement discretion with respect to the requirement at 42 CFR 423.154(a)(1)(i) that limits dispensing of solid oral doses of brand-name drugs, as defined in § 423.4, to enrollees in long-term care (LTC) facilities to no greater than 14-day increments at a time. For enrollees residing in LTC facilities, Part D sponsors may permit pharmacies to expand the use of submission clarification code 21 (LTC dispensing, 14 days or less not applicable) to allow for greater than 14 day supplies for all applicable Part D drugs to provide more flexibility for LTC facilities and pharmacies to coordinate with each other.
223	HHS	CMS	Guidance		Audit Reviews	CMS is reprioritizing scheduled program audits and contract-level Risk Adjustment Data Validation audits for MA organizations, Part D sponsors, Medicare-Medicaid Plans, and Programs of All-Inclusive Care for the Elderly organizations. Reprioritizing these audit activities will allow providers, CMS and the organizations to focus on patient care.
224	HHS	CMS	Guidance		Part D Enforcement Discretion	CMS is exercising its enforcement discretion to adopt a temporary policy of relaxed enforcement in connection with, but not limited to, the following: • Waiving Part D medication delivery documentation and signature log requirements; • Relaxing to the greatest extent possible prior authorization requirements, where appropriate; and/or • Suspending plan-coordinated pharmacy audits.
225	HHS	CMS	Guidance		Special Requirements	MAOs must follow the requirements for disasters and emergencies outlined in 42 CFR 422.100(m). Under 42 CFR 422.100(m), MAOs must ensure access to benefits in the following manner: • Cover Medicare Parts A and B services and supplemental Part C plan benefits furnished at non-contracted facilities subject to § 422.204(b)(3), which requires that facilities that furnish covered A/B benefits have participation agreements with Medicare. • Waive, in full, requirements for gatekeeper referrals where applicable.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
						• Provide the same cost-sharing for the enrollee as if the service or benefit had been furnished at a plan-contracted facility. • Make changes that benefit the enrollee effective immediately without the 30-day notification requirement at § 422.111(d)(3). (Such changes could include reductions in cost-sharing and waiving prior authorizations as described below.)
226	HHS	CMS	Guidance		Prior Authorization	Consistent with flexibilities available to Medicare Advantage Organizations absent a disaster, declaration of a state of emergency, or public health emergency, Medicare Advantage Organizations may choose to waive or relax plan prior authorization requirements at any time in order to facilitate access to services with less burden on beneficiaries, plans, and providers. Any such relaxation or waiver must be uniformly provided to similarly situated enrollees who are affected by the disaster or emergency. We encourage plans to consider utilizing this flexibility.
227	HHS	CMS	Guidance		Home or Mail Delivery of Part D Drugs.	In situations when a disaster or emergency makes it difficult for enrollees to get to a retail pharmacy, or enrollees are prohibited from going to a retail pharmacy (*e.g.,* in a quarantine situation), Part D sponsors are permitted to voluntarily relax any plan-imposed policies that may discourage certain methods of delivery, such as mail or home delivery, for retail pharmacies that choose to offer these delivery services in these instances.
228	HHS	CMS	Guidance		Pharmacies Enrolling as Labs	Pharmacies may enroll in Medicare as a Clinical Laboratory Improvement Act (CLIA) laboratory if they have their CLIA certification.
229	HHS	CMS	Guidance	Survey Guidance QSO–20–12–All.	Suspension of Enforcement Activities.	During the prioritization period, the following surveys will not be authorized: • Standard surveys for long term care facilities (nursing homes), hospitals, home health agencies (HHAs), intermediate care facilities for individuals with intellectual disabilities (ICF/IIDs), and hospices. This includes the life safety code and Emergency Preparedness elements of those standard surveys; • Revisits that are not associated with IJ. As a result, the following enforcement actions will be suspended, until revisits are again authorized: ○ For nursing homes—Imposition of Denial of Payment for New Admissions (DPNA), including situations where facilities that are not in substantial compliance at 3 months, will be lifted to allow for new admissions during this time; ○ For HHAs—Imposition of suspension of payments for new admissions (SPNA) following the last day of the survey when termination is imposed will be lifted to allow for new admissions during this time; ○ For nursing homes and HHAs—Suspend per day civil money penalty (CMP) accumulation, and imposition of termination for facilities that are not in substantial compliance at 6 months. • For CLIA, we intend to prioritize immediate jeopardy situations over recertification surveys.
230	HHS	CMS	Guidance		Medicare Provider Enrollment Relief.	42 CFR 424.514 42 CFR 424.518. Exercise 1135 waiver authority to establish toll-free hotlines to allow certain providers and suppliers to enroll and receive temporary Medicare billing privileges. Waive certain screening requirements for providers and suppliers (*e.g.,* finger-print based criminal background checks, site visits, etc.). All enrollment applications received on or after March 1, 2020 will be expedited. Expedite pending applications as well. Postpone all revalidation actions.
231	HHS	CMS	Guidance		Temporary Expansion Locations	Temporary Expansion Locations: Waiving requirements at 42 CFR 491.5(a)(3)(iii) which require RHCs and FQHCs be independently considered for Medicare approval if services are furnished in more than one permanent location. This flexibility includes areas which may be outside of the location requirements 42 CFR 491.5(a)(1) and (2) for the duration of the PHE.
232	HHS	CMS	Waiver		Long Term Care Facility Training and Certification of Nurse Aides.	Waive requirements at 42 CFR 483.35(d) (with the exception of 42 CFR 483.35(d)(1)(i)), which require that a SNF and NF may not employ anyone for longer than four months unless they met the training and certification requirements under § 483.35(d).
233	HHS	CMS	Waiver		Modification of Substitute Billing Arrangements Timetable.	Allows a physician or physical therapist to use the same substitute for the entire time he or she is unavailable to provide services during the COVID–19 emergency plus an additional period of no more than 60 continuous days after the public health emergency expires.
234	HHS	CMS	Waiver		Ambulatory Surgical Centers & Freestanding Emergency Departments (EDs) Hospital Conversion.	During the PHE, CMS has created streamlined and temporary enrollment process for ASCs and licensed Freestanding EDs that wish to convert to a hospital in order to expand capacity and treat patients. ASCs and Freestanding EDs that convert to become a hospital must meet the Hospital Conditions of Participation that remain in effect during the PHE, including 24–7 nursing and others. They must also be able to act as a hospital, and cannot (for example) act as just an outpatient surgical department of a hospital.
235	HHS	CMS	Waiver	42 CFR 424.36E	Beneficiary claims signature requirements for ambulance services.	CMS has determined that there is good cause to accept transport staff signatures in cases where it would not be possible or practical (such as a difficult to clean surface) to disinfect an electronic patient reporting device used after being touched by a beneficiary with known or suspected COVID–19; documentation should note the verbal consent.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
236	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Durable Medical Equipment Interim Pricing in the CARES Act.	I. Changes to the Medicare regulations to revise payment rates for certain durable medical equipment and enteral nutrients, supplies, and equipment as part of implementation of section 3712 of the CARES Act. We are making conforming changes to § 414.210(g)(9), consistent with section 3712(a) and (b) of the CARES Act, but we are omitting the language in section 3712(b) of the CARES Act that references an effective date that is 30 days after the date of enactment of the law. We are revising § 414.210(g)(9)(iii), which describes the 50/50 fee schedule adjustment blend for items and services furnished in rural and noncontiguous areas, to address dates of service from June 1, 2018 through December 31, 2020 or through the duration of the emergency period described in section 1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B)), whichever is later. We are also adding § 414.210(g)(9)(v) which will state that, for items and services furnished in areas other than rural or noncontiguous areas with dates of service from March 6, 2020, through the remainder of the duration of the emergency period described in section 1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B)), based on the fee schedule amount for the area is equal to 75 percent of the adjusted payment amount established under ''this section'' (by which we mean § 414.210(g)(1) through (8)), and 25 percent of the unadjusted fee schedule amount. For items and services furnished in areas other than rural or noncontiguous areas with dates of service from the expiration date of the emergency period described in section 1135(g)(1)(B) of the Act (42 U.S.C. 1320b–5(g)(1)(B)) through December 31, 2020, based on the fee schedule amount for the area is equal to 100 percent of the adjusted payment amount established under § 414.210(g)(1) through (8) (referred to as ''this section'' in the regulation text). In addition, we are revising § 414.210(g)(9)(iv) to specify for items and services furnished in areas other than rural and noncontiguous areas with dates of service from June 1, 2018 through March 5, 2020, based on the fee schedule amount for the area is equal to 100 percent of the adjusted payment amount established under § 414.210(g)(1) through (8) (''this section'' in the regulation text).
237	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Basic Health Program Blueprint Revisions.	This IFC revises 42 CFR § 600.125(b) and adds the new paragraph 42 CFR 600.125(c) to permit states operating a BHP to submit revised BHP Blueprints for temporary substantial changes that could be effective retroactive to the first day the COVID–19 PHE. These changes must be directly tied to the PHE for the COVID–19 pandemic and increase access to coverage, and must not be restrictive in nature. For example, states might want to revise a BHP Blueprint retroactively during the COVID–19 PHE to implement provisions such as temporarily allowing continuous eligibility or temporarily waiving limitations on certain benefits covered under its BHP to ensure enrollees have access to necessary services. The state would need to demonstrate to HHS that the significant changes in its revised Blueprint are tied to the COVID–19 PHE and that the changes are not restrictive in nature. This flexibility is similar to the flexibility that states currently have with Medicaid and CHIP state plan amendments.
238	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Flexibility for Medicaid Laboratory Services.	This IFC amends the CMS regulation at 42 CFR 440.30 to provide flexibility with respect to Medicaid coverage of certain COVID–19 related laboratory tests in a greater variety of circumstances and settings. For example, the IFC provides states with flexibility to cover, under their Medicaid programs, a COVID–19 test without it being first ordered by a physician or other licensed practitioner, as well as to cover COVID–19 tests administered in certain non-office settings that are intended to minimize transmission of COVID–19, such as parking lots. Given the nature and scope of the pandemic, it is important to accommodate the evolution of COVID–19 diagnostic mechanisms. The regulatory updates would also allow Medicaid to cover laboratory processing of self-collected COVID–19 tests that the FDA has authorized for home use.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
239	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Improving Care Planning for Medicaid Home Health Services.	P. Section 3708 of the CARES Act amended Medicare requirements at sections 1814(a) and 1835(a) of the Act to expand the list of practitioners who can order home health services. Specifically, sections 1814(a)(2)(C) of the Act under Part A and section 1835(a)(2)(A) of the Act under Part B of the Medicare program were amended to allow an NP, CNS or PA to order home health services in addition to physicians so long as these NPPs are permitted to provide such services under the scope of practice laws in the state. Section 3708(e) of the CARES Act also provides that the requirements for ordering home health services shall apply under title XIX in the same manner and to the same extent as such requirements apply under title XVIII of such Act. In accordance with this language on applying these requirements ''in the same manner'' as Medicare is, in light of the urgent need to provide these flexibilities during the COVID–19 PHE, and because this provision will increase flexibility in the delivery of benefits and make Medicaid coverage of home health services more available, the Medicaid regulations discussed in this section will take effect on the same date as the Medicare regulations implementing section 3708 discussed in section II.J. of this IFC, ''Care Planning for Medicare Home Health Services.'' Further, the language in section 3708 of the CARES Act is not time limited to the period of the COVID–19 PHE; the revisions to the Medicaid home health program will be permanently in effect. The purpose of this regulation is to implement this statutory directive in the CARES Act within the Medicaid program. In implementing the CARES Act home health provisions, it is important to note the structural differences between the Medicare home health benefit and the Medicaid home health benefit that require some adaptation for the requirement to apply the new Medicare rules in section 3708 of the CARES Act to Medicaid ''in the same manner and to the same extent as such requirements apply'' under Medicare. Under the Medicare program, the home health benefit includes skilled part-time or intermittent nursing, home health aide service, therapies and medical social services. DME is a separate benefit under Medicare, and could already be ordered, prior to the enactment of section 3708 of the CARES Act, by a more extensive list of NPPs than the practitioners identified in section 3708 of the CARES Act for Medicare home health services. Comparatively, as noted previously in this section of the IFC, the Medicaid home health benefit includes part-time or intermittent nursing, home health aide services, and medical supplies, equipment and appliances, also known as DME. Therapy services can be included at the state's option. As discussed earlier in this section, Medicare allows a more extensive list of NPPs to order DME, than the practitioners identified for Medicaid or the practitioners identified in the CARES Act. Because DME (''medical supplies, equipment and appliances'') is covered under the Medicaid home health benefit, this would mean applying the current Medicare rules on who can order DME under that Medicare benefit to that component of the Medicaid home health benefit. We believe that aligning the Medicaid program with Medicare regarding who can order medical supplies, equipment and appliances promotes access to services for Medicaid beneficiaries, including those who are dually eligible, and will eliminate burden to states and providers on dealing with inconsistencies between the Medicare and Medicaid programs. Specifically, we are amending the home health regulation at § 440.70(a)(3) to allow other licensed practitioners, to order medical equipment, supplies and appliances in addition to physicians, when practicing in accordance with state laws. For other services covered under the Medicaid home health benefit, we are applying the new list of practitioners set forth in section 3708 of the CARES Act to who can order those services, specifically, part-time or intermittent nursing services, home health aide services, and if included in the state's home health benefit, therapy services. Specifically, § 440.70(a)(2) is amended to allow a NP, CNS and PA to order home health services described in § 440.70(b)(1), (2) and (4). Through this IFC, we are also amending the current regulation to remove the requirement that the NPPs described in § 440.70(a)(2) have to communicate the clinical finding of the face-to-face encounter to the ordering physician. With expanding authority to order home health services, the CARES Act also provides that such practitioners are now capable of independently performing the face-to-face encounter for the patient for whom they are the ordering practitioner, in accordance with state law. If state law does not allow such flexibility, the NPP is required to work in collaboration with a physician. Finally, we note that the flexibility allowed in this IFC to NPs, CNSs and PAs to order home health services must be done in accordance with state law. Individual states have varying requirements for conditions of practice, which determine whether a practitioner may work independently, without a written collaborative agreement or supervision from a physician, or whether general or direct supervision and collaboration is required. State Medicaid Agencies can consult the specific practitioner association or relevant state agency website to ensure that practitioners are working within their scope of practice and prescriptive authority.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
240	HHS	CMS	Interim Final Rule	RIN 0938–AU31	Clarification on Reporting Under the Home Health Value-Based Purchasing Model for CY 2020.	A. Through this IFC, we are implementing a policy to align the Home Health Value-Based Purchasing (HHVBP) Model data submission requirements with any exceptions or extensions granted for purposes of the Home Health Quality Reporting Program (HH QRP) during the PHE for COVID–19. We are also implementing a policy for granting exceptions to the New Measures data reporting requirements under the HHVBP Model during the PHE for COVID–19. Specifically, during the PHE for COVID–19, to the extent that the data that participating HHAs in the nine HHVBP Model states are required to report are the same data that those HHAs are also required to report for the HH QRP, HHAs are required to report those data for the HHVBP Model in the same time, form and manner that HHAs are required to report those data for the HH QRP. As such, if CMS grants an exception or extension that either excepts HHAs from reporting certain quality data altogether, or otherwise extends the deadlines by which HHAs must report those data, the same exceptions and/or extensions apply to the submission of those same data for the HHVBP Model. In addition, in this IFC, we are adopting a policy to allow exceptions or extensions to New Measure reporting for HHAs participating in the HHVBP Model during the PHE for COVID–19. As authorized by section 1115A of the Act and finalized in the CY 2016 HH PPS final rule (80 FR 68624), the HHVBP Model has an overall purpose of improving the quality and delivery of home health care services to Medicare beneficiaries. The specific goals of the Model are to: (1) Provide incentives for better quality care with greater efficiency; (2) study new potential quality and efficiency measures for appropriateness in the home health setting; and (3) enhance the current public reporting process. All Medicare certified HHAs providing services in Arizona, Florida, Iowa, Nebraska, North Carolina, Tennessee, Maryland, Massachusetts, and Washington are required to compete in the Model. The HHVBP Model uses the waiver authority under section 1115A(d)(1) of the Act to adjust Medicare payment rates under section 1895(b) of the Act based on the competing HHAs' performance on applicable measures. The maximum payment adjustment percentage increases incrementally over the course of the HHVBP Model in the following manner, upward or downward: (1) 3 percent in CY 2018; (2) 5 percent in CY 2019; (3) 6 percent in CY 2020; (4) 7 percent in CY 2021; and (5) 8 percent in CY 2022. Payment adjustments are based on each HHA's Total Performance Score (TPS) in a given performance year (PY), which is comprised of performance on: (1) A set of measures already reported via the Outcome and Assessment Information Set (OASIS), 5 completed Home Health Consumer Assessment of Healthcare Providers and Systems (HHCAHPS) surveys, and select claims data elements; and (2) three New Measures for which points are achieved for reporting data.
241	HHS	CMS	Waiver		Respiratory Care Services	Waiving the requirements at 42 CFR § 482.57(b)(1) that require hospitals to designate in writing the personnel qualified to perform specific respiratory care procedures and the amount of supervision required for personnel to carry out specific procedures. These flexibilities may be implemented so long as they are not inconsistent with a state's emergency preparedness or pandemic plan.
242	HHS	CMS	Waiver		Documentation of Progress Notes.	Scope of authority extended for non-physician practitioners to document progress notes of patients receiving services in psychiatric hospitals.
243	HHS	CMS	Waiver		DMEPOS Replacement Requirements.	Where Durable Medical Equipment Prosthetics, Orthotics, and Supplies (DMEPOS) is lost, destroyed, irreparably damaged, or otherwise rendered unusable, DME Medicare Administrative Contractors have the flexibility to waive replacements requirements under Medicare such that the face-to-face requirement, a new physician's order, and new medical necessity documentation are not required. Suppliers must still include a narrative description on the claim explaining the reason why the equipment must be replaced and are reminded to maintain documentation indicating that the DMEPOS was lost, destroyed, irreparably damaged or otherwise rendered unusable or unavailable as a result of the emergency.
244	HHS	CMS	Waiver		Modified Discharge Planning	Waiving the requirement 42 CFR § 482.43(a)(8), § 482.61(e), and § 485.642(a)(8) to provide detailed information regarding discharge planning, described below: • The hospital, psychiatric hospital, and CAH must assist patients, their families, or the patient's representative in selecting a post-acute care provider by using and sharing data that includes, but is not limited to, home health agency (HHA), skilled nursing facility (SNF), inpatient rehabilitation facility (IRF), and long-term care hospital (LTCH) quality measures and resource use measures. The hospital must ensure that the postacute care data on quality measures and resource use measures is relevant and applicable to the patient's goals of care and treatment preferences. • CMS is maintaining the discharge planning requirements that ensure a patient is discharged to an appropriate setting with the necessary medical information and goals of care.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
245	HHS	CMS	Waiver		Detailed Information Sharing for Discharge Planning for Home Health Agencies.	Waiving the requirements of 42 CFR § 484.58(a) to provide detailed information regarding discharge planning, to patients and their caregivers, or the patient's representative in selecting a post-acute care provider by using and sharing data that includes, but is not limited to, (another) home health agency (HHA), skilled nursing facility (SNF), inpatient rehabilitation facility (IRF), and long-term care hospital (LTCH) quality measures and resource use measures. • This temporary waiver provides facilities the ability to expedite discharge and movement of residents among care settings. CMS is maintaining all other discharge planning requirements.
246	HHS	CMS	Waiver		DMEPOS Signature on Orders	DMEPOS items, except for Power Mobility Devices (PMDs), can be provided via a verbal order. A signature is required prior to submitting claims for payment but the order can be signed electronically. PMDs require a signed, written order prior to delivery.
247	HHS	CMS	Waiver		Specific Physical Environment Waivers for Inspection, Testing and Maintenance.	42 CFR § 482.41(d) for hospitals, § 485.623(b) for CAH, § 418.110(c)(2)(iv) for inpatient hospice, § 483.470(j) for ICF/IID; and § 483.90 for SNFs/NFs all require these facilities and their equipment to be maintained to ensure an acceptable level of safety and quality. CMS is temporarily modifying these requirements to the extent necessary to permit these facilities to adjust scheduled inspection, testing and maintenance (ITM) frequencies and activities for facility and medical equipment.
248	HHS	CMS	Waiver		Special Purpose Renal Dialysis Facilities (SPRDF) Designation Expanded.	Authorizes the establishment of SPRDFs under 42 CFR § 494.120 to address access to care issues due to COVID–19 and the need to mitigate transmission among this vulnerable population. This will not include the normal determination regarding lack of access to care at § 494.120(b) as this standard has been met during the period of the national emergency. Approval as a Special Purpose Renal Dialysis Facility related to COVID–19 does not require Federal survey prior to providing services.
249	HHS	CMS	Waiver		Expanded Ability for Hospitals to Offer Long-term Care Services (''Swing-Beds'') for Patients Who do not Require Acute Care but do Meet the Skilled Nursing Facility (SNF) Level of Care Criteria as Set Forth at 42 CFR 409.31.	Under section 1135(b)(1) of the Act, CMS is waiving the requirements at 42 CFR 482.58, ''Special Requirements for hospital providers of long-term care services (''swing-beds'')'' subsections (a)(1)–(4) ''Eligibility'', to allow hospitals to establish SNF swing beds payable under the SNF prospective payment system (PPS) to provide additional options for hospitals with patients who no longer require acute care but are unable to find placement in a SNF. In order to qualify for this waiver, hospitals must: • Not use SNF swing beds for acute level care. • Comply with all other hospital conditions of participation and those SNF provisions set out at 42 CFR 482.58(b) to the extent not waived. • Be consistent with the state's emergency preparedness or pandemic plan currently not willing to accept or able to take patients because of the COVID–19 public health emergency (PHE); Hospitals must call the CMS Medicare Administrative Contractor (MAC) enrollment hotline to add swing bed services. The hospital must attest to CMS that: • They have made a good faith effort to exhaust all other options; • There are no skilled nursing facilities within the hospital's catchment area that under normal circumstances would have accepted SNF transfers, but are currently not willing to accept or able to take patients because of the COVID–19 public health emergency (PHE); • The hospital meets all waiver eligibility requirements; and • They have a plan to discharge patients as soon as practicable, when a SNF bed becomes available, or when the PHE ends, whichever is earlier. This waiver applies to all Medicare enrolled hospitals, except psychiatric and long term care hospitals that need to provide post-hospital SNF level swing-bed services for non-acute care patients in hospitals, so long as the waiver is not inconsistent with the state's emergency preparedness or pandemic plan. The hospital shall not bill for SNF PPS payment using swing beds when patients require acute level care or continued acute care at any time while this waiver is in effect. This waiver is permissible for swing bed admissions during the COVID–19 PHE with an understanding that the hospital must have a plan to discharge swing bed patients as soon as practicable, when a SNF bed becomes available, or when the PHE ends, whichever is earlier.
250	HHS	CMS	Waiver		Housing Acute Care Patients in the IRF or IPF Excluded Distinct Part Units.	Waiving requirements to allow acute care hospitals to house acute care inpatients in excluded distinct part units, such as excluded distinct part unit IRFs or IPFs, where the distinct part unit's beds are appropriate for acute care inpatients. The Inpatient Prospective Payment System (IPPS) hospital should bill for the care and annotate the patient's medical record to indicate the patient is an acute care inpatient being housed in the excluded unit because of capacity issues related to the disaster or emergency.
251	HHS	CMS	Waiver		Resident Transfer and Discharge.	Waiving requirements in 42 CFR 483.10(c)(5); 483.15(c)(3), (c)(4)(ii), (c)(5)(i) and (iv), (c)(9), and (d); and § 483.21(a)(1)(i), (a)(2)(i), and (b)(2)(i) (with some exceptions) to allow a long term care (LTC) facility to transfer or discharge residents to another LTC facility solely for the following cohorting purposes:

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
						• Transferring residents with symptoms of a respiratory infection or confirmed diagnosis of COVID–19 to another facility that agrees to accept each specific resident, and is dedicated to the care of such residents; • Transferring residents without symptoms of a respiratory infection or confirmed to not have COVID–19 to another facility that agrees to accept each specific resident, and is dedicated to the care of such residents to prevent them from acquiring COVID–19; or • Transferring residents without symptoms of a respiratory infection to another facility that agrees to accept each specific resident to observe for any signs or symptoms of a respiratory infection over 14 days. Exceptions: • These requirements are only waived in cases where the transferring facility receives confirmation that the receiving facility agrees to accept the resident to be transferred or discharged. Confirmation may be in writing or verbal. If verbal, the transferring facility needs to document the date, time, and person that the receiving facility communicated agreement. • In § 483.10, we are only waiving the requirement, under § 483.10(c)(5), that a facility provide advance notification of options relating to the transfer or discharge to another facility. Otherwise, all requirements related to § 483.10 are not waived. Similarly, in § 483.15, we are only waiving the requirement, under § 483.15(c)(3), (c)(4)(ii), (c)(5)(i) and (iv), and (d), for the written notice of transfer or discharge to be provided before the transfer or discharge. This notice must be provided as soon as practicable. • In § 483.21, we are only waiving the timeframes for certain care planning requirements for residents who are transferred or discharged for the purposes explained in 1–3 above. Receiving facilities should complete the required care plans as soon as practicable, and we expect receiving facilities to review and use the care plans for residents from the transferring facility, and adjust as necessary to protect the health and safety of the residents the apply to. • These requirements are also waived when the transferring residents to another facility, such as a COVID–19 isolation and treatment location, with the provision of services ''under arrangements,'' as long as it is not inconsistent with a state's emergency preparedness or pandemic plan, or as directed by the local or state health department. In these cases, the transferring LTC facility need not issue a formal discharge, as it is still considered the provider and should bill Medicare normally for each day of care. The transferring LTC facility is then responsible for reimbursing the other provider that accepted its resident(s) during the emergency period. ○ If the LTC facility does not intend to provide services under arrangement, the COVID–19 isolation and treatment facility is the responsible entity for Medicare billing purposes. The LTC facility should follow the procedures described in 40.3.4 of the Medicare Claims Processing Manual (*https://www.cms.gov/Regulations-andGuidance/Guidance/Manuals/Downloads/clm104c06.pdf*) to submit a discharge bill to Medicare. The COVID–19 isolation and treatment facility should then bill Medicare appropriately for the type of care it is providing for the beneficiary. If the COVID–19 isolation and treatment facility is not yet an enrolled provider, the facility should enroll through the provider enrollment hotline for the Medicare Administrative Contractor that services their geographic area to establish temporary Medicare billing privileges. We remind LTC facilities that they are responsible for ensuring that any transfers (either within a facility, or to another facility) are conducted in a safe and orderly manner, and that each resident's health and safety is protected. We also remind states that under 42 CFR 488.426(a)(1), in an emergency, the State has the authority to transfer Medicaid and Medicare residents to another facility.
252	HHS	CMS	Waiver		Furnishing Dialysis Services on the Main Premises.	ESRD requirements at 42 CFR 494.180(d) require dialysis facilities to provide services directly on its main premises or on other premises that are contiguous with the main premises. CMS is waiving this requirement to allow dialysis facilities to provide service to its patients who reside in the nursing homes, long-term care facilities, assisted living facilities and similar types of facilities, as licensed by the state (if applicable). CMS continues to require that services provided to these patients or residents are under the direction of the same governing body and professional staff as the resident's usual Medicare-certified dialysis facility. Further, in order to ensure that care is safe, effective and is provided by trained and qualified personnel, CMS requires that the dialysis facility staff: (1) Furnish all dialysis care and services; (2) provide all equipment and supplies necessary; (3) maintain equipment and supplies in off-premises location; (4) and complete all equipment maintenance, cleaning and disinfection using appropriate infection control procedures and manufacturer's instructions for use.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
253	HHS	CMS	Waiver		Specific Physical Environment Waiver for Outside Window and Outside Door Requirements.	42 CFR 482.41(b)(9) for hospitals, § 485.623(c)(7) for CAHs, § 418.110(d)(6) for inpatient hospices, § 483.470(e)(1)(i) for ICF/IIDs, and § 483.90(a)(7) for SNFs/NFs require these facilities to have an outside window or outside door in every sleeping room. CMS will permit a waiver of these outside window and outside door requirements to permit these providers to utilize facility and non-facility space that is not normally used for patient care to be utilized for temporary patient care or quarantine.
254	HHS	CMS	Waiver		Temporary Expansion Locations	For the duration of the PHE related to COVID–19, CMS is waiving certain requirements under the Medicare conditions of participation at 42 CFR 482.41 and § 485.623 (as noted elsewhere in this waiver document) and the provider-based department requirements at § 413.65 to allow hospitals to establish and operate as part of the hospital any location meeting those conditions of participation for hospitals that continue to apply during the PHE. This waiver also allows hospitals to change the status of their current provider-based department locations to the extent necessary to address the needs of hospital patients as part of the state or local pandemic plan. This extends to any entity operating as a hospital (whether a current hospital establishing a new location or an Ambulatory Surgical Center (ASC) enrolling as a hospital during the PHE pursuant to a streamlined enrollment and survey and certification process) so long as the relevant location meets the conditions of participation and other requirements not waived by CMS. This waiver will enable hospitals to meet the needs of Medicare beneficiaries.
255	HHS	CMS	Waiver	RIN 0938–AU31	IRF and IPF Teaching Status Adjustment Payments.	To ensure that teaching IRFs and IPFs can alleviate bed capacity issues by taking patients from the inpatient acute care hospitals without being penalized by lower teaching status adjustments, we are freezing the IRFs' and IPFs' teaching status adjustment payments at their values prior to the PHE. For the duration of the COVID–19 PHE, an IRF's teaching status adjustment payments will be the same as they were on the day before the COVID–19 PHE was declared.
256	HHS	CMS	Waiver		Care for Patients in Extended Neoplastic Disease Care Hospitals.	CMS is allowing extended neoplastic disease care hospitals to exclude inpatient stays where the hospital admits or discharges patients in order to meet the demands of the emergency from the greater than 20-day average length of stay requirement, which allows these facilities to be excluded from the hospital inpatient prospective payment system and paid an adjusted payment for Medicare inpatient operating and capital-related costs under the reasonable cost based reimbursement rules as authorized under Section 1886(d)(1)(B)(vi) of the Act and 42 CFR 412.22(i).
257	HHS	CMS	Waiver		Community Mental Health Clinic (CMHC) 40 Percent Rule.	Waiving the requirement at § 485.918(b)(1)(v) that a CMHC provides at least 40 percent of its items and services to individuals who are not eligible for Medicare benefits. Waiving the 40 percent requirement will facilitate appropriate timely discharge from inpatient psychiatric units and prevent admissions to these facilities because CMHCs will be able to provide PHP services to Medicare beneficiaries without restrictions on the proportion of Medicare beneficiaries that they are permitted to treat at a time. This will allow communities greater access to health services, including mental health services.
258	HHS	CMS	Waiver		Resident Groups	Waiving the requirements at 42 CFR 483.10(f)(5), which ensure residents can participate in-person in resident groups. This waiver would only permit the facility to restrict in-person meetings during the national emergency given the recommendations of social distancing and limiting gatherings of more than ten people. Refraining from in-person gatherings will help prevent the spread of COVID–19.
259	HHS	CMS	Waiver		Non-Core Services	Waiving the requirement for hospices to provide certain noncore hospice services during the national emergency, including the requirements at 42 CFR 418.72 for physical therapy, occupational therapy, and speech-language pathology.
260	HHS	CMS	Waiver		Time Period for Initiation of Care Planning and Monthly Physician Visits.	Modifying two requirements related to care planning, specifically: • 42 CFR 494.90(b)(2): CMS is modifying the requirement that requires the dialysis facility to implement the initial plan of care within the latter of 30 calendar days after admission to the dialysis facility or 13 outpatient hemodialysis sessions beginning with the first outpatient dialysis session. This modification will also apply to the requirement for monthly or annual updates of the plan of care within 15 days of the completion of the additional patient assessments. • § 494.90(b)(4): CMS is modifying the requirement that requires the ESRD dialysis facility to ensure that all dialysis patients are seen by a physician, nurse practitioner, clinical nurse specialist, or physician's assistant providing ESRD care at least monthly, and periodically while the hemodialysis patient is receiving in-facility dialysis. CMS is waiving the requirement for a monthly in-person visit if the patient is considered stable and also recommends exercising telehealth flexibilities, *e.g.,* phone calls, to ensure patient safety.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
261	HHS	CMS	Waiver		Dialysis Home Visits to Assess Adaptation and Home Dialysis Machine Designation.	Waiving the requirement at 42 CFR 494.100(c)(1)(i) which requires the periodic monitoring of the patient's home adaptation, including visits to the patient's home by facility personnel. For more information on existing flexibilities for in-center dialysis patients to receive their dialysis treatments in the home, or long-term care facility, referenceQSO–20–19–ESRD.
262	HHS	CMS	Waiver		ICF/IID Suspension of Community Outings.	Waiving the requirements at 42 CFR 483.420(a)(11) which requires clients have the opportunity to participate in social, religious, and community group activities. The federal and/or state emergency restrictions will dictate the level of restriction from the community based on whether it is for social, religious, or medical purposes. States may have also imposed more restrictive limitations. CMS is authorizing the facility to implement social distancing precautions with respect to on and off campus movement. State and Federal restrictive measures should be made in the context of competent, person-centered planning for each client.
263	HHS	CMS	Waiver		ICF/IID Modification of Adult Training Programs and Active Treatment.	CMS is waiving those components of beneficiaries' active treatment programs and training that would violate current state and local requirements for social distancing, staying at home, and traveling for essential services only. For example, although day habilitation programs and supported employment are important opportunities for training and socialization of clients at intermediate care facilities for individuals with developmental disabilities, these programs pose too high of a risk to staff and clients for exposure to a person with suspected or confirmed COVID–19. In accordance with § 483.440(c)(1), any modification to a client's Individual Program Plan (IPP) in response to treatment changes associated with the COVID–19 crisis requires the approval of the interdisciplinary team. For facilities that have interdisciplinary team members who are unavailable due to the COVID–19, CMS would allow for a retroactive review of the IPP under 483.440(f)(2) in order to allow IPPs to receive modifications as necessary based on the impact of the COVID–19 crisis.
264	HHS	CMS	Waiver		Timeframes for Hospice Comprehensive Assessments.	CMS is waiving certain requirements at 42 CFR 418.54 related to updating comprehensive assessments of patients. This waiver applies the timeframes for updates to the comprehensive assessment found at § 418.54(d). Hospices must continue to complete the required assessments and updates; however, the timeframes for updating the assessment may be extended from 15 to 21 days.
265	HHS	CMS	Waiver		Clinical Records for Long-Term Care (LTC) Facilities.	Pursuant to section 1135(b)(5) of the Act, CMS is modifying the requirement at 42 CFR 483.10(g)(2)(ii) which requires long-term care (LTC) facilities to provide a resident a copy of their records within two working days (when requested by the resident). Specifically, CMS is modifying the timeframe requirements to allow LTC facilities ten working days to provide a resident's record rather than two working days.
266	HHS	CMS	Waiver		Clinical Records for HHAs	In accordance with section 1135(b)(5) of the Act, CMS is extending the deadline for completion of the requirement at 42 CFR 484.110(e), which requires HHAs to provide a patient a copy of their medical record at no cost during the next visit or within four business days (when requested by the patient). Specifically, CMS will allow HHAs ten business days to provide a patient's clinical record, instead of four.
267	HHS	CMS	Waiver		Ambulance Services: Medicare Ground Ambulance Data Collection System.	Modifying the data collection period and data reporting period, as defined at 42 CFR § 414.626(a), for ground ambulance organizations (as defined at 42 CFR § 414.605) that were selected by CMS under 42 CFR § 414.626(c) to collect data beginning between January 1, 2020 and December 31, 2020 (year 1) for purposes of complying with the data reporting requirements described at 42 CFR § 414.626. Under this modification, these ground ambulance organizations can select a new continuous 12-month data collection period that begins between January 1, 2021 and December 31, 2021, collect data necessary to complete the Medicare Ground Ambulance Data Collection Instrument during their selected data collection period, and submit a completed Medicare Ground Ambulance Data Collection Instrument during the data reporting period that corresponds to their selected data collection period. CMS is modifying this data collection and reporting period to increase flexibilities for ground ambulance organizations that would otherwise be required to collect data in 2020–2021 so that they can focus on their operations and patient care. As a result of this modification, ground ambulance organizations selected for year 1 data collection and reporting will collect and report data during the same period of time that will apply to ground ambulance organizations selected by CMS under 42 CFR § 414.626(c) to collect data beginning between January 1, 2021 and December 31, 2021 (year 2) for purposes of complying with the data reporting requirements described at 42 CFR § 414.626.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
268	HHS	CMS	Waiver		Paid Feeding Assistants for Long-Term Care Facilities (LTCF).	Modifying the requirements at 42 CFR 483.60(h)(1)(i) and 483.160(a) regarding required training of paid feeding assistants. Specifically, CMS is modifying the minimum timeframe requirements in these sections, which require this training to be a minimum of 8 hours. CMS is modifying to allow that the training can be a minimum of 1 hour in length. CMS is not waiving any other requirements under 42 CFR 483.60(h) related to paid feeding assistants or the required training content at 42 CFR 483.160(a)(1)–(8), which contains infection control training and other elements. Additionally, CMS is also not waiving or modifying the requirements at 42 CFR 483.60(h)(2)(i), which requires that a feeding assistant must work under the supervision of a registered nurse (RN) or licensed practical nurse (LPN).
269	HHS	CMS	Waiver	42 CFR 483.430(e)(1).	ICF/IID Mandatory Training Requirements Suspension.	Waiving, in-part, the requirements at 42 CFR 483.430(e)(1) related to routine staff training programs unrelated to the public health emergency. CMS is not waiving 42 CFR 483.430(e)(2)–(4) which requires focusing on the clients' developmental, behavioral and health needs and being able to demonstrate skills related to interventions for inappropriate behavior and implementing individual plans. We are not waiving these requirements as we believe the staff ability to develop and implement the skills necessary to effectively address clients' developmental, behavioral and health needs are essential functions for an ICF/IID. CMS is also not waiving initial training for new staff hires or training for staff around prevention and care for the infection control of COVID–19. It is critical that new staff gain the necessary skills and understanding of how to effectively perform their role as they work with this complex client population and that staff understand how to prevent and care for clients with COVID–19.
270	HHS	CMS	Waiver		Requirement for Hospices to Use Volunteers.	Waiving the requirement at 42 CFR 418.78(e) that hospices are required to use volunteers (including at least 5% of patient care hours). It is anticipated that hospice volunteer availability and use will be reduced related to COVID–19 surge and potential quarantine.
271	HHS	CMS	Waiver		ICF/IID Staffing Flexibilities	Waiving the requirements at 42 CFR 483.430(c)(4), which requires the facility to provide sufficient Direct Support Staff (DSS) so that Direct Care Staff (DCS) are not required to perform support services that interfere with direct client care. DSS perform activities such as cleaning of the facility, cooking, and laundry services. DSC perform activities such as teaching clients appropriate hygiene, budgeting, or effective communication and socialization skills. During the time of this waiver, DCS may be needed to conduct some of the activities normally performed by the DSS. This will allow facilities to adjust staffing patterns, while maintaining the minimum staffing ratios required at § 483.430(d)(3).
272	HHS	CMS	Waiver		Ambulatory Surgical Center (ASC) Medical Staff.	Waiving the requirement at § 416.45(b) that medical staff privileges must be periodically reappraised, and the scope of procedures performed in the ASC must be periodically reviewed. This will allow for physicians whose privileges will expire to continue practicing at the ambulatory surgical center, without the need for reappraisal, and for ASCs to continue operations without performing these administrative tasks during the PHE. This waiver will improve the ability of ASCs to maintain their current workforce during the PHE.
273	HHS	CMS	Waiver		Sterile Compounding	Waiving requirements (also outlined in USP797) at 42 CFR 482.25(b)(1) and 485.635(a)(3) in order to allow used face masks to be removed and retained in the compounding area to be re-donned and reused during the same work shift in the compounding area only. This will conserve scarce face mask supplies. CMS will not review the use and storage of face masks under these requirements.
274	HHS	CMS	Waiver		Patient Rights	Waiving requirements under 42 CFR 482.13 only for hospitals that are considered to be impacted by a widespread outbreak of COVID–19. Hospitals that are located in a state which has widespread confirmed cases (*i.e.,* 51 or more confirmed cases*) as updated on the CDC website, CDC States Reporting Cases of COVID–19, at *https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html,* would not be required to meet the following requirements: • § 482.13(d)(2)—With respect to timeframes in providing a copy of a medical record. • § 482.13(h)—Related to patient visitation, including the requirement to have written policies and procedures on visitation of patients who are in COVID–19 isolation and quarantine processes. • § 482.13(e)(1)(ii)—Regarding seclusion.
275	HHS	CMS	Waiver		Certification related to Long-Term Care Facilities (Physical Environment).	Waiving requirements related at 42 CFR 483.90, specifically the following: • Provided that the state has approved the location as one that sufficiently addresses safety and comfort for patients and staff, CMS is waiving requirements under § 483.90 to allow for a non-SNF building to be temporarily certified and available for use by a SNF in the event there are needs for isolation processes for COVID–19 positive residents, which may not be feasible in the existing SNF structure to ensure care and services during treatment for COVID–19 are available while protecting other vulnerable adults.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
						• CMS believes this will also provide another measure that will free up inpatient care beds at hospitals for the most acute patients while providing beds for those still in need of care. CMS will waive certain conditions of participation and certification requirements for opening a NF if the state determines there is a need to quickly stand up a temporary COVID–19 isolation and treatment location. • CMS is also waiving requirements under 42 CFR 483.90 to temporarily allow for rooms in a long-term care facility not normally used as a resident's room, to be used to accommodate beds and residents for resident care in emergencies and situations needed to help with surge capacity. Rooms that may be used for this purpose include activity rooms, meeting/conference rooms, dining rooms, or other rooms, as long as residents can be kept safe, comfortable, and other applicable requirements for participation are met. This can be done so long as it is not inconsistent with a state's emergency preparedness or pandemic plan, or as directed by the local or state health department.
276	HHS	CMS	Guidance		Review Choice Demonstration for Home Health Services Claims Processing Requirements.	Effective March 29, 2020, certain claims processing for the Review Choice Demonstration (RCD) for Home Health Services will be paused in Illinois, Ohio, and Texas, until the PHE for the COVID–19 pandemic has ended. During the pause, the MACs will process claims submitted prior to the emergency period under normal claims processing requirements. Claims for home health services furnished on or after March 29, 2020 and before the end of the PHE for the COVID–19 pandemic in these states will not be subject to the review choices made by the home health agency under the demonstration. However, the MAC will continue to review any pre-claim review requests that have already been submitted, and providers may continue to submit new pre-claim review requests for review during the pause. Claims that have received a provisional affirmative pre-claim review decision and are submitted with an affirmed Unique Tracking Number (UTN) will continue to be excluded from future medical review. Home health agencies participating in pre-claim review may submit their claims without requesting such approval from the MAC and claims submitted without a UTN will not be stopped for prepayment review and will not receive a 25% payment reduction. HHAs participating in the other review choices (prepayment or postpayment review) will not receive Additional Documentation Requests (ADRs) during the pause, and ADRs that were issued prior to the PHE will be released and processed as normal. Following the end of the PHE for the COVID–19 pandemic, the MAC will conduct postpayment review on claims subject to the demonstration that were submitted and paid during the pause. The demonstration will not begin in North Carolina and Florida on May 4, 2020, as previously scheduled. CMS will provide notice on its demonstration website rescheduling the start of the demonstration, once the PHE has ended.
277	HHS	CMS	Guidance		Cost and Utilization Management Requirements.	Part D sponsors must suspend all quantity and days' supply limits under 90 days for all covered Part D drugs (as defined in 42 CFR 423.100) other than such limits resulting from safety edits (discussed below). Part D sponsors may otherwise continue to utilize their formularies, tiered cost-sharing benefit structures, and approved prior authorization (PA) and step therapy (ST) requirements. There are no alterations to mid-year formulary change requirements, and we remind sponsors that new drugs may be added and utilization management requirements removed at any time.
278	HHS	CMS	Guidance		Opioid Safety Edits	Part D sponsors are expected to continue to apply existing opioid point-of-sale safety edits during the COVID–19 emergency, including the care coordination edit at 90 morphine milligram equivalents (MME) per day, optional hard edit at 200 MME per day or more, hard edit for seven-day supply limit for initial opioid fills (opioid naïve), soft edit for concurrent opioid and benzodiazepine use, and soft edit for duplicative long-acting (LA) opioid therapy. However, due to the increased burden on the healthcare system as a result of the COVID–19 pandemic, we encourage plans to waive requirements for pharmacist consultation with the prescriber to confirm intent to lessen the administrative burden on prescribers and pharmacists. Additionally, CMS is exercising its enforcement discretion to adopt a temporary policy of relaxed enforcement in connection with any Part D medication delivery documentation and signature log requirements related to these edits during the COVID–19 emergency, as noted above.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
279	HHS	CMS	Guidance		Additional or Expanded Benefit Offerings.	In response to the unique circumstances resulting from the outbreak of COVID–19, CMS is exercising its enforcement discretion to adopt a temporary policy of relaxed enforcement in connection with the prohibition on mid-year benefit enhancements (73 **Federal Register** 43628), such as expanded or additional benefits or more generous cost-sharing under the conditions outlined in this memorandum, when such mid-year benefit enhancements are provided in connection with the COVID–19 outbreak, are beneficial to enrollees, and are provided uniformly to all similarly situated enrollees. MAOs may implement additional or expanded benefits that address issues or medical needs raised by the COVID–19 outbreak, such as covering meal delivery or medical transportation services to accommodate the efforts to promote social distancing during the COVID–19 public health emergency. CMS will exercise its enforcement discretion regarding the administration of MAOs' benefit packages as approved by CMS until it is determined that the exercise of this discretion is no longer necessary in conjunction with the COVID–19 outbreak.
280	HHS	CMS	Guidance		Medicare Advantage Cost-Sharing.	MAOs may waive or reduce enrollee cost-sharing for beneficiaries enrolled in their Medicare Advantage plans impacted by the outbreak. For example, Medicare Advantage Organizations may waive or reduce enrollee cost-sharing for COVID–19 treatment, telehealth benefits or other services to address the outbreak provided that Medicare Advantage Organizations waive or reduce cost-sharing for all similarly situated plan enrollees on a uniform basis. CMS clarifies that this flexibility is limited to when a waiver or reduction in cost-sharing can be tied to the COVID–19 outbreak. CMS consulted with the HHS Office of Inspector General (OIG) and HHS OIG advised that should an Medicare Advantage Organization choose to voluntarily waive or reduce enrollee cost-sharing, as approved by CMS herein, such waivers or reductions would satisfy the safe harbor to the Federal anti-kickback statute set forth at 42 CFR 1001.952(l).
281	HHS	CMS	Guidance		Telehealth	Medicare Advantage Organizations may also provide enrollees access to Medicare Part B services via telehealth in any geographic area and from a variety of places, including beneficiaries' homes. Should a Medicare Advantage Organization wish to expand coverage of telehealth services beyond those approved by CMS in the plan's benefit package for similarly situated enrollees impacted by the outbreak, CMS will exercise its enforcement discretion regarding the administration of Medicare Advantage Organizations' benefit packages as approved by CMS until it is determined that the exercise of this discretion is no longer necessary in conjunction with the PHE. CMS consulted with the HHS OIG and HHS OIG advised that should a Medicare Advantage Organization choose to expand coverage of telehealth benefits, as approved by CMS herein, such additional coverage would satisfy the safe harbor to the Federal anti-kickback statute set forth at 42 CFR 1001.952(l).
282	HHS	CMS	Guidance		Model of Care Flexibility	CMS also recognizes that in light of the COVID–19 outbreak, an MAO with one or more special needs plans (SNPs) may need to implement strategies that do not fully comply with their approved SNP model of care (MOC) in order to provide care to enrollees while ensuring that enrollees and health care providers are also protected from the spread of COVID–19. CMS will consider the special circumstances presented by the COVID–19 outbreak when conducting MOC monitoring or oversight activities.
283	HHS	CMS	Guidance		Involuntary Disenrollment—Temporary Absence Flexibilities.	Due to the public health emergency posed by COVID–19 and the urgent need to ensure that enrollees have continued coverage and access to sufficient health care items and services to meet their medical needs, CMS is exercising its enforcement discretion to adopt a temporary policy of relaxed enforcement with respect to MA organizations that choose to delay to a later date the involuntary disenrollment of enrollees who are temporarily absent from the service area for greater than 6 months when that absence is due to the COVID–19 national emergency. CMS will not enforce the requirement at § 422.74(d)(4) and will allow MA organizations to extend the period of time members may remain enrolled while temporarily absent from the plan service area through the end of the year, or the end of the public health emergency, whichever is earlier. Individuals who remain absent from the service area will be disenrolled January 1, 2021, if the public health emergency is still in effect at that time, or 6 months after the individual left the service area, whichever is later.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
284	HHS	CMS	Guidance		Involuntary Disenrollment—Loss of Special Needs Status.	Due to the public health emergency posed by COVID–19 and the urgent need to ensure that enrollees have continued coverage and access to sufficient health care items and services to meet their medical needs, CMS will also exercise enforcement discretion during calendar year 2020 to adopt a temporary policy of relaxed enforcement with respect to MA organizations that choose to delay to a later date the involuntary disenrollment of enrollees who are losing special needs status and cannot recertify SNP eligibility due to the COVID–19 national emergency. Under this policy, CMS will also not take action against MA organizations that have a policy of deemed continued eligibility and choose to delay to a later date the involuntary disenrollment of enrollees who fail to regain special needs status during the period of deemed continued eligibility (see § 422.52(d)) due to the COVID–19 national emergency. CMS will not enforce the requirement for mandatory disenrollment at § 422.74(b)(2)(iv) and will allow MA organizations to extend the period of deemed continued eligibility under § 422.52(d) during 2020. Individuals who do not regain eligibility must be disenrolled the later of January 1, 2021, or upon expiration of the usual period of deemed continued eligibility that begins the first of the month following the month in which information regarding the loss is available to the MA organization and communicated to the enrollee, including cases of retroactive Medicaid terminations. SNPs are not required under existing regulations to have a policy of deemed continued eligibility; however, plans must apply the same policy consistently for all enrollees of the applicable SNP. For those SNPs that have elected not to have a policy of deemed continued eligibility, CMS encourages the SNP to consider establishing one. For those plans that have a policy of deemed continued eligibility for a period of less than 6 months, CMS encourages the SNP to increase this to 6 months. SNPs may make these types of changes mid-year as long as the change is applied to everyone in the plan and the plan notifies its CMS account manager.
285	HHS	CMS	Guidance		Prior Authorization	Consistent with flexibilities available to Medicare Advantage Organizations absent a disaster, declaration of a state of emergency, or public health emergency, Medicare Advantage Organizations may choose to waive or relax plan prior authorization requirements at any time in order to facilitate access to services with less burden on beneficiaries, plans, and providers. Any such relaxation or waiver must be uniformly provided to similarly situated enrollees who are affected by the disaster or emergency. We encourage plans to consider utilizing this flexibility.
286	HHS	CMS	Guidance		Medicare Advantage Organization (MAO) and Part D Sponsors Additional Flexibilities.	Given both the rapidly changing landscape and the need for Part D sponsors to act quickly to ensure enrollee and employee safety during this pandemic, we encourage Part D sponsors to take the actions you deem reasonable and necessary to keep your enrollees and employees safe and curb the spread of this virus, while still ensuring beneficiary access to needed Part D drugs (example actions listed below). CMS fully supports plans taking actions to accommodate the efforts to promote social distancing. We recognize that there may be circumstances where a Part D sponsor may need to implement strategies or actions they deem reasonable and necessary, but which do not fully comply with program requirements, in order to provide qualified prescription drug coverage to enrollees while ensuring their enrollees and employees are also protected from the spread of COVID–19. CMS will consider the special circumstances presented by the COVID–19 outbreak when conducting monitoring or oversight activities.
287	HHS	CMS	Guidance		Reimbursements for Enrollees for Prescriptions Obtained from Out-of-Network Pharmacies.	Consistent with § 423.124(a) of the Part D regulations, Part D sponsors must ensure enrollees have adequate access to covered Part D drugs dispensed at out-of-network pharmacies when those enrollees cannot reasonably be expected to obtain covered Part D drugs at a network pharmacy. Enrollees remain responsible for any cost sharing under their plan and additional charges (*i.e.,* the out-of-network pharmacy's usual and customary charge), if any, that exceed the plan allowance.
288	HHS	CMS	Guidance		Prior Authorization for Part D Drugs.	As is the case for Medicare Advantage Organizations, consistent with flexibilities available to Part D Sponsors absent a disaster or emergency, Part D Sponsors may choose to waive prior authorization requirements at any time that they otherwise would apply to Part D drugs used to treat or prevent COVID–19, if or when such drugs are identified. Sponsors can also choose to waive or relax PA requirements at any time for other formulary drugs in order to facilitate access with less burden on beneficiaries, plans, and providers. Any such waiver must be uniformly provided to similarly situated enrollees who are affected by the disaster or emergency. We encourage plans to consider utilizing this flexibility.
289	HHS	CMS	Guidance		Drug Shortages	Part D plan sponsors should follow the existing drug shortage guidance in Section 50.13 of Chapter 5 of the Prescription Drug Benefit Manual in response to any shortages that result from this emergency.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
290	HHS	CMS	Guidance		Involuntary Disenrollment—MA and Part D Premium and Grace Period Flexibilities.	To ensure that Medicare Advantage and Part D beneficiaries continue to have access to needed care during the COVID–19 national emergency, CMS would like to remind plans of their ability to apply flexible policies to members who are unable to pay plan premiums. Plans are not required under existing regulations to disenroll members due to failure to pay plan premiums; however, plans must apply the same policy consistently for all enrollees of the applicable plan. For those plans that have elected a policy to disenroll for non-payment of premium, we encourage you to consider changing the policy so that the plan would not disenroll members for non-payment of premium. If a plan chooses not to eliminate its disenrollment policy, we encourage the plan to increase the mandatory grace period (at least two months) to a longer period of time. Plans may make these types of changes mid-year as long as the change is applied to everyone in the plan and the plan notifies its CMS account manager. Detailed information regarding disenrollment and non-payment of premiums requirements are at § 422.74(b)(1)(i) and section 50.3.1 of Chapter 2 of the Medicare Managed Care Manual for MA and at § 423.44(b)(1)(i) and section 50.3.1 of Chapter 3 of the Medicare Prescription Drug Benefit Manual for Part D.
291	HHS	CMS	Guidance		MA and Part D Plan Flexibility to Waive Cost Sharing and to Provide Expanded Telehealth Benefits.	MAOs may waive or reduce enrollee cost-sharing for beneficiaries enrolled in their Medicare Advantage plans impacted by the outbreak. For example, Medicare Advantage Organizations may waive or reduce enrollee cost-sharing for COVID–19 treatment, telehealth benefits or other services to address the outbreak provided that Medicare Advantage Organizations waive or reduce cost-sharing for all similarly situated plan enrollees on a uniform basis. CMS clarifies that this flexibility is limited to when a waiver or reduction in cost-sharing can be tied to the COVID–19 outbreak. CMS consulted with the HHS Office of Inspector General (OIG) and HHS OIG advised that should an Medicare Advantage Organization choose to voluntarily waive or reduce enrollee cost-sharing, as approved by CMS herein, such waivers or reductions would satisfy the safe harbor to the Federal anti-kickback statute set forth at 42 CFR 1001.952(l).
292	HHS	CMS	Guidance		Coverage of Testing and Testing-Related Services for COVID–19.	Under Section 6003 of the Families First Coronavirus Response Act and Section 3713 of the CARES Act, MAOs must not charge cost sharing (including deductibles, copayments, and coinsurance) for: • Clinical laboratory tests for the detection of SARS–CoV–2 or the diagnosis of the virus that causes COVID–19 and the administration of such tests; • specified COVID–19 testing-related services (as described in section 1833(cc)(1)) for which payment would be payable under a specified outpatient payment provision described in section 1833(cc)(2); and • COVID–19 vaccines and the administration of such vaccines, as described in section 1861(s)(10)(A). The limit on cost sharing (including deductibles, copayments, and coinsurance) for COVID–19 testing and specified testing-related services applies to services furnished on or after March 18, 2020, and during the emergency period identified in section 1135(g)(1)(B) of the Act (that is, the public health emergency declared by the Secretary pursuant to section 319 of the Public Health Service Act on January 31, 2020, entitled ''Determination that a Public Health Emergency Exists Nationwide as the Result of the 2019 Novel Coronavirus,'' and any extensions thereof) (''applicable emergency period''). In addition, MAOs may not impose any prior authorization or other utilization management requirements with respect to the coverage of these services when those items or services are furnished on or after March 18, 2020, and during the applicable emergency period.
293	HHS	CMS	Waiver		In-Service Training	Modifying the nurse aide training requirements at § 483.95(g)(1) for SNFs and NFs, which requires the nursing assistant to receive at least 12 hours of in-service training annually.
294	HHS	CMS	Waiver		12-hour Annual In-service Training Requirement for Home Health Aides.	Modifying the requirement at 42 CFR 484.80(d) that home health agencies must assure that each home health aide receives 12 hours of in-service training in a 12-month period. In accordance with section 1135(b)(5) of the Act, we are postponing the deadline for completing this requirement throughout the COVID–19 PHE until the end of the first full quarter after the declaration of the PHE concludes. This will allow aides and the registered nurses (RNs) who teach in-service training to spend more time delivering direct patient care and additional time for staff to complete this requirement.
295	HHS	CMS	Waiver		Annual Training for Hospice Aides.	Modifying the requirement at 42 CFR 418.100(g)(3), which requires hospices to annually assess the skills and competence of all individuals furnishing care and provide in-service training and education programs where required. Pursuant to section 1135(b)(5) of the Act, we are postponing the deadline for completing this requirement throughout the COVID–19 PHE until the end of the first full quarter after the declaration of the PHE concludes. This does not alter the minimum personnel requirements at 42 CFR 418.114. Selected hospice staff must complete training and have their competency evaluated in accordance with unwaived provisions of 42 CFR part 418.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
296	HHS	CMS	Waiver		Training and Assessment of HHA and Hospice Aides.	Waiving the requirement at 42 CFR 418.76(h)(2) for Hospice and 42 CFR 484.80(h)(1)(iii) for HHAs, which require a registered nurse, or in the case of an HHA a registered nurse or other appropriate skilled professional (physical therapist/occupational therapist, speech language pathologist) to make an annual on-site supervisory visit (direct observation) for each aide that provides services on behalf of the agency. In accordance with section 1135(b)(5) of the Act, we are postponing completion of these visits. All postponed onsite assessments must be completed by these professionals no later than 60 days after the expiration of the PHE.
297	HHS	CMS	Guidance	N/A	Repetitive Scheduled Non-Emergent Ambulance Transport Claims Processing Requirements.	Effective March 29, 2020, certain claims processing requirements for the Repetitive, Scheduled Non-Emergent Ambulance Transport Prior Authorization Model will be paused in the model states of Delaware, the District of Columbia, Maryland, New Jersey, North Carolina, Pennsylvania, South Carolina, Virginia, and West Virginia until the PHE for the COVID–19 pandemic has ended. During the pause, claims for repetitive, scheduled non-emergent ambulance transports submitted on or after March 29, 2020, and before the end of the PHE for the COVID–19 pandemic in these states will not be stopped for pre-payment review if prior authorization has not been requested by the fourth round trip in a 30-day period. During the pause, the MAC will continue to review any prior authorization requests that have already been submitted, and ambulance suppliers may continue to submit new prior authorization requests for review during the pause.
298	HHS	CMS	Section 1135 Waiver.	N/A	Temporarily relax provider enrollment requirements.	Allows states to apply for the ability to: Waive payment of application fee to temporarily enroll a provider. Waive criminal background checks associated with temporarily enrolling providers. Waive site visits to temporarily enroll a provider. Permit providers located out-of-state/territory to provide care to an emergency State's Medicaid enrollee and be reimbursed for that service. Streamline provider enrollment requirements when enrolling providers. Postpone deadlines for revalidation of providers who are located in the state or otherwise directly impacted by the emergency. Waive requirements that physicians and other health care professionals be licensed in the state in which they are providing services, so long as they have equivalent licensing in another state. Waive conditions of participation or conditions for coverage for existing providers for facilities for providing services in alternative settings, including using an unlicensed facility, if the provider's licensed facility has been evacuated.
299	HHS	CMS	Section 1135 Waiver.	N/A	Suspend PASRR Assessments	Suspend PASRR Level I and Level II Assessments for 30 Days.
300	HHS	CMS	Section 1135 Waiver.	N/A	Extend Fair Hearing Requests and Appeal Timelines.	Allow managed care enrollees to proceed almost immediately to a state fair hearing without having a managed care plan resolve the appeal first by permitting the state to modify the timeline for managed care plans to resolve appeals to one day so the impacted appeals satisfy the exhaustion requirements. Give enrollees more than 120 days (if a managed care appeal) or more than 90 days (if an eligibility for fee-for-service appeal) to request a state fair hearing by permitting extensions of the deadline for filing those appeals by a set number of days (*e.g.,* an additional 120 days).
301	HHS	CMS	Section 1135 Waiver.	N/A	Temporarily Suspend Medicaid FFS Prior Authorization Requirements.	Suspend Medicaid fee-for-service prior authorization requirements. Section 1135(b)(1)(C) allows for a waiver or modification of pre-approval requirements if prior authorization processes are outlined in detail in the State Plan for particular.
302	HHS	CMS	Section 1135 Waiver.	N/A	Permit Provision of Services in Alternative Settings.	Waive conditions of participation or conditions for coverage for existing providers for facilities for providing services in alternative settings, including using an unlicensed facility, if the provider's licensed facility has been evacuated.
303	HHS	CMS	Section 1135 Waiver.	N/A	Extend Pre-Existing Prior Authorizations through PHE.	Require fee-for-service providers to extend pre-existing authorizations through which a beneficiary has previously received prior authorization through the termination of the emergency declaration.
304	HHS	CMS	Section 1135 Waiver.	N/A	Submission Flexibilities	Grant Flexibility on SPA Submission Deadline, Public Notice and Tribal Consultation.
305	HHS	CMS	Section 1135 Waiver.	N/A	HCBS Flexibilities	Temporarily Allow Beneficiaries to Relocate to Settings Not Meeting HCBS Settings Requirements. Temporarily Eliminate Requirement to Obtain Signatures on HCBS Person-Centered Service Plans.
306	HHS	CMS	Section 1135 Waiver.	N/A	Conflict of Interest Requirements	Waive Conflict of Interest Requirements for Case Management.
307	HHS	CMS	Section 1135 Waiver.	N/A	Provide Additional Benefits and services.	Allows states to add home delivered meals and other services including medical equipment and supplies to their Medicaid program.
308	HHS	CMS	Section 1135 Waiver.	N/A	Modify Licensure or Other Requirements for Wavier Services Settings	
309	HHS	CMS	Section 1135 Waiver.	N/A	Exceed Service Limitations or Requirements for Amount, Duration and Prior Authorization.	Suspend Medicaid fee-for-service prior authorization requirements. Section 1135(b)(1)(C) allows for a waiver or modification of pre-approval requirements if prior authorization processes are outlined in detail in the State Plan for particular benefits. Require fee-for-service providers to extend pre-existing authorizations through which a beneficiary has previously received prior authorization through the termination of the emergency declaration.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
310	HHS	CMS	Section 1135 Waiver.	N/A	Opportunities for Self Direction	This allows states to temporarily add or expand requirements for Medicaid self-direction during the PHE.
311	HHS	CMS	Section 1135 Waiver.	N/A	Increase the Cost Limits	Temporarily Increase the Cost Limits for Entry into the Waiver.
312	HHS	CMS	HCBS Appendix K Waiver.	N/A	Waive Visitors Settings Requirements.	Not comply with the HCBS settings requirement at 42 CFR 441.301(c)(4)(vi)(D) that individuals are able to have visitors of their choosing at any time, for settings added after March 17, 2014, to minimize the spread of infection during the COVID–19 pandemic.
313	HHS	CMS	HCBS Appendix K Waiver.	N/A	Allow Reassessment and Re-evaluation Extensions.	Allow an extension for reassessments and reevaluations for up to one year past the due date.
314	HHS	CMS	HCBS Appendix K Waiver.	N/A	Add Electronic Service Delivery	Add an electronic method of service delivery (*e.g.,* telephonic) allowing services to continue to be provided remotely in the home setting for: Case management; Personal care services that only require verbal cueing; In-home habilitation; Monthly monitoring (*i.e.,* in order to meet the reasonable indication of need for services requirement in 1915(c) waivers); Other [as described]:
315	HHS	CMS	HCBS Appendix K Waiver.	N/A	Allow Virtual/Remote Evaluations, Assessments and Person-Centered Services Planning.	Allow the option to conduct evaluations, assessments, and person-centered service planning meetings virtually/remotely in lieu of face-to-face meetings.
316	HHS	CMS	HCBS Appendix K Waiver.	N/A	Add Electronic Method for Signing Required Documents.	Add an electronic method of signing off on required documents such as the person-centered service plan.
317	HHS	CMS	HCBS Appendix K Waiver.	N/A	Allow Spouses and Parents of Minor Children to Provide Services.	Allow spouses and parents of minor children to provide personal care services.
318	HHS	CMS	HCBS Appendix K Waiver.	N/A	Allow Family Member to Provide Services.	Allow a family member to be paid to render services to an individual.
319	HHS	CMS	HCBS Appendix K Waiver.	N/A	Modify Providers of Home-Delivered Meals.	Modify service providers for home-delivered meals to allow for additional providers, including non-traditional providers.
320	HHS	CMS	HCBS Appendix K Waiver.	N/A	Allow Other Practitioners to Provide Services.	Allows states to apply for flexibilities like the ability to Allow Other Practitioners to Provide Services and Allow other practitioners in lieu of approved providers within the waiver.
321	HHS	CMS	HCBS Appendix K Waiver.	N/A	Waive Conflict of Interest Requirements for Case Management.	Case management entity qualifies under 42 CFR 441.301(c)(1)(vi) as the only willing and qualified entity.
322	HHS	CMS	HCBS Appendix K Waiver.	N/A	Modify Services	Allows for states to apply to provide additional services such as: Home-delivered meals, medical supplies, equipment and appliances (over and above that which is in the state plan), and assistive technology.
323	HHS	CMS	HCBS Appendix K Waiver.	N/A	Allow Retainer Payments	Temporarily include retainer payments to address emergency related issues. States must describe the circumstances under which such payments are authorized and applicable limits on their duration. Retainer payments are available for habilitation and personal care only.]
324	HHS	CMS	HCBS Appendix K Waiver.	N/A	Changes to Participant Safeguards.	Postponing 372 Reporting Requirements. Temporarily modify incident reporting requirements, medication management or other participant safeguards to ensure individual health and welfare, and to account for emergency circumstances.
325	HHS	CMS	HCBS Appendix K Waiver.	N/A	Modify Person-Centered Planning Requirements.	Temporarily modify person-centered service plan development process and individual(s) responsible for person-centered service plan development, including qualifications. States must describe any modifications including qualifications of individuals responsible for service plan development, and address Participant Safeguards. Also include strategies to ensure that services are received as authorized.
326	HHS	CMS	HCBS Appendix K Waiver.	N/A	Allow Payment in Institutional Settings.	Temporarily allow for payment for services for the purpose of supporting waiver participants in an acute care hospital or short-term institutional stay when necessary supports (including communication and intensive personal care) are not available in that setting, or when the individual requires those services for communication and behavioral stabilization, and such services are not covered in such settings.
327	HHS	CMS	HCBS Appendix K Waiver.	N/A	Allow Virtual LOC Determinations.	Temporarily modify processes for level of care evaluations or re-evaluations (within regulatory requirements).
328	HHS	CMS	HCBS Appendix K Waiver.	N/A	Increase or Modify Payments Rates.	Temporarily increase payment rates. States provide an explanation for the increase; List the provider types, rates by service, and specify whether this change is based on a rate development method that is different from the current approved waiver. If the rate varies by provider, they list the rate by service and by provider.]
329	HHS	CMS	HCBS Appendix K Waiver.	N/A	Extend Dates for LOC Determinations.	Temporarily modify processes for level of care evaluations or re-evaluations (within regulatory requirements.
330	HHS	CMS	Medicaid Disaster Relief SPA.	N/A	Adopt Optional COVID–19 Testing Group.	Furnishes medical assistance to the new optional group described at section 1902(a)(10)(A)(ii)(XXIII) and 1902(ss) of the Act providing coverage for uninsured individuals.
331	HHS	CMS	Medicaid Disaster Relief SPA.	N/A	Establish Residency for Individuals Temporarily Out of State Due to a Disaster.	Considers individuals who are evacuated from the state, who leave the state for medical reasons related to the disaster or public health emergency, or who are otherwise absent from the state due to the disaster or public health emergency and who intend to return to the state, to continue to be residents of the state under 42 CFR 435.403(j)(3).
332	HHS	CMS	Medicaid Disaster Relief SPA.	N/A	Extend PE to non-MAGI Populations.	Allow hospitals to make presumptive eligibility determinations for the following additional state plan populations, or for populations in an approved section 1115 demonstration, in accordance with section 1902(a)(47)(B) of the Act and 42 CFR 435.1110, provided that the agency has determined that the hospital is capable of making such determinations.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
333	HHS	CMS	Medicaid Disaster Relief SPA.	N/A	Extend the ROP for good faith effort.	Provides for an extension of the reasonable opportunity period for non-citizens declaring to be in a satisfactory immigration status, if the non-citizen is making a good faith effort to resolve any inconsistences or obtain any necessary documentation, or the agency is unable to complete the verification process within the 90-day reasonable opportunity period due to the disaster or public health emergency.
334	HHS	CMS	Medicaid Disaster Relief SPA.	N/A	Establish Income and Resource Disregards for non-MAGI Eligibility Groups.	Agency applies less restrictive financial methodologies to individuals excepted from financial methodologies based on modified adjusted gross income (MAGI).
335	HHS	CMS	Medicaid Disaster Relief SPA.	N/A	Designate Other Entities as a Qualified Entity for PE.	Agency designates itself as a qualified entity for purposes of making presumptive eligibility determinations described below in accordance with sections 1920, 1920A, 1920B, and 1920C of the Act and 42 CFR part 435 Subpart L. Also allow the agency to designate the following entities as qualified entities for purposes of making presumptive eligibility determinations or adds additional populations as described below in accordance with sections 1920, 1920A, 1920B, and 1920C of the Act and 42 CFR part 435 Subpart L.
336	HHS	CMS	Medicaid Disaster Relief SPA.	N/A	Adopt Continuous Eligibility for Children.	Agency adopts continuous eligibility for children regardless of changes in circumstances in accordance with section 1902(e)(12) of the Act and 42 CFR 435.926.
337	HHS	CMS	Medicaid Disaster Relief SPA.	N/A	Extend Residency to Individuals who May be Considered Residents of Other States.	Agency provides Medicaid coverage to the following individuals living in the state, who are non-residents.
338	HHS	CMS	Medicaid Disaster Relief SPA.	N/A	Extend the Redetermination Period for Non-MAGI Populations.	Agency conducts redeterminations of eligibility for individuals excepted from MAGI-based financial methodologies under 42 CFR 435.603(j) less frequently (but at least once every 12 months) in accordance with 42 CFR 435.916(b).
339	HHS	CMS	Medicaid Disaster Relief SPA.	N/A	Suspend Deductibles, Copayments, Coinsurance and other Cost Sharing Charges.	Agency suspends deductibles, copayments, coinsurance, and other cost sharing charges.
340	HHS	CMS	Medicaid Disaster Relief SPA.	N/A	Suspend Enrollment Fees, Premiums and Similar Charges.	Agency suspends enrollment fees, premiums and similar charges.
341	HHS	CMS	Medicaid Disaster Relief SPA.	N/A	Add a Variance to the Basic PETI Personal Needs Allowance.	State elects a new variance to the basic personal needs allowance for institutionalized individuals.
342	HHS	CMS	Medicaid Disaster Relief SPA.	N/A	Establish an Undue Hardship Waiver for Payment of Enrollment Fees, Premiums and Other Similar Charges.	Agency allows waiver of payment of the enrollment fee, premiums and similar charges for undue hardship.
343	HHS	CMS	Medicaid Disaster Relief SPA.	N/A	Adjust Covered Benefits	Give state flexibility to adjust or make changes to the covered benefits under their Medicaid program.
344	HHS	CMS	Medicaid Disaster Relief SPA.	N/A	Establish Preferred Drug List Exceptions.	Agency makes exceptions to their published Preferred Drug List if drug shortages occur.
345	HHS	CMS	Medicaid Disaster Relief SPA.	N/A	Extend Telehealth Utilization	Agency makes changes to telehealth utilization, which may be different than outlined in the state's approved state plan.
346	HHS	CMS	Medicaid Disaster Relief SPA.	N/A	Apply New or Adjusted Benefits to ABPs.	Applies new or adjusted benefits to ABPs.
347	HHS	CMS	Medicaid Disaster Relief SPA.	N/A	Compliance with Existing Requirements for New and Adjusted benefits.	Attest to compliance with existing benefit requirements.
348	HHS	CMS	Medicaid Disaster Relief SPA.	N/A	Expand Prior Authorization	Prior authorization for medications is expanded by automatic renewal without clinical review, or time/quantity extensions.
349	HHS	CMS	Medicaid Disaster Relief SPA.	N/A	Adjust Days' Supply or Quantity Limits.	Agency adjusts day supply or quantity limit for covered outpatient drugs, if current state plan pages have limits on the amount of medication dispensed.
350	HHS	CMS	Medicaid Disaster Relief SPA.	N/A	Add New Optional Benefits	Adds optional benefits in its state plan (include service descriptions, provider qualifications, and limitations on amount, duration or scope of the benefit).
351	HHS	CMS	Medicaid Disaster Relief SPA.	N/A	Add Temporary Supplemental Payment to the Professional Dispensing Fee.	Agency makes payment adjustment to the professional dispensing fee when additional costs are incurred by the providers for delivery.
352	HHS	CMS	Medicaid Disaster Relief SPA.	N/A	Miscellaneous Payment Changes.	Includes supplemental payments—Creating new targeted supplemental payments for hospitals, nursing facilities, and other providers types or modifying existing supplemental payments, such as to accelerate the timing of the payments or to allow for additional flexibility in qualification.
353	HHS	CMS	Medicaid Disaster Relief SPA.	N/A	Increase Payment Rates for Current State Plan Services.	Nursing facility rate increases or add-ons—Increases can be per diem dollar increases (ranging from $12 to $40 per day) or percentage increases (ranging from 4% to 30%). Some increases are across-the-board, while others are targeted to residents diagnosed with COVID–19. Other changes involve temporarily modifying existing rate setting methodologies (such as allowing additional costs to be considered), removing certain payment penalties, and setting payments for isolation centers. Telehealth payment—Removing existing state plan language restricting use of telehealth/telephonic delivery of services and paying for such services at either the same face-to-face state plan rates or alternative rates. Supplemental payments—Creating new targeted supplemental payments for hospitals, nursing facilities, and other providers types or modifying existing supplemental payments, such as to accelerate the timing of the payments or to allow for additional flexibility in qualification. Bed hold days—Increasing the number of inpatient facility bed hold days that the state will pay for or removing the limit altogether, subject to certain conditions, such as state pre-authorization for COVID–19-related leave of absences. Laboratory testing—Adding COVID–19 testing codes to state fee schedules and modifying payments of these codes to 100% of Medicare.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
						Hospital rate increases—Increasing hospital payment rates by a certain percentage, ranging from 5–12% increase for general hospital rates to targeting inpatient stays with COVID–19 diagnosis for 20% increase. Various provider rate increases or add-ons—Increasing rates across multiple provider/service types from 5 to 15% to providing increases to multiple provider types based on the hours worked by direct care workers, tiered based on the treatment of COVID–19 patients.
354	HHS	CMS	Medicaid Disaster Relief SPA.	N/A	Payments for Telehealth Services.	Removing existing state plan language restricting use of telehealth/telephonic delivery of services and paying for such services at either the same face-to-face state plan rates or alternative rates.
355	HHS	CMS	Medicaid Disaster Relief SPA.	N/A	Establish a Payment Methodology for New Covered Optional Benefits.	Establish payment methodology for newly covered benefits.
356	HHS	CMS	CHIP Disaster Relief SPA.	N/A	Delay Renewal Processing and Deadlines.	At State discretion, requirements related to timely processing of renewals and/or deadlines for families to respond to renewal requests may be temporarily waived for CHIP beneficiaries who reside and/or work in a State or Federally declared disaster area.
357	HHS	CMS	CHIP Disaster Relief SPA.	N/A	Delay Acting on Changes in Circumstance.	At State discretion, the waiting period policy will be temporarily suspended for CHIP applicants and current enrollees who reside and/or work in a State or Federally declared disaster area.
358	HHS	CMS	CHIP Disaster Relief SPA.	N/A	Delay Application Processing	At State discretion, requirements related to timely processing of applications may be temporarily waived for CHIP applicants who reside and/or work in a State or Federally declared disaster area.
359	HHS	CMS	CHIP Disaster Relief SPA.	N/A	Delay Tribal Consultation	To address the COVID–19 public health emergency, the State seeks a waiver under section 1135 of the Act to modify the tribal consultation process by shortening the number of days before submission of the SPA and/or conducting consultation after submission of the SPA.
360	HHS	CMS	CHIP Disaster Relief SPA.	N/A	Waive Cost Sharing	At State discretion, cost sharing may be temporarily waived for CHIP applicants and/or existing beneficiaries who reside and/or work in a State or Federally declared disaster area.
361	HHS	CMS	CHIP Disaster Relief SPA.	N/A	Waive Premiums/Enrollment Fees.	At State discretion, non-payment of premium or enrollment fees may be temporarily forgiven/waived for CHIP applicants and/or existing beneficiaries who reside and/or work in a State or Federally declared disaster area.
362	HHS	CMS	CHIP Disaster Relief SPA.	N/A	Waive Premium Lock-Out Policy	At State discretion, the premium lock-out policy is temporarily suspended and coverage is available regardless of whether the family has paid their outstanding premium for existing beneficiaries who reside and/or work in a State or Federally declared disaster area.
363	HHS	CMS	CHIP Disaster Relief SPA.	N/A	Extend the ROP for Good Faith Effort.	At State discretion, the agency may provide for an extension of the reasonable opportunity period for non-citizens declaring to be in a satisfactory immigration status, if the non-citizen is making a good faith effort to resolve any inconsistences or obtain any necessary documentation, or the agency is unable to complete the verification process within the 90-day reasonable opportunity period due to the State or Federally declared disaster or public health emergency.
364	HHS	CMS	CHIP Disaster Relief SPA.	N/A	Institute More Frequent PE Periods.	At State discretion, the presumptive eligibility period will be extended to (insert State specific timeframe) for CHIP applicants and current enrollees who reside and/or work in a State or Federally declared disaster area.
365	HHS	CMS	CHIP Disaster Relief SPA.	N/A	Extend Premium Deadlines	At State discretion, families may temporarily be given additional time to pay their premiums for existing beneficiaries who reside and/or work in a State or Federally declared disaster are a.
366	HHS	CMS	CHIP Disaster Relief SPA.	N/A	Provide 12-Month Continuous Eligibility.	At State discretion, it may temporarily provide continuous eligibility to CHIP enrollees who reside and/or work in a State or Federally declared disaster area.
367	HHS	CMS	CHIP Disaster Relief SPA.	N/A	Allow Phone Triage for Dental Services.	At State discretion, it may temporarily use a simplified application for CHIP enrollees who reside and/or work in a State or Federally declared disaster area.
368	HHS	CMS	CHIP Disaster Relief SPA.	N/A	Provide Additional Benefits	At State discretion, requirements related to timely processing of renewals and/or deadlines for families to respond to renewal requests may be temporarily waived for CHIP beneficiaries who reside and/or work in a State or Federally declared disaster area.
369	HHS	CMS	CHIP Disaster Relief SPA.	N/A	Waive Affordability Test and Private Insurance Lookback.	At State discretion, premiums or enrollment fees and co-payments may be temporarily waived for CHIP applicants and/or existing beneficiaries who reside and/or work in a State or Federally declared disaster area.
370	HHS	CMS	CHIP Disaster Relief SPA.	N/A	Add More Qualified Entities to Make PE Determinations.	At State discretion, non-payment of premium or enrollment fees may be temporarily forgiven/waived for CHIP applicants and/or existing beneficiaries who reside and/or work in a State or Federally declared disaster area.
371	HHS	CMS	Other regulatory action.	N/A	Payment and Grace Period Flexibilities Associated with the COVID–19 National Emergency.	Announces enforcement discretion to permit issuers that offer coverage through HealthCare.gov to extend premium payment deadlines and delay cancellation for non-payment of premiums.
372	HHS	CMS	Guidance	N/A	FAQs on Catastrophic Plan Coverage and COVID–19.	Announces enforcement discretion to permit issuers to amend their catastrophic plans to provide coverage without imposing cost-sharing requirements for COVID–19 related services before an enrollee meets the catastrophic plan's deductible.
373	HHS	CMS	Other regulatory action.	N/A	Postponement of 2019 Benefit year HHS-operated Risk Adjustment Data Validation (HHS–RADV).	Announces temporarily policy of relaxed enforcement to postpone issuer requirements related to the 2019 benefit year HHS–RADV process, delaying the timeline for release of 2019 benefit year HHS–RADV error rates, as well as the publication of 2019 benefit year HHS–RADV results to issuers.

ATTACHMENT A—Continued

Action	Agency	Sub-agency	Type of action	RIN (if applicable)	Title of action	Brief summary of action
374	HHS	CMS	Other regulatory action.	N/A	Risk Adjustment Telehealth and Telephone Services During COVID–19 FAQs.	Provides clarification that telephonic codes will be valid for 2020 benefit year risk adjustment data submissions for the HHS-operated risk adjustment program.
375	HHS	CMS	Other regulatory action.	N/A	Temporary Period of Relaxed Enforcement for Submitting the 2019 MLR Annual Reporting Form and Issuing MLR Rebates in Response to the COVID–19 Public Health Emergency.	Announces temporary policy of relaxed enforcement with respect to the regulatory timeframe for issuers to submit the 2019 MLR Annual Reporting Form and for issuers that elect to pay a portion or all of their estimated 2019 MLR rebates in the form of premium credits.
376	HHS	CMS	Other regulatory action.	N/A	Temporary Period of Relaxed Enforcement of Certain Timeframes Related to Group Market Requirements Under the Public Health Service Act in Response to the COVID–19 Outbreak.	The Departments of Labor and the Treasury released a joint **Federal Register** Notice providing relief from certain timing requirements under ERISA and the Code that affect private employer group health plans, and their participants and beneficiaries in response to the COVID–19 PHE. This guidance announces a temporary policy of relaxed enforcement to extend similar time frames otherwise applicable to non-Federal governmental group health plans and health insurance issuers offering coverage in connection with a group health plan, and their participants and beneficiaries.
377	HHS	CMS	Other regulatory action.	N/A	Temporary Policy on 2020 Premium Credits Associated with the COVID–19 Public Health Emergency.	Announces temporary policy of relaxed enforcement to allow health insurance issuers in the individual and small group markets to temporarily offer premium credits for 2020 coverage.
378	HHS	CMS	Other regulatory action.	N/A	TDL	On March 30 CMS suspended most Medicare Fee-For-Service (FFS) medical review because of the COVID–19 pandemic. This included pre-payment medical reviews conducted by Medicare Administrative Contractors (MACs) under the Targeted Probe and Educate program, and post-payment reviews conducted by the MACs, Supplemental Medical Review Contractor (SMRC) reviews and Recovery Audit Contractor (RAC).
379	HHS	CMS	Other regulatory action.		Prior Authorization for Certain DMEPOS items.	Effective March 29. 2020, certain claims processing requirements were paused for power mobility devices and pressure reducing support surfaces that required prior authorization. During this pause, claims for these items would not be denied for failing to obtain a provisional affirmation prior authorization decision. Additionally, CMS delayed the implementation of prior authorization for certain lower limb prosthetic codes. Prior to the COVID–19 PHE, CMS had announced that prior authorization for the specified LLPs would be required in California, Michigan, Pennsylvania, and Texas beginning May 11, 2020 and the remaining states beginning October 8, 2020.
380	HHS	CMS	Other regulatory action.		Opt-Out Physicians and Practitioners.	42 CFR 405.445. Allow opted-out physicians and non-physician practitioners to terminate their opt-out status early and enroll in Medicare to provide care to more patients.
381	HHS	CMS	Waiver		Medicaid Provider Enrollment Relief.	42 CFR 455.414, 42 CFR 455.432, 42 CFR 455.434, 42 CFR 455.460 42 CFR 455.436. Exercise 1135 waiver authority to allow providers to enroll and receive temporary Medicaid billing privileges using an abbreviated enrollment process; waive certain screening and enrollment requirements for temporary billing privileges established on all enrollment applications received on or after March 1, 2020 including collection of the application fee, site visits, and fingerprinting for ''moderate'' and ''high'' risk provider types; continue to require screening against HHS OIG exclusion list and Death Master File to ensure provider is not excluded or deceased; provided states with the ability to postpone all revalidation actions.
382	HHS	CMS	Waiver		Medicare Provider Medicare Provider Enrollment Relief: DME Suppliers 42 CFR 424.57.	Waive several DME supplier standards, including supplier standard 7 that requires facility access/maintaining a facility. Waive DME accreditation (at initial enrollment and re-accreditation requirement.

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Part V

Federal Communications Commission

47 CFR Parts 1 and 54

Establishing a 5G Fund for Rural America; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 54

[GN Docket No. 20–32; FCC 20–150; FRS 17211]

Establishing a 5G Fund for Rural America

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) acts on its proposal to retarget universal service funding for mobile broadband and voice in the high-cost program to support the deployment of 5G services by establishing the 5G Fund for Rural America as a replacement for the Mobility Fund Phase II and adopting the basic framework for implementing the 5G Fund.

DATES: Effective December 28, 2020, except for §§ 1.21001(b)(1), 1.21001(b)(2), 1.21001(b)(3), 1.21001(b)(4), 1.21001(b)(5), 1.21001(b)(6), 1.21001(b)(7), 1.21001(b)(8), 1.21001(b)(9), 1.21001(b)(10), 1.21001(b)(11), 1.21001(b)(12), 1.21001(b)(13), 1.21001(e), 1.21002(e), 1.21002(f), 54.313(n), 54.322(b), 54.322(c)(4), 54.322(g), 54.322(h), 54.322(i), 54.322(j), 54.1014(a), 54.1014(b)(2), 54.1016(b), 54.1018(a), 54.1018(b), 54.1018(c), 54.1019(a)(1), 54.1019(a)(2), 54.1019(a)(3), 54.1019(a)(4), 54.1020(a), 54.1020(b), 54.1020(c)(1), and 54.1020(c)(2), which are delayed and for which we will publish a document in the **Federal Register** announcing the effective date.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Valerie M. Barrish, Office of Economics and Analytics, Auctions Division, (202) 418–0660 or *Valerie.Barrish@fcc.gov.* For information regarding the PRA information collection requirements contained in this PRA, contact Cathy Williams, Office of Managing Director, at (202) 418–2918 or *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *5G Fund Report and Order* in GN Docket No. 20–32, FCC 20–150, adopted on October 27, 2020 and released on October 29, 2020. The full text of this document is available on the Commission's website at *https://www.fcc.gov/document/fcc-establishes-5g-fund-rural-america-0.* To request materials in accessible formats for people with disabilities, send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Synopsis

I. Introduction

1. Our nation is at the dawn of the 5G era of wireless connectivity. Recently, nationwide mobile wireless providers have deployed 5G networks covering more than 200 million Americans. And today we ensure that all Americans benefit from the country's 5G future, no matter where they live. We act on our proposal to replace the Mobility Fund Phase II with the 5G Fund for Rural America and make certain that our limited Universal Service Fund dollars are directed to support the deployment of state-of-the art wireless networks that are more responsive, more secure, and faster than today's 4G LTE networks. Moreover, by establishing the 5G Fund, we further secure our nation's leadership in 5G, which will promote technological innovation in the United States, enhance our economic prosperity and protect our national security.

2. Many urban and suburban areas of our nation are already benefiting from the evolution to 5G networks. Nationwide providers have begun deploying 5G service in more populated parts of our country, with even more widely-available 5G service expected in the near future. For example, T-Mobile has made enforceable commitments to the Commission as part of its acquisition of Sprint to deploy 5G service covering 85% of the population in rural areas and 97% of all Americans within three years, with coverage rising to 90% of the population in rural areas and 99% nationwide within six years. Moreover, it committed to deploy 5G service meeting minimum download speed performance benchmarks of at least 50 Mbps available to 90% of the rural population, with two-thirds of rural Americans able to receive download speeds of at least 100 Mbps. Late last year, T-Mobile announced that it switched on its 5G network across the nation using low-band spectrum.

3. 5G networks will improve the lives of Americans living and working in rural areas by providing much needed access to telehealth, telework, remote learning opportunities, precision agriculture, and other services and applications. We anticipate that the deployment of 5G-capable networks in rural areas will drive job creation and have a powerful impact on the nation's economy. The framework for the 5G Fund that we adopt today will bring technological innovation and economic benefits to the parts of our country that need them the most. We embark on this new 5G era recognizing that the next decade and beyond hold significant promise for rural America, and we envision that the 5G Fund will be an important catalyst to propel the nationwide deployment of networks capable of closing the digital divide, once and for all.

4. The 5G Fund for Rural America will use multi-round reverse auctions to distribute up to $9 billion, in two phases, bringing voice and 5G broadband service to those rural areas of our country that, absent subsidies, would be unlikely to see the deployment of 5G-capable networks. Based on lessons learned from the Mobility Fund, and overwhelming record support, we adopt our proposal to determine which areas will be eligible for 5G Fund support through improved mobile broadband coverage data that will be gathered through the Commission's Digital Opportunity Data Collection proceeding. Although this approach will not be the fastest possible path to the Phase I auction, it will allow us to identify with greater precision those areas of the country where support is most needed and will be spent most efficiently.

II. Background

5. Since 2011, the Commission has taken numerous steps to comprehensively reform the universal service program to focus our limited funds on ensuring access to fixed and mobile broadband for unserved Americans living in rural, insular, and high cost areas of the country. As part of these efforts, in the *USF/ICC Transformation Order,* 76 FR 73830, Nov. 29, 2011, the Commission froze high-cost support being provided to competitive eligible telecommunications carriers (ETCs), commenced a process to phase down this high-cost support over five years, and established a two-phased Mobility Fund to ensure that universal service support for mobile services would be targeted in a cost-effective manner. The Commission determined it would pause the phase down of the frozen ''legacy'' high-cost support for competitive ETCs to provide mobile wireless service at the 60% frozen support level in the event that the second phase of the Mobility Fund was not operational by July 1, 2014.[1] However, the Commission

[1] We use the term ''legacy high-cost support'' and ''legacy support'' herein to refer specifically to the high-cost support that was frozen in the *USF/ICC*

planned to adopt additional mobile broadband public interest obligations as a condition for the continued receipt of such support if the legacy support phase down was paused at any point.

6. In Mobility Fund Phase I, the Commission awarded almost $300 million, along with an additional $50 million for Tribal Mobility Fund Phase I, in one-time universal service support through two reverse auctions. Before adopting rules for Phase II of the Mobility Fund, Commission staff conducted a review of mobile wireless providers' FCC Form 477 submissions to identify the specific areas of the country that were lacking 4G LTE coverage as well as to examine the efficiency of the distribution of legacy high-cost support. Staff analysis revealed that almost 75% of legacy high-cost support was being distributed to carriers in areas where 4G LTE service was already being provided by an unsubsidized provider. Furthermore, according to the report, only approximately 20% of the land area of the United States outside of Alaska either lacked 4G LTE service entirely or had 4G LTE service provided only by a subsidized carrier. Mobile wireless carriers were therefore receiving approximately $300 million or more each year in subsidies that were unnecessary to ensure the continued availability of 4G LTE service in those areas.

7. Recognizing the need to redirect universal service funds to target areas of the country that were unlikely to receive 4G LTE service without subsidies, in its 2017 *Mobility Fund Phase II Report and Order,* 82 FR 15422, Mar. 28, 2017, the Commission adopted rules to move forward with Mobility Fund Phase II, and established the framework for a challenge process to resolve disputes about areas that were found to be presumptively ineligible for support. Mobile wireless providers were required to submit 4G LTE coverage maps by January 4, 2018, to be followed by a process in which parties could challenge the submitted coverage maps. In December 2018, after questions over the accuracy of the submitted coverage maps arose, the Commission launched an investigation into the 4G LTE coverage data submitted by some providers and suspended the response phase of the Mobility Fund Phase II challenge process pending the investigation.

8. On December 4, 2019, the Rural Broadband Auctions Task Force released a staff report on the results of that investigation. Staff determined that the Mobility Fund Phase II coverage maps submitted by certain carriers overstated actual coverage and did not reflect on-the-ground performance in many instances. The staff report recommended that the Commission terminate the challenge process, concluding that the coverage maps were not a sufficiently reliable or accurate basis upon which to complete the challenge process as designed.

9. On April 23, 2020, we adopted the *5G Fund NPRM,* 85 FR 31616, May 26, 2020, which proposed to terminate the planned Mobility Fund Phase II auction and replace it with a 5G Fund for Rural America, using multi-round reverse auctions to distribute up to $9 billion to bring voice and 5G broadband service to rural areas of our country that are unlikely to see unsubsidized deployment of 5G-capable networks. We further proposed to modernize frozen mobile legacy support in order to ensure that advanced networks are deployed in areas served by providers continuing to receive legacy support.

III. Discussion

10. To meet our obligation of ensuring that all Americans have access to services reasonably comparable to those in urban areas and to achieve our goal of ensuring that all Americans experience the benefits of next-generation 5G technology, we now adopt a path forward for the 5G Fund for Rural America. The rapid pace of deployment of 5G networks in many parts of the country, combined with T-Mobile's commitment to cover 90% of rural Americans with its 5G network, supports our conclusion that it is no longer the time to begin a 10-year support program to deploy 4G LTE networks. We adopt our proposals to replace Mobility Fund Phase II with the 5G Fund for Rural America and to distribute up to $9 billion in universal service support to bring mobile voice and 5G broadband service to rural areas of our country. In adopting our proposal to replace Mobility Fund Phase II with the 5G Fund, we terminate the Mobility Fund Phase II challenge process and dismiss as moot several petitions for waiver in that proceeding which are unnecessary to address given the termination of the Mobility Fund Phase II challenge process. We also adopt our proposals to impose 5G public interest obligations and performance requirements on carriers continuing to receive legacy mobile high-cost support to help ensure that the areas they serve enjoy the benefits that 5G promises. Our actions here will ensure that rural communities can connect to the digital economy and benefit from the opportunities for enhanced education, employment, healthcare, and civic and social engagement that access to advanced mobile broadband communications can provide.

A. Collecting New Mobile Coverage Data Before Funding 5G Rural America

11. We adopt our proposal, known in the *5G Fund NPRM* as Option B, to award 5G Fund support based on new, more precise, verified mobile coverage data collected through the Commission's Digital Opportunity Data Collection. While the Commission continues to lack a congressional appropriation necessary to implement the new data collection, we believe—and the record supports our view—that the risk of any delay in holding an auction is outweighed by the ability to target auction support with greater precision. That risk is further mitigated by the public interest obligations we adopt for competitive ETCs that receive legacy high-cost support for mobile wireless services.

12. In proposing to establish a 5G Fund for Rural America, we sought comment on two different options to determine the areas that would be eligible for support in the Phase I auction: One would be based upon existing governmental data on the ruralness of an area and allow us to proceed more quickly to the auction, and the other would be based upon new mobile coverage data but would, by necessity, delay the start of the auction. These two approaches represented a fundamental tradeoff between more precisely targeting support to areas that need it and the time required to collect, process, and analyze the data necessary for such precision. In the *5G Fund NPRM,* we estimated that basing 5G Fund eligibility on the new collection of mobile coverage data would add 18–24 months to the process of preparing for an auction, even if Congress were to appropriate funds sufficient to implement the statute, which it still has not done.

13. Most commenters urge us to collect new mobile coverage data prior to holding the 5G Fund Phase I auction, with some citing in particular the findings of the *Mobility Fund Phase II Investigation Staff Report.* We agree that requiring new mobile coverage data will result in a better understanding of the unserved areas most in need of our limited universal service funds than existing data.

14. We disagree with those comments arguing that the Broadband Deployment Accuracy and Technological Availability (Broadband DATA) Act

Transformation Order and is disbursed to competitive ETCs to provide mobile wireless service.

expressly prohibits the award of 5G Fund support until after collecting new mobile coverage data, precluding Option A. The Broadband DATA Act requires the Commission to collect mobile coverage data generated using standardized parameters and, from these data, release mobile broadband deployment maps. ''[A]fter creating the maps[,]'' the statute requires the Commission to use those maps when awarding new funding to deploy broadband service. We agree with RWA that the language of the Broadband DATA Act does not prevent us from awarding support prior to creating the mobile broadband deployment maps in the Digital Opportunity Data Collection. As RWA notes, the plain wording of the statute is clear that the Commission ''is required to use new maps to award funding, but only 'after' such maps are created.'' We therefore conclude that the statute does not yet impose any limitations on the data we may use to award new funding.

15. Several commenters support moving forward quickly with the 5G Fund Phase I auction based on existing U.S. Census Bureau and U.S. Department of Agriculture data under our Option A proposal, or some variant of it. We recognize the pressing need to bring 5G to unserved rural areas; however we agree with the concerns raised by some commenters that reliance upon 10-year-old U.S. Department of Agriculture data as a proxy for rurality and to award funding that will continue for an additional 10 years risks both directing support to areas where support is not needed and also missing areas where support is needed. Option B will allow us to more efficiently allocate 5G Fund support by identifying areas that are already served by an unsubsidized provider and thus should not be ineligible for support. Establishing eligibility under Option A using a degree of rurality would not have allowed us target funds in this manner. We conclude, therefore, that on balance it is not in the public interest to follow the Option A approach. We also decline to adopt the 5G Fund Supporters' proposal for an ''Initial Tranche'' of support targeted at particular historically disadvantaged communities that this commenter contends should be given priority because of similar concerns about the accuracy of available data. We will take all appropriate steps to implement Option B as quickly as we can without jeopardizing the quality or accuracy of the new data we will collect.

16. While urging us to first collect new mobile coverage data, many commenters supporting Option B make various suggestions for expediting the Phase I auction. We agree on the need to move quickly toward an auction and will take steps to minimize the delay caused by our decision. However, we disagree with suggestions that we should collect new mobile coverage data prior to implementation of the Digital Opportunity Data Collection. We are unconvinced that those approaches would provide reliable coverage data in a shorter timeframe. In particular, while carriers may have experience generating and submitting mobile coverage data as part of their required FCC Form 477 filings, or as part of the one-time collection of 4G LTE coverage data for Mobility Fund Phase II, we would need to develop the processes and IT systems necessary to allow for the submission and verification of mobile coverage data and allow for a public-facing challenge process regardless of whether or not the collection is implemented through the Digital Opportunity Data Collection. Although we have recently adopted new requirements for the Digital Opportunity Data Collection stemming from the Broadband DATA Act, the Commission still lacks funding to implement the statute's requirements. Implementation of any alternative data collection and public challenge process would run into the same logistical and funding hurdles, and staff estimates it would take at least as long to complete. Such arguments also overlook the fact that we originally tasked the Universal Service Administrative Company (USAC) with implementation of the Digital Opportunity Data Collection, work which came to a halt when Congress expressly prohibited the Commission from delegating responsibility for these tasks to USAC in the Broadband DATA Act.

B. Determining Eligible Areas Using Updated Mobile Coverage Data

17. We will determine the areas eligible for support in the 5G Fund Phase I auction based upon where new mobile coverage data submitted in the Digital Opportunity Data Collection show a lack of unsubsidized 4G LTE and 5G broadband service by at least one service provider, broadly in line with our Option B proposal. In determining which areas are subsidized for this purpose, we will use Geographic Information Systems (GIS) data from USAC delineating the boundaries of the subsidized service areas of each competitive ETC receiving mobile legacy high-cost support. While most providers are still in the early stages of deploying their 5G networks in rural areas, we expect that a new collection of mobile coverage data in 2021 or 2022 will show significant 5G broadband deployments. Because these areas will have already seen deployment of 5G without subsidy, we will exclude such areas from eligibility consistent with our longstanding policy of avoiding overbuilding competitive networks. Moreover, we will also exclude from eligibility those areas where new coverage data gathered in the Digital Opportunity Data Collection show unsubsidized 4G LTE networks have been deployed. Given the rapid state of competitive 5G deployment in the marketplace, combined with enforceable merger commitments from T-Mobile, we believe that subsidizing 5G deployments where unsubsidized 4G LTE networks have been deployed is unnecessary and risks preempting reasonably near-term 5G deployments we could expect in those areas.

18. Commenters that support Option B also generally support our proposal to define as eligible those areas where new coverage data show a lack of 4G LTE broadband service. However, one commenter suggests also making eligible under Option B those areas that historically lacked 4G LTE service. Given the potential for allocating inefficient support to areas more likely to see competitive 5G deployments and concerns over the accuracy of historical FCC Form 477 and Mobility Fund Phase II 4G LTE mobile coverage data, we are unconvinced that there is a meaningful basis upon which to allocate support to some areas otherwise served by unsubsidized 4G LTE networks. We likewise decline to prioritize any areas based upon historical 3G and 4G LTE coverage data. While we proposed a similar approach in the context of Option A, we conclude that such prioritization is unnecessary in light of our decision to base eligibility on more precise Digital Opportunity Data Collection maps. Moreover, our concerns with developing a meaningful way to incorporate less reliable historical data sources into our eligibility determinations are equally applicable. There is likely significant overlap between areas that have historically lacked 3G or 4G LTE service and the areas that currently lack unsubsidized 4G LTE service, more than 10 years after the technology was first deployed. Moreover, we believe that use of an adjustment factor that considers terrain and potential business case will provide adequate prioritization to ensure historically underserved or unserved areas will receive support in the Phase I auction.

19. We adopt our proposal to exclude from eligibility for the 5G Fund those areas in Alaska, for which high-cost

support is provided via the mobile portion of the Alaska Plan, as well as areas in Puerto Rico and the U.S. Virgin Islands where the Commission has already provided high-cost support, including support for 5G mobile broadband, a proposal that RWA supports. We disagree with commenters suggesting that the Commission include Alaska in the roll out of the 5G Fund. The Commission established the Alaska Plan in 2016 for a 10-year term, apart from earlier efforts to reform the mobile high-cost program due to the '''uniquely challenging operating conditions''' in Alaska. The Commission explained in the *Mobility Fund Phase II Report and Order* that because it ''adopt[ed] the Alaska Plan for mobile carriers as an Alaska-specific substitute mechanism for mobile high-cost support, . . . there will be no support provided under Mobility Fund Phase II or Tribal Mobility Fund Phase II for mobile services within Alaska.'' Since we today establish the 5G Fund to replace Mobility Fund Phase II, we similarly conclude that the Alaska Plan should remain the sole high-cost support mechanism for mobile carriers in Alaska. Moreover, we do not believe the framework that we adopt for the 5G Fund is appropriate for Alaska given the unique circumstances faced by carriers deploying mobile services in that state, and because it would undermine the comprehensive support mechanism the Commission adopted to address those challenges.

C. Framework for the 5G Fund

20. We adopt the basic framework we proposed for the 5G Fund for Rural America, with a few specific modifications to the requirements we proposed for competitive ETCs receiving legacy high-cost support for mobile wireless service. We will require both legacy high-cost support recipients and 5G Fund auction support recipients to meet public interest obligations to provide voice and 5G broadband service, and to satisfy distinct, measured performance requirements as a condition of receiving support. Recipients of both legacy high-cost support and 5G Fund auction support must meet minimum baseline performance requirements for data speed, latency, and data allowance, including: (1) Deploying 5G networks that meet at least the 5G–NR (New Radio) technology standards developed by the 3rd Generation Partnership Project with Release 15 (or any successor release that may be adopted by the Office and Bureau after appropriate notice and comment) with median download and upload speeds of at least 35 Mbps and 3 Mbps with minimum cell edge download and upload speeds of 7 Mbps and 1 Mbps; (2) meeting end-to-end round trip data latency measurements of 100 milliseconds or below; and (3) offering at least one service plan that includes a minimum monthly data allowance that is equivalent to the average United States subscriber data usage. We adopt performance goals and measures for the 5G Fund similar to those that the Commission has implemented in recent high-cost support proceedings and direct the Office and Bureau to adopt others. Designing and adopting oversight and accountability measures when adopting a new or modified universal service program not only ensures that the Commission meets its obligations under the Act, but also facilitates our compliance with government-wide obligations for the efficient and effective design and implementation of federal programs.

21. These performance requirements, along with public interest obligations for reasonably comparable rates, collocation, and voice and data roaming, will ensure that rural areas receive service comparable to high-speed, mobile broadband service available in urban areas. We also adopt interim and final 5G service deployment milestones for 5G Fund auction support recipients, and reporting requirements to monitor the progress of all recipients in meeting the distinct performance requirements that we adopt.

1. Establishing a Two-Phased 5G Fund for Rural America

22. We adopt our proposal to award support from the 5G Fund for Rural America through a competitive reverse auction in two phases. In Phase I, we will target support nationwide to all eligible rural areas that lack unsubsidized 4G LTE and 5G broadband service, and in Phase II we will focus support to specifically target the deployment of technologically innovative 5G networks that facilitate precision agriculture.

23. We conclude that a reverse auction is the appropriate mechanism for allocating scarce universal service resources to the carriers that will use them most efficiently. The Commission has long endorsed competitive bidding for distributing support. In the *USF/ICC Transformation Order,* the Commission recognized the value of competitive bidding for awarding award high-cost support, both fixed and mobile, noting that a reverse auction ''is the best available tool for identifying'' areas where support can make the largest difference, as well as the associated support amounts. In the existing mobile legacy high-cost support program, on the other hand, neither the areas for which legacy support is currently disbursed nor the amount of support carriers receive have a direct nexus to the areas most in need of support or the amount needed to provide service therein.

24. Our experience using competitive bidding in the Mobility Fund Phase I, Tribal Mobility Fund Phase I, and Connect America Fund Phase II auctions confirms the Commission's prediction that it is the most efficient and effective mechanism for awarding universal service support. An auction mechanism allows us to distribute support in a transparent, speedy, and efficient manner, and provides a straightforward means of identifying those providers that are willing to provide 5G service at the lowest cost to the Universal Service Fund by determining support levels that winning bidders are willing to accept in exchange for the public interest obligations and performance requirements we impose.

25. Consistent with our decision to base eligibility on new, granular Digital Opportunity Data Collection mobile broadband coverage data, as well as our decision to adopt 5G performance requirements and public interest obligations for legacy high-cost recipients, we decline to adopt RWA's proposal for a three-phase approach that would award support to certain existing legacy high-cost recipients. Under RWA's proposal, the 5G Fund would create a $1.5 billion ''Phase 0'' for current legacy support recipients with 500,000 or fewer subscribers so that those carriers could build out 5G in areas eligible under Option A before proceeding to an auction with remaining funds. NTCA supports RWA's three-phase proposal, but proposes that the Commission should base eligible areas for both the Phase I and Phase II auctions on Option B.

26. RWA argues that its approach would provide certainty to small rural carriers and promote faster 5G deployment, while NTCA claims that its approach can leverage existing high-cost support recipients' networks. Based on the record before us, and our experience with competitive bidding mechanisms, we are not convinced that this approach would be a more efficient or effective means of awarding support than an auction. We are unpersuaded that a three-phase approach improves our ability to better target support or to significantly accelerate 5G deployment in rural areas. While we do not doubt that recipients of mobile legacy high-

cost support have been ''good stewards of universal service funds'' as NTCA states, neither proposal is consistent with our decade-long efforts to reform universal service high-cost support. Moreover, to the extent RWA and NTCA are correct that carriers receiving legacy high-cost support can deploy 5G networks in their service areas more efficiently, we anticipate they will have an advantage against bidders that do not already serve those eligible areas in the auction.

27. We agree with AT&T that implementing a Phase 0 approach risks continuing to provide legacy high-cost support to fund service in areas that may already have unsubsidized 4G LTE (or even 5G) service from one or more providers. Further, we agree with T-Mobile that setting aside funds for a limited subset of providers would be an inefficient use of our scarce resources, and could limit our ability to expand 5G coverage to as many unserved areas as possible. This concern is amplified by the fact that we would risk overpaying for 5G networks in some areas that another provider (or even the same legacy support recipient) would be willing to serve for less support through an auction.

2. Budget

28. We adopt a budget of $9 billion for the 5G Fund, to be awarded in two phases: Up to $8 billion for Phase I, of which we will reserve $680 million of support for service to Tribal lands, and at least $1 billion in Phase II, as well as any unawarded funds from Phase I. We further adopt our proposal to repurpose the Mobility Fund Phase II budget for the 5G Fund.

29. Given the apparent overstatement of coverage data the Commission staff investigation discovered, we anticipate that the more precise and granular mobile broadband coverage data that will become available in the Digital Opportunity Data Collection proceeding will show that the number of areas unserved by unsubsidized 4G LTE is greater than the Commission originally estimated, and the number of areas unserved by 5G will likewise be substantial. Insofar as almost two years have passed since the Commission ceased the Mobility Fund II challenge process, however, we note that some carriers will have expanded their 4G LTE footprint; therefore, all of the areas that were eligible for a Mobility Fund II auction may not be eligible for a 5G Fund Phase I auction. The deployment of networks capable of providing this 5G service undoubtedly will be expensive, particularly given the need to build high quality infrastructure beyond just our rural roadways. We therefore conclude that significantly more funds than those budgeted for Mobility Fund Phase II will be necessary to achieve our rural 5G goals. By repurposing the entire $4.53 billion budget originally adopted for Mobility Fund Phase II, and essentially doubling our financial commitment to deploying mobile broadband in rural areas, we will have a greater likelihood of achieving the Commission's goals while incentivizing carriers to participate in the auction.

30. In establishing the total budget for the 5G Fund, we are mindful that the cost of universal service programs is ultimately borne by the consumers and businesses that pay to fund these programs, and we have a corresponding obligation to exercise fiscal responsibility by avoiding excessive subsidization and overburdening communications consumers. Courts have recognized that over-subsidizing universal service programs can actually undermine the statutory principles set forth in section 254(b) of the Communications Act of 1934, as amended (the Act). With this in mind, we adopt a 5G Fund budget that seeks to balance the various competing objectives in section 254 of the Act, including the objective of providing support that is sufficient, but not so excessive so as to impose an undue burden on consumers and businesses. Our approach is consistent with judicial interpretation of these objectives, as well as our own.

31. As we have repeatedly emphasized since we began reforming of our universal service programs, ratepayer funds are not unlimited and must be prioritized to achieve our policy goals. We conclude that the budget of $8 billion that we adopt today for Phase I of the 5G Fund incentivizes competition from carriers that wish to participate in the Phase I auction in order to deploy 5G consistent with the public interest obligations and performance requirements we propose for the 5G Fund. We further conclude that a budget of at least $1 billion for Phase II of the 5G Fund will be necessary for carriers to commit to the deployment of technologically innovative 5G networks that facilitate precision agriculture. Dedicating at least $1 billion to this second phase of the 5G Fund will help close the remaining digital divide but also direct funds to networks supporting innovative agricultural solutions, increasing our nation's economic efficiency and encouraging economic growth in rural areas, especially in vast areas of agricultural lands that currently remain unserved.

32. For these same reasons, we decline to allot a larger portion of the total 5G Fund budget to the Phase II auction, as some commenters suggest. Such an approach risks significantly increasing the number of areas that remain unserved after the Phase I auction. Moreover, because the amount of funds necessary to cover the phase down of legacy high-cost support will not be known until the conclusion of the Phase I auction, we decline to reduce the Phase I budget by the amount necessary to fund the phase down, which should provide maximum certainty to prospective bidders.

33. Although some commenters suggest that the total budget may be insufficient to deploy 5G networks to all eligible areas, none of those commenters proposed an alternative amount for the total 5G Fund budget. Those same commenters also support reassessing the Phase II budget following Phase I. Aside from the commenters suggesting a three-phase approach for the 5G Fund, no commenters addressed our request for comment on an alternative total budget.

34. Although it did not offer an alternative total budget amount, we note that AST&Science comments that we should ''earmark a small portion (10% to 15%) of the 5G Fund for ''*qualified applicants* who commit to use innovative, non-traditional systems to serve *areas that are highly unlikely to receive service* even with the benefit of support.'' We decline to adopt this suggestion, as we have others, because it does not serve our primary policy goal of awarding support to as many eligible areas as possible with the limited funds available. For the same reason, we decline to adopt Lynk Global Inc.'s request that we set aside 1% of the 5G Fund as a reimbursable expense to satellite operators that successfully enable access to connectivity via mobile phones everywhere in the United States and its territories.

35. We acknowledge concerns of commenters that contend that funds necessary to deploy 5G-capable networks in rural areas may be significantly higher than our total 5G Fund budget. The Commission's experience in the CAF Phase II auction demonstrates that competitive bidding can bring costs below projections: The aggregate reserve price of more than 713,000 locations assigned in that auction was $5 billion, compared to total winning bids of $1.5 billion. Moreover, we anticipate that many providers will use private capital in conjunction with the 5G Fund support they receive to build their 5G networks. By establishing the budget at $9 billion, we also recognize the risk of

overburdening consumers that contribute to the Universal Service Fund. Of course, the Commission will have the opportunity to reassess the Phase II budget following Phase I in the event it determines it is insufficient.

3. Support for Tribal Lands

36. We adopt our proposal to reserve up to $680 million of the $8 billion 5G Fund Phase I budget to support networks serving eligible areas in Tribal lands. Under the approach we adopt, only eligible areas on Tribal lands will be assigned support from this reserve. This doubles the minimum amount that the Commission intended to reserve to support Tribal lands from the Mobility Fund Phase II budget. Most commenters favored our proposal to reserve support for Tribal lands in the 5G Fund, but some express concern that $680 million will still be insufficient to ensure that these areas receive reasonably comparable service at affordable prices. We are mindful of these concerns, and we recognize that deploying networks that support 5G service will require a significant undertaking, particularly on Tribal lands where services often lag behind even non-Tribal rural lands. For those reasons, we acknowledge that we may need to revisit the amount of the budget reserved for Tribal lands after the conclusion of a Phase I auction, and, if necessary, we will do so at that time.

37. We adopt our proposal that bidding under the Tribal reserve budget and bidding under the unreserved portion of the budget will take place simultaneously as part of the single 5G Fund Phase I auction. The Cherokee Nation expresses concern with this approach maintaining that we should conduct additional auctions as needed to ensure that the support reserved for Tribal lands in the 5G Fund auction serves Tribal lands. These concerns are unwarranted. Contrary to the Cherokee Nation's assumption, conducting bidding simultaneously creates no disincentive for bidders because fewer bids on Tribal lands under the reserved Tribal lands budget will not lead to more funds being transferred to the unreserved budget. Rather, Tribal areas with winning bids will receive a greater share of the Tribal budget. Accordingly, we do not believe that reserving those funds for a subsequent auction for support for Tribal lands will be a timely or practical approach to enhance 5G Tribal land deployments.

38. Consistent with past practice, the details and final bidding procedures for a 5G Fund auction will be developed during our standard pre-auction process, and we anticipate that the procedures we adopt after notice and comment will ensure that support levels assigned from the Tribal reserve will not be less than support assigned from the unreserved budget, except possibly in cases where more than one bidder is competing for support in the same area.

39. We decline to adopt Smith Bagley, Inc.'s Remote Tribal Areas Plan, which proposes allowing carriers serving Tribal lands to participate in an opt-in funding plan similar to the Alaska Plan, as an alternative mechanism for providing support to remote Tribal areas. We are not convinced that this approach would improve the outcome on Tribal lands over awarding support to Tribal areas through a reverse auction. As the Commission explained in rejecting a similar proposal in the Mobility Fund Phase II proceeding, the Commission adopted the Alaska Plan not because of the existence of Tribal lands in Alaska, but because of the need for support to be flexible enough to accommodate Alaska's unique conditions, like its ''remoteness, lack of roads, challenges and costs associated with transporting fuel, lack of scalability per community, satellite and backhaul availability, extreme weather conditions, challenging topography, and short construction season.'' We again conclude that adopting such an approach for all remaining states would be inconsistent with our decision to use a reverse auction as an efficient mechanism for deciding where to allocate Tribal support. Based on the $680 million budget that we are reserving for support for Tribal lands, we anticipate that 5G Fund support will meaningfully flow to Tribal areas.

40. We also decline to adopt Standing Rock Telecommunications, Inc.'s request that we use a Tribal entity weighting factor as a mechanism to provide Tribal entities with the opportunity to become the winning bidder to provide supported 5G service on their Tribal lands. The $680 million reserved Tribal lands budget we adopt will create a powerful incentive for service providers to bid to serve Tribal lands. We are unpersuaded that creating a preference for a particular type of entity will advance our goals and produce greater deployment on Tribal lands. Indeed, including an additional weighting factor for Tribal entities could deter non-Tribal entities from bidding to serve Tribal lands, reducing both the competitiveness of the Phase I auction and the potential reach of our finite funds.

41. *Identifying Tribal Lands.* We adopt our proposal to amend the definition of ''Tribal lands'' in section 54.5 of the Commission's rules to allow for the designation of certain non-Tribal areas and communities as Tribal lands, consistent with the rules for the Lifeline program. All commenters who addressed this proposal support it. This designation process permits expansion of the definition of Tribal lands for the high-cost program upon an appropriate showing that certain areas or communities that fall outside the boundaries of existing Tribal lands—*i.e.,* off-reservation lands other than those already covered by the definition in section 54.5—have the same characteristics as existing Tribal lands. Although this designation process was adopted solely for the Lifeline program, the Commission previously has relied on precedent for the Lifeline program when adopting, interpreting, and expanding the definition of Tribal lands for purposes of the high-cost program. We find that the adoption and use of the designation process for the high-cost program is in the public interest because it will: (1) Reflect the flexibility that the Commission has used to adjust, as appropriate, the definition of Tribal lands in the universal service context; and (2) enable us to maximize bidding by all eligible bidders to serve Tribal lands in a 5G Fund auction and any future universal service auctions by grouping together existing Tribal lands and associated off-reservation lands, thereby making those areas more attractive for bidders and facilitating coverage to Tribal lands, as well as promoting competitive bidding for funding of such coverage.

42. We designate three types of off-reservation lands as Tribal lands for purposes of the high-cost program. First, we designate as Tribal lands any federally recognized off-reservation trust lands, Tribal designated statistical areas (TDSAs), or joint use areas from the Census Bureau's American Indian, Alaska Native, and Native Hawaiian boundaries. In effect, we will thus include as Tribal lands all areas from the U.S. Census Bureau's American Indian, Alaska Native, Native Hawaiian dataset that are classified as federally recognized, regardless of the area's census code, classification, or component type in the data. Because many Tribal citizens live and work in, or travel to such off-reservation trust lands, TDSAs, or joint use areas, or are otherwise areas which are near federally-recognized reservations that we unambiguously consider Tribal lands, we conclude that the ''Tribal character of'' such off-reservation lands is clear. Moreover, in the context of the high-cost program, such areas face many of the same barriers to service as faced by on-reservation land—*e.g.,* low

population density, high levels of poverty, lack of infrastructure, and historical lack of service. We find that including off-reservation areas in our definition of Tribal lands will help ensure we close the digital divide by facilitating carriers availing themselves of Tribal support mechanisms in our high-cost programs to serve more expansive areas with many of the same characteristics. We acknowledge that Commission staff previously concluded that certain TDSAs did not qualify as ''Tribal lands'' under the section 54.5 definition for purposes of the Tribal Mobility Fund Phase I auction. For the reasons previously stated, however, we now consider all TDSAs as Tribal lands for the 5G Fund and other high-cost program mechanisms. Second, we designate as Tribal lands those areas within the study area boundaries of the Eastern Navajo Agency and Sacred Wind Communications in New Mexico to allow so-called ''checkerboard'' Tribal and non-Tribal land areas in this section of New Mexico to be aggregated as Tribal lands for purposes of the high-cost program, including the 5G Fund, consistent with past Commission waivers. Under this approach, all Tribal land with the same four-digit census code within the minimum geographic area for bidding will be grouped together to allow bidders to bid on Tribal areas grouped by Tribal entity. For Tribal land that is not part of the Census Bureau's federally recognized American Indian, Alaska Native, and Native Hawaiian boundaries, we will assign such land the census code for the appropriate Tribal entity. Because there is no individual Alaska Native village associated with areas in Alaska that are not part of the American Indian, Alaska Native, and Native Hawaiian boundary data, we will identify these areas with the appropriate Alaska Native Regional Corporation identifier. Specifically, we will identify as part of the Navajo Nation the portions of the study area boundaries of the Eastern Navajo Agency and Sacred Wind Communications in New Mexico that fall outside of any Tribal boundary from the Census Bureau's data. Lastly, we designate as Tribal lands any areas within the geographic boundaries reflected in the Historical Map of Oklahoma (1870–1890), including the Cherokee Outlet, consistent with the Commission's interpretation of the ''former reservations in Oklahoma'' in section 54.400(e). We note the Supreme Court's recent decision in *McGirt* v. *Oklahoma,* 140 S. Ct. 2452 (2020), holding that land reserved for the Creek Nation since the 19th century remains ''Indian country'' for purposes of the Major Crimes Act and recognizing approximately half of the state of Oklahoma as Native American reservation land, but further note that this decision does not impact the approach to defining and identifying Tribal lands for purposes of the high-cost program we adopt here because the lands at issue in that decision were already considered to be Tribal lands under our proposal.

43. Commenters generally support our proposals concerning identification of Tribal lands. Smith Bagley supports the definitional change to the Eastern Navajo Agency to capture so-called ''checkerboard'' areas consisting of multiple land classifications, so that residents have access to the 5G Fund, and all future universal service programs, consistent with past Commission waivers. It submits that it is the correct course for the Commission to identify as part of the Navajo Nation the portions of the study area boundaries of the Eastern Navajo Agency and Sacred Wind Communications in New Mexico that fall outside of any Tribal boundary from the Census Bureau's data, and submits that solidifying the Eastern Navajo Agency's status as Tribal land will save Commission resources, bring certainty to carriers serving these areas, and generally serve the public interest.

44. The Cherokee Nation states that it interprets the Commission's proposal to mean that the Cherokee Nation's former reservation lands, the Cherokee Outlet, will be assigned to the Cherokee Nation because the Cherokee Nation is the only tribe to have treaty rights to the Cherokee Outlet, and that any ''former reservation lands'' of the Iowa, Kickapoo, and Pawnee will be assigned to them respectively, but asks for clarity regarding which particular ''former reservation lands'' will be assigned to each of the four Tribal entities. RWA supports the Cherokee Nation's request. We clarify that the area not currently designated as Tribal in the U.S. Census Bureau's American Indian, Alaska Native, and Native Hawaiian data but identified as the Cherokee Outlet on the Oklahoma Historical Map (1870–1890) will be considered Tribal under the definition we adopt. Similarly, areas not currently designated as Tribal in the Census Bureau data but identified as Iowa, Kickapoo, or Pawnee based upon the ''former reservations in Oklahoma'' identified on the Oklahoma Historical Map (1870–1890) will be considered Tribal.

45. The Council of Athabascan Tribal Governments and the Mount Sanford Tribal Consortium each state that the Commission's proposal to include Alaska in the definition of ''Tribal lands'' but exclude Alaska from the 5G Fund is inconsistent and will create confusion unless the Commission either deletes the reference to Alaska, or notes in the definition that areas in Alaska are not eligible for 5G Fund support. We note that the existing definition of ''Tribal lands'' in section 54.5 of the Commission's rules defines that term for purposes of high-cost support and thus applies to all high-cost support programs. The Commission did not propose in the *5G Fund NPRM* a new definition of ''Tribal lands'' that is unique to the 5G Fund for Rural America. The amendments to section 54.5 proposed in the *5G Fund NPRM*—which we adopt here—are not specific to the 5G Fund and will apply to all high-cost support programs going forward, including the new 5G Fund, and for this reason, we do not qualify the reference to Alaska in the definition of ''Tribal lands.'' Instead, consistent with our policy of not providing high-cost support funding to more than one mobile competitive ETC in a geographic area, we proposed in the *5G Fund NPRM* to exclude areas in Alaska, for which high-cost support is already being provided via the mobile portion of the Alaska Plan, from the areas eligible for 5G Fund support. In formally adopting our proposal to exclude areas in Alaska from eligibility for 5G Fund support today, we make clear that such areas are not eligible for 5G Fund support.

4. Term of Support

46. We adopt a 10-year support term for each phase of the 5G Fund, with monthly disbursements to winning bidders. As we recently explained in adopting a 10-year support term for the Rural Digital Opportunity Fund in the *Rural Digital Opportunity Fund Report and Order,* 85 FR 13773, Mar. 10, 2020, a support term of 10 years encourages long-term investment and contributed to the robust participation in the successful Connect America Fund Phase II auction. We conclude that the same incentives apply here.

47. Commenters largely agree that a 10-year support term will provide the certainty and stability needed to encourage deployment of 5G service in rural areas while allowing providers to recover the cost of deploying their networks over time. We decline to shorten the term of support to five years as one commenter suggests, because we conclude that a five-year support term is too short to encourage long-term investment. For similar reasons, we also reject the suggestion that we should

accelerate the disbursement of funds by increasing support awarded during the first year, because our decision to disburse support on a monthly basis best ensures our ability to safeguard universal service funds in the event that service providers do not comply with our performance requirements and public interest obligations, and provides predictability for the Fund's contributions mechanism. Moreover, monthly disbursements provide 5G support recipients with reliable and predictable payments that conform to a variety of business cycles.

5. A Multi-Round, Descending Clock Auction

48. We adopt our proposal to rely on the Commission's existing Part 1, Subpart AA competitive bidding process rules for universal service support for the 5G Fund, with specific detailed clock auction bidding and bid processing procedures to be developed through our ordinary pre-auction notice and comment process. For Phase I and Phase II of the 5G Fund, we will use a multi-round, descending clock auction to identify the areas that will receive support, the carriers that will receive support in those areas, and the amount of support that each winning bidder will be eligible to receive. This descending clock auction will consist of sequential bidding rounds according to an announced schedule. Using multi-round auctions will enable bidders to adjust their bidding strategies over the course of the bidding so as to create viable aggregations of geographic areas in which to construct networks. The Commission has found that this approach to developing competitive bidding procedures—first defining important elements of the basic structure while later considering the detailed procedures for implementation—gives it necessary flexibility for integrating its auction objectives and high-level decisions into a workable and consistent auction process. Most commenters support our proposal. CCA, however, cautions against the use of reverse auctions because they can ''drive support to lowest cost options,'' specifically citing the use of equipment that may be subject to security concerns. We do not find this argument compelling. Firms generally face an incentive to minimize costs not limited to reverse auction bidders. Moreover, the Commission generally ensures equipment safety and security standards, and those concerns are not limited to competitive bidding in a reverse clock auction.

49. For both the Phase I and Phase II auctions, we adopt our proposal to accept bids and identify winning bids using a support price per adjusted square kilometer. Each eligible area will have an associated number of square kilometers which will be adjusted by an adjustment factor, described below. We will determine support amounts for an area by multiplying an area's associated adjusted square kilometers by the relevant price per square kilometer. For example, an area with 100 square kilometers and an adjustment factor of 1.2 would have 100×1.2 or 120 adjusted square kilometers. This approach will ensure that carriers bidding to serve the hardest-to-serve parts of the country can compete efficiently and fairly in the auction. Commenters did not oppose these specific proposals.

50. During the pre-auction processes for Phase I and Phase II, as is the Commission's normal practice, we will seek comment on and adopt an opening price per adjusted square kilometer that is high enough that even carriers requiring a very high level of support will be able to compete in the auction. The opening price multiplied by the number of adjusted square kilometers in the area will represent the highest support amount that a winning bidder could receive for the area in the auction. The same opening price and subsequent clock prices, in dollars per adjusted square kilometer, will apply to all the eligible areas in the auction. The clock price will be decremented in subsequent rounds of the auction, implying lower support amounts for each area. Since the opening price is intended to serve as a starting point for bidding and not an estimate of final prices, we anticipate that the opening price that we propose will be based on rough estimates of the cost of providing service in hard-to serve areas, taking into account any adjustments that are adopted.

6. Minimum Geographic Area for Bidding

51. We conclude that the minimum geographic area for bidding—*i.e.,* the geographic area by which areas eligible for 5G Fund support will be grouped for bidding—in a 5G Fund auction will be no larger than a census tract and no smaller than a census block group, as designated by the U.S. Census Bureau. Our goal in adopting a minimum geographic area for bidding is to ensure that a wide variety of interested bidders, including small entities, have the flexibility to design a network that matches their business model and technical capabilities and that allows service providers to achieve their performance benchmarks and public interest obligations efficiently. Thus, as the Commission did in the CAF Phase II and Rural Digital Opportunity Fund proceedings, we will determine the exact geographic area for grouping eligible areas during the pre-auction process when we finalize the auction design and have better data for determining eligible areas. Commenters are split on whether the minimum geographic area for bidding in a 5G Fund auction should be smaller than a census tract, and none support larger ones. In considering whether to use a minimum geographic area smaller than a census tract, we are mindful of the concerns of commenters that the number of square kilometers in a census tract may not correspond well with the low population density of that large a geographic area and that it may be difficult for carriers meet the 5G Fund performance requirements.

52. We also conclude that the minimum geographic area for bidding for a 5G Fund auction will be larger than individual census blocks, which are smaller than census tracts and census block groups. Although at least one commenter supports using individual census blocks, as we recently concluded in the context of the CAF Phase II and Rural Digital Opportunity Fund auctions, doing so would significantly increase the complexity of the bidding process both for bidders and the bidding system and minimize the potential for broad coverage by winning bidders. Furthermore, using census blocks as the minimum geographic area could create more challenges for providers in putting together a bidding strategy that aligns with their intended network construction or expansion.

53. In order to provide interested parties greater certainty, and insofar as no commenter objected to it, we also adopt our proposal to remove from a 5G Fund auction any geographic area that has *de minimis* eligible areas, which we define as an area of one square kilometer or less within the geographic area that we ultimately adopt. We believe there would be little or no demand for these *de minimis* areas, the administrative burdens would outweigh any potential benefits, and that the amount of the winning bid associated with such areas would be so small in terms of monthly disbursements that the cost to distribute it would outweigh its utility in benefitting a support recipient.

54. Moreover, because we decide to allocate funds reserved for support to Tribal lands from a separate Tribal lands budget, we also adopt our proposal to identify the eligible areas that coincide with an area of a specific Tribal entity by overlaying the boundaries of Tribal lands for each federally recognized

Tribal entity on the eligible areas within each minimum geographic area that we adopt. We note that while commenters generally did not address this proposal, two commenters—Smith Bagley and the Cherokee Nation—are generally supportive of our proposals to identify and group Tribal areas with the appropriate entity for purposes of the high-cost program and 5G Fund.

7. Adjustment Factor

55. We adopt our proposal to incorporate an adjustment factor into the 5G Fund auction that will assign a weight to each geographic area and will apply that adjustment factor to bidding for support amounts, and to apply that adjustment factor to the methodology for disaggregating legacy high-cost support. This weighting will reflect the relative cost of serving areas with differing terrain characteristics, as well as the potential business case for each area, with less profitable areas receiving greater weight and therefore greater support. The descending clock auction format we will use is one in which a uniform support rate is offered across all eligible areas, and carriers indicate which specific areas they would serve at that rate. If the sum of all payments that would be made at a specific rate given carriers' expressed willingness to serve exceeds the 5G Fund budget, then the rate is reduced and carriers express their willingness to serve at the lower rate. This process continues until the payment is equal to the 5G Fund budget. Under this process, carriers will be willing to serve fewer areas as the rate falls, but if the same rate is offered for all remaining areas, more support than is needed will flow to the less costly-to-serve and more profitable remaining areas. The adjustment factor will, however, for any given support rate, allocate a multiple of the support rate to more costly and less profitable areas, thereby making them more attractive to serve and increasing the support to such areas.

56. Using an adjustment factor to help distribute 5G Fund support to, and disaggregate legacy support in, a range of areas across the country that are geographically and economically diverse serves the public interest. As stated in the *5G Fund NPRM,* however, we do not expect an adjustment factor to capture the full differences between the costs and benefits of providing service to different types of geographic areas. In addition, we may cap the adjustment factor if we believe that it would be helpful to do so in balancing our goals of providing broad and equitable support for 5G.

57. As directed in the *5G Fund Order,* 85 FR 34525, Jun. 5, 2020, the Office and Bureau proposed and sought comment in the *5G Fund Adjustment Factor Public Notice,* DA 20–594, rel. Jun. 5, 2020, on specific adjustment factor values and the underlying methodologies used to develop them. Consistent with our decision to adopt the use of an adjustment factor, the adjustment factor values that are adopted by the Office and Bureau will be used in both bidding in the 5G Fund auction and for the disaggregation of legacy support.

58. Commenters broadly support our proposal to adopt an adjustment factor, although they differ in how to calculate and apply it. T-Mobile argues that an adjustment factor will ''encourage investment in areas that are more costly or less profitable to serve.'' The Massachusetts Department of Telecommunications and Cable also supports using an adjustment factor to score auction bids, but argues that the Commission should ''account for all relevant differences in 5G deployment and operating costs between locations, not just differences in terrain.'' AST&Science strongly supports incorporating an adjustment factor into the 5G Fund auction design ''in order to increase support to areas that are more costly and less profitable to serve.'' RWA believes that adjustment factors are ''an effective way of targeting support to hard-to-serve rural areas'' in an auction.

59. Our application of an adjustment factor in bidding in the 5G Fund auction and for the disaggregation of legacy support recognizes the variability of costs of deploying service, especially mobile service, across the country, and in that way advances our core universal service goal of ensuring access to reasonably comparable services in all areas of the country. We accordingly decline to adopt a disaggregation methodology allocating universal service support uniformly throughout a provider's subsidized service area; doing so would ignore the significant additional costs that wireless providers incur to deploy service in more difficult terrain and economic conditions. Instead, consistent with the direction in the *5G Fund Order,* the Office and Bureau will apply a disaggregation methodology that uses an adjustment factor as a proxy for determining areas that are relatively more costly for potential bidders and current legacy support recipients.

60. We adopt our proposal to use an adjustment factor that accounts for both the relative costs and business cases of deploying a 5G network given the differing terrain and economic conditions throughout the United States. The adopted adjustment factor will ensure that bids to serve areas that tend to be less profitable to serve, such as more economically disadvantaged areas and areas with more challenging terrain, are given greater weight in the auction and are not disadvantaged. We defer the final determination of the precise manner in which the adjustment factor will be incorporated into the auction mechanism to the pre-auction process.

61. We disagree with Verizon that applying such an adjustment factor to bidding is untested. In the CAF Phase II auction, the Commission's cost model adjusted reserve prices based on variations in the deployment costs of fixed networks due to factors like geography and regional costs. This cost-based adjustment to the bid amount is effectively the same as we adopt here—albeit designed here for application to mobile networks—and we will build on our experience in that auction. We also disagree with RWA that the adjustment factor should not be applied to the disaggregation of legacy support. Using an adjustment factor is appropriate because it will alleviate potential concerns over a carrier losing a disproportionate amount of its legacy support resulting from a disaggregation methodology in which more costly areas would be treated the same as less costly areas with respect to subsidies received. For example, a hypothetical carrier serving one mountainous census tract and one flat census tract of equal size in its subsidized service area might require 75% of its support to serve the mountainous tract and 25% to serve the flat tract. Were an unsubsidized carrier to enter the flat tract, which may be more likely given the relatively lower costs in the flat tract, if we did not apply the adjustment factor in calculating disaggregated support, the carrier would lose 50% of its funding and would be unable to continue serving the mountainous tract. However, applying an adjustment factor of three to the mountainous area would result in the carrier retaining 75% of its original support amount and allow it to continue serving the mountainous tract.

62. We decline to adopt the Massachusetts Department of Telecommunications and Cable's proposal to explicitly account for all 5G capital and ongoing cost differences in the calculation of the adjustment factor. We first note that two of the models presented in the *5G Fund Adjustment Factor Public Notice,* the Entry and Auction Bidding models, do reflect differences across geographic areas in

capital and ongoing costs, including the differences in labor rates, utility rates and other factors cited by the Massachusetts Department of Telecommunications and Cable. These models estimate differences in total profitability from deployment, and as such, capture differences in capital and ongoing costs as well as revenues from subscriber demand. Also, as we observed in the *5G Fund NPRM,* we do not intend for the adjustment factor to be an exhaustive accounting of all cost and demand differences across every area. Rather, it is to allow bidders in less profitable to serve areas to effectively compete in the auction while at the same time allowing the auction, rather than a cost model, to determine the most economically efficient allocation of winning bidders and funding levels across geographic areas.

D. Public Interest Obligations and 5G Service Performance Requirements for Legacy High-Cost Support and 5G Fund Auction Support Recipients

1. 5G Public Interest Obligations for Legacy High Cost Support Recipients

63. To bring accountability and ensure deployment of 5G technology in each carrier's subsidized service area, we establish broadband public interest obligations that will require competitive ETCs receiving legacy high-cost support for mobile wireless service to provide mobile, terrestrial voice and data services that comply, at a minimum, with 5G–NR technology as defined by 3GPP Release 15 (or any successor release that the Office of Economics and Analytics and the Wireline Competition Bureau may require after notice and comment). Specifically, we adopt our proposal to require that legacy support recipients use an increasing percentage of their support toward 5G service. We will also require competitive ETCs receiving legacy high-cost support to meet specified coverage requirements until such legacy support begins to phase down or otherwise ceases.

64. We note that the Commission has already begun phasing down support for those competitive ETCs that receive legacy high-cost support to provide service to fixed locations, and will similarly exempt entirely from new obligations and requirements competitive ETCs receiving legacy high-cost support for mobile wireless service in Alaska, Puerto Rico, and the U.S. Virgin Islands, areas for which the Commission adopted alternative support mechanisms and that are not otherwise eligible for 5G Fund support. We further note that competitive ETCs may voluntarily relinquish receipt of legacy high-cost support for a subsidized service area, and upon so doing, will no longer be required to meet these public interest obligations. However, in cases where a carrier voluntarily relinquishes legacy support at some point after effective date of these rules, the Commission may seek up to full recovery of all legacy support the carrier received after the effective date of these rules which was not spent toward the deployment, operation, and/or maintenance of 5G services consistent with the non-compliance framework we adopt herein.

65. No commenter disputes our reliance on the Commission's determination in the *USF/ICC Transformation Order* that any pause in the phase down of legacy high-cost support should be accompanied by additional public interest obligations and performance requirements for these support recipients. Rural Americans deserve timely deployment of service by legacy recipients of high-cost support that is comparable to what is being offered in urban areas, and our stewardship of the Universal Service Fund demands that we specify and clarify the obligations of legacy support recipients.

66. Because we recognize that the amount of legacy high-cost support received by each competitive ETC varies considerably and bears no direct relation to the size of its subsidized service area or to the expected cost of deploying 5G service, we do not adopt our proposal to require recipients to meet uniform 5G service deployment milestone coverage requirements largely mirroring those we adopt herein for 5G Fund support recipients. Instead, we adopt a general requirement for competitive ETCs receiving legacy high-cost support to meet deployment coverage requirements, and direct the Office and Bureau to develop and adopt, after notice and comment, specific 5G broadband service deployment coverage requirements and service deployment milestone deadlines for each legacy support recipient that take into consideration the amount of legacy support the carrier receives. In so doing, we direct the Office and Bureau to analyze the costs of 5G deployment in subsidized service areas and to evaluate the adequacy of legacy support to meet the particular deployment coverage requirements ultimately adopted.

67. Some parties raise objections to or otherwise question our directing the Office and Bureau to develop 5G deployment coverage requirements for legacy support recipients. We disagree and believe that these workstreams can proceed in parallel. Without more rigorous and objective 5G deployment obligations, we are concerned that legacy support may not ensure the timely deployment of 5G service to rural areas, that we will lack adequate information by which to measure the effectiveness of this support, and that legacy recipients may not be properly incentivized to participate in a 5G Fund auction. We therefore disagree with these concerns and anticipate that the Office and Bureau will adopt appropriate carrier-specific coverage deployment requirements expeditiously.

68. We note as a threshold matter that each ETC receiving high-cost support has an existing public interest obligation to offer broadband service throughout its subsidized service area. The details of the technical characteristics and deployment requirements of this broadband public interest obligation differ for each of the specific mechanisms under which carriers receive high-cost support, but the obligation to offer broadband service applies broadly, including to competitive ETCs that continue to receive legacy high-cost support to provide mobile services. Our decision today thus helps to complete the reform of the high-cost program begun in 2011 by effectuating this broadband service public interest obligation for legacy high-cost support recipients, whose broadband-specific public interest obligations for mobile services were not previously detailed. In so doing, we also effectuate the Commission's expectation that any pause in the phase down would include additional mobile broadband public interest obligations and performance requirements for the continued receipt of support. For the reasons stated in the *5G Fund NPRM,* we adopt our proposal to require legacy high-cost support recipients to meet additional public interest obligations and performance requirements and will require recipients of legacy high-cost support to meet the specific public interest obligations and performance requirements detailed herein.

69. Each competitive ETC receiving legacy high-cost support for mobile wireless services must now use an increasing percentage of its legacy support toward the deployment, maintenance, and operation of voice and broadband networks that support 5G meeting the performance requirements we adopt today within its subsidized service areas. Specifically, legacy support recipients must use at least one-third of the legacy support they receive in 2021 and at least two-thirds of the legacy support they receive in 2022 for these purposes. Some carriers raise a concern that budgets and

deployment plans for 2021 are largely complete, which could make it difficult for some legacy support recipients to achieve the 2021 requirement. As such, we will also afford a carrier the flexibility to use less than one-third of its legacy support in 2021 and make up any shortfall in 2021 by proportionally increasing the requirement in 2022 (above the two-thirds of its support the carrier is required to spend on 5G in that year). For example, a legacy high-cost support recipient that receives $9 million per year in legacy support could meet this requirement by spending on 5G: $3 million in 2021 and $6 million in 2022; $1.5 million in 2021 and $7.5 million in 2022; or even $0 in 2021 and $9 million in 2022. To take advantage of this flexibility, a carrier receiving legacy support must certify to the Bureau by March 31, 2021 (or 30 days after the Commission receives Paperwork Reduction Act approval, whichever is later) as to the amount of 2021 legacy support it will use for the 5G deployment requirements and certify that it will make up any shortfall in 2022. For legacy support received in 2023 and for each subsequent year, the full amount of legacy support a carrier receives in the calendar year must be used for these purposes by the end of the calendar year until its legacy support for an area begins to phase down or otherwise ceases. We note that this requirement is not intended to prohibit a competitive ETC from using a portion of its legacy support on the maintenance or operation of 4G LTE or previous generation services in its subsidized service area as part of a network otherwise capable of providing 5G service meeting the performance requirements, for example, in order to continue to support older generation consumer handsets. In line with the geographic flexibility we adopt herein, the percentage of legacy support that a competitive ETC must use will be calculated against the total amount of legacy high-cost support that the carrier receives for all of the subsidized service areas for which it (or any affiliated competitive ETCs) receives support at 60% of the frozen high-cost support level, calculated pursuant to section 54.307(e)(2)(iii).

70. We conclude that adopting uniform coverage requirements for 5G broadband service deployment similar to those we adopt for 5G Fund winning bidders without first estimating the sufficiency of support amounts to meet a coverage requirement could give some carriers a windfall for little deployment while imposing impossible expectations on others. On the other hand, requiring that an increasing percentage of legacy support be used to deploy 5G service does not present similar concerns about the sufficiency of support. For example, a competitive ETC that receives $10 million per year to provide service across a state would thus, presumably, be able to deploy 5G broadband service on a faster timeline and covering more area (*e.g.,* perhaps to 85% of its subsidized service area within four years) than would a competitive ETC that receives only $1 million per year to provide service to a similar sized area across the same state. Nevertheless, both legacy support recipients would be able to spend the same proportion of legacy support toward deployment of 5G service in order to meet their broadband public interest obligations. Requiring a gradual shift to spending on 5G service, as we do today, will broadly align with the schedule for 5G deployment in unsubsidized and urban areas, and will help ensure that high-cost areas do not fall behind.

71. Several commenters oppose our proposal to require legacy support recipients to meet uniform 5G coverage requirements as part of the public interest obligations and performance requirements we tentatively concluded we should adopt. AT&T argues that requiring 5G deployment in areas after support has been phased down would ''violate[ ] the Commission's obligation [under section 254(b)(5) of the Act] to establish support mechanisms that provide sufficient funding.'' We expressly proposed in the *5G Fund NPRM* to exempt from any 5G broadband service deployment public interest obligation areas where the legacy support recipient is subject to two-year phase down of support, both during the two-year phase down period and also after legacy support ceases, a proposal which we adopt herein. In other words, contra AT&T's suggestion, there will be no requirement to deploy 5G broadband service in areas where support is being or has been phased down. The Coalition of Rural Wireless Carriers (CRWC) similarly argues that requiring 5G deployment public interest obligations without evaluating the costs required to deploy service is arbitrary and capricious and would violate the statute. Smith Bagley opposes 5G deployment requirements for legacy support recipients on remote Tribal lands, where, it states, costs are so high and current support levels are insufficient to provide even 4G LTE service in many areas and that ''the Commission cannot require carriers to improve facilities and service levels in uneconomic high-cost areas unless it provides support that is explicit and sufficient . . . .'' We agree with these commenters that requiring legacy support recipients to meet uniform coverage requirements for 5G broadband service buildout without further analysis of the amount of legacy support each competitive ETC receives is premature. We have therefore directed the Office and Bureau to evaluate the adequacy of legacy support to meet particular deployment coverage requirements and to adopt specific 5G broadband service deployment coverage requirements and service deployment milestone deadlines for each legacy support recipient that take into consideration the amount of legacy support the carrier receives after notice and comment.

72. Three commenters support alternative frameworks that would require the deployment of 5G broadband service over a 10-year period in return for the same or an increased amount of legacy support carriers receive. Both RWA and NTCA suggest requiring modified 5G broadband service deployment obligations and performance requirements of legacy support recipients, but only as part of their respective ''5G Small Carrier Fund'' proposals. These proposals, which are largely modeled on the Commission's Alaska Plan, would offer legacy support recipients an increase in their support amounts over 10 years to deploy 5G and which we declined to adopt above. Smith Bagley proposes a ''Remote Tribal Areas Plan'' that would similarly offer the same amount of support, or a modified amount determined by the Commission, over 10 years for legacy support recipients that serve remote Tribal lands to deploy 5G in such areas. While we recognize the challenges of small carriers and those that provide service to Tribal areas, as we explain above in declining to adopt the alternate proposals advanced by RWA, NTCA, and Smith Bagley, the Commission's experience awarding support via competitive bidding has shown it to be an effective use of ratepayer funds and none of these commenters has convinced us that departing from that approach is warranted. We further conclude that the broadband public interest obligations and performance requirements we adopt today will help bring 5G service to existing high-cost areas while incentivizing current legacy high-cost support recipients, including small carriers and those that serve Tribal lands, to participate in the 5G Fund Phase I auction, ultimately ensuring that

the largest number of rural areas receive support.

73. Finally, recognizing that there may be particular circumstances where the amount of legacy support received is so low or the costs of any steps toward the deployment of 5G service so high as to frustrate any 5G broadband public interest obligation, we direct the Office and Bureaus to consider adopting, after notice and comment, a *de minimis* exception to any 5G deployment public interest obligations that the Office and Bureau may adopt as part of the proceeding to develop carrier-specific coverage requirements. In so doing, we direct the Office and Bureau to consider in setting any *de minimis* exceptions the amount of legacy support a carrier receives in relation to the administrative costs of establishing and verifying 5G deployment.

2. 5G Public Interest Obligations for 5G Fund Auction Support Recipients

74. We adopt our proposal to establish public interest obligations for 5G Fund support recipients to provide terrestrial mobile voice and data services that comply, at a minimum, with 5G–NR technology defined as 3GPP Release 15 (or any successor release that the Office and Bureau may require 5G Fund support recipients to comply with after appropriate notice and comment) and to meet measured performance requirements as a condition of receiving support. We also adopt our proposal to require 5G Fund support recipients to meet baseline performance requirements for minimum data speed, maximum data latency, and a minimum monthly data allowance.

75. Commenters generally support requiring specific public interest obligations and performance requirements for 5G Fund support recipients, and most support requiring the deployment of 5G service. CCA, however, suggests allowing 5G Fund support recipients to deploy 4G LTE-Advanced and provide a plan to transition to 5G–NR within a set period. In its reply comments, RWA disagrees with CCA's suggestion that 5G Fund support recipients be allowed to deploy 4G LTE-Advanced and suggests that the 5G buildout requirements require 5G–NR 3GPP Release 15 or later.

76. We agree with RWA and find it imperative that consumers in rural America receive service meeting the minimum industry standard to be considered 5G in order to ensure the 5G Fund is consistent with our goal to bridge the digital divide. We therefore adopt the requirement that 5G service deployed to meet public interest obligations and performance requirements for 5G Fund support recipients comply with the 5G–NR standard defined as 3GPP Release 15 (or any successor release with which the Office and Bureau may require 5G Fund support recipients to comply after notice and comment). In so doing, we also decline to adopt the suggestion of the 5G Fund Supporters who argue that the Commission should add an extension of the Cable Procurement Rule to the 5G Fund public interest obligations to ensure that minority- and women-owned businesses apply for the many procurement opportunities that will owe their creation to the 5G Fund. Our experience using reverse auctions to distribute support successfully in the Mobility Fund Phase I and CAF Phase II auctions supports our decision that competitive bidding without specific preferences provides the most efficient and effective mechanism to award universal service support.

77. *5G Service Milestones.* To ensure that 5G Fund support recipients meet their public interest obligation to provide 5G service in areas where they receive support, we adopt interim and final service deployment milestones to monitor progress in timely meeting the 5G Fund performance requirements. Specifically, we adopt our proposal for interim service deployment milestones requiring a 5G Fund support recipient to offer 5G service meeting established performance requirements to at least 40% of the total square kilometers associated with the eligible areas for which it is authorized to receive 5G Fund support in a state by the end of the third full calendar year following authorization of support, to at least 60% of the total square kilometers by the end of the fourth full calendar year, and to at least 80% of the total square kilometers by the end of the fifth full calendar year.

78. We also adopt our proposed final service deployment milestone that requires a 5G Fund support recipient to offer 5G service that meets the established 5G Fund performance requirements to at least 85% of the total square kilometers associated with the eligible areas for which it is authorized to receive 5G Fund support in a state by the end of the sixth full calendar year following authorization of support. Additionally, we adopt our proposal to require a 5G Fund support recipient to demonstrate by the end of the sixth full calendar year following authorization of support that it provides service that meets the established 5G performance requirements to least 75% of the total square kilometers within each of its individual biddable areas.

79. NTCA generally supports our proposed interim and final service deployment milestones, and the New York Public Service Commission similarly supports our proposals. We decline to adopt an alternative milestone schedule for deployment of 5G service suggested by RWA that would require recipients to cover 40% of the areas for which 5G Fund support is authorized by the end of year four, 60% by the end of year six, and 85% by the end of year 10. While RWA claims that deployment of a 5G network is ''more complex and time consuming than building out prior generation networks'' and will be difficult for legacy high-cost support recipients to do as part of its Phase 0 proposal, RWA provides no persuasive reason why 5G Fund support recipients should follow this delayed schedule. We are unconvinced that 5G Fund support recipients, which are able to factor in the cost and complexity of meeting service deployment milestones when placing bids in an auction, will find it overly burdensome to meet the deployment milestones we adopt.

80. We decline to adopt the proposal of the California Public Utilities Commission to adopt a higher service deployment milestone coverage requirement—90% by the end of year six and 100% by the end of year seven. There may be isolated areas that are particularly challenging to serve even in terrain that is otherwise not difficult to serve, and adopting a 100% coverage requirement could drastically increase costs in a 5G Fund auction if bidders reasonably conclude that certain areas they would otherwise be interested in serving are cost prohibitive due to an especially challenging terrain feature like a ravine or mountaintop. Such a requirement would thus potentially distort the 5G Fund auction with little gain. At the same time, we disagree with Verizon's suggestion to reduce the required coverage percentage within each biddable unit with particularly challenging areas, based on an alternate deployment requirement focusing on road miles and population. We believe that deviating from our area-coverage approach in the 5G Fund would undercut our focus on ensuring widespread availability of 5G services, including in sparsely populated areas like agricultural lands. Moreover, while we acknowledge that achieving 5G deployment covering 85% required by the final service deployment milestone may be difficult to achieve in particularly challenging terrain, bidders in a 5G Fund auction will be able to factor in the costs of deployment in

such environments when placing bids in the auction.

81. Lastly, we adopt the interim and final service milestones for 5G Fund support recipients as proposed in the *5G Fund NPRM* because we conclude it is imperative that carriers receiving 5G Fund support make significant progress toward providing 5G service early in their support term, and then continue to make progress toward overall coverage goals throughout the remainder of the term. We note that the service milestones we adopt for the 5G Fund are similar to those adopted for the Rural Digital Opportunity Fund and CAF Phase II, as well as in the Uniendo a Puerto Rico Fund and Connect USVI Fund proceeding. Adopting a consistent approach here ensures that we act as responsible stewards of universal service funds. The requirement that 5G Fund support recipients cover at least 75% of the total square kilometers within each biddable unit also ensures that support recipients do not cherry-pick the easiest-to-serve areas and leave more difficult regions cut off from service and from other potential service providers.

3. 5G Service Performance Requirements

82. We adopt our proposal to require recipients of legacy high-cost support and 5G Fund support to meet baseline performance requirements for minimum data speed, maximum latency, and minimum monthly data allowance. In the *5G Fund NPRM,* we proposed minimum baseline performance requirements for legacy and 5G Fund support recipients to deploy 5G service speeds of at least 35/3 Mbps, sought comment on whether the required data speed should be a median, mean, or another percentile of probability, proposed 100 milliseconds or lower round-trip latency, and proposed a minimum monthly data allowance that would correspond to the average U.S. subscriber data usage. Consistent with these proposals, we will require that support recipients deploy 5G–NR service with median speeds of at least 35/3 Mbps, minimum cell edge speeds of at least 7/1 Mbps, and have round-trip latency of 100 milliseconds or less. We do not adopt additional standardized propagation modeling requirements as proposed. As discussed further in Section III.E.1 and III.G.1, we will instead defer to the propagation modeling standards adopted for reporting of 5G mobile broadband coverage in the Digital Opportunity Data Collection. Additionally, we will require that support recipients offer at least one service plan in the areas for which legacy support is disbursed or 5G Fund support is authorized that includes a data allowance that is equivalent to the average United States subscriber data usage.

83. We disagree with CCA's suggestion to fund both 5G deployments and 4G LTE-Advanced deployments using equipment that can subsequently be upgraded to 5G. As RWA and CRWC demonstrate, many competitive ETCs receiving legacy high-cost support have already deployed 4G LTE equipment in their network core using legacy support, which should significantly reduce the burden of using future legacy support to upgrade these networks to 5G service meeting at least the 5G–NR standard we adopt. Consistent with our overall approach in this proceeding, we believe support is best directed to modern 5G deployments rather than further deployments of 4G LTE technology. Moreover, we agree with RWA that ''[o]nly real 5G will allow the provision of flexible broadband services, increased speed, reduced latency, and reduced energy consumption, [among] other 5G capabilities that 4G (or '5G Lite') simply cannot provide.''

84. RWA is the only commenter to directly address adopting these performance requirements specifically for legacy high-cost support recipients, which it generally supports albeit with a longer deployment buildout timeframe and as part of its ''Phase 0'' proposal. RWA and AT&T otherwise support our proposed data speeds of 35/3 Mbps, and we agree with these commenters that a median speed of 35/3 Mbps, combined with the requirement that supported networks meet 3GPP's 5G–NR standard, recognizes that network speeds will vary across service areas and will allow a variety of 5G applications in rural areas. We disagree with CCA's claims that data speeds of 35/3 Mbps are arbitrary and will not be attainable for rural carriers without substantial cost. The Commission has previously required minimum speeds of 35/3 Mbps for 5G service in the high-cost program and to date most eligible carriers have accepted that funding and associated obligation to deploy at those speeds. While it is true that 5G service is not defined by a particular speed, we conclude that setting both minimum cell edge and median target speeds based upon what we believe to be achievable with a minimum amount of spectrum will help align the services funded with 5G Fund support with the performance of 5G service in unsubsidized areas. We note that a review of the Commission's public Universal Licensing System indicates that the licenses held by competitive ETCs receiving legacy high-cost support provide the minimum amount of bandwidth that we find to be necessary to support 5G services (at least 10 megahertz x 10 megahertz using frequency division duplex (FDD) or 20 megahertz using time division duplex (TDD)) meeting these speeds in more than 95% of subsidized service areas. We consequently believe even small and mid-size rural providers will be reasonably capable of meeting a 35/3 Mbps standard with available spectrum.

85. We also disagree with suggestions from Next Century Cities, Juniper Networks, and Verizon that we should adopt higher speeds for the 5G Fund, ranging from 50/5 Mbps to 1 Gbps. While many 5G networks will be capable of higher speeds, the 5G Fund is intended to support networks in even the most sparsely populated and hardest-to-serve parts of the country. Setting network speeds too high risks raising the costs of deploying in those areas so high that service providers are unwilling to bid. As we have noted, we believe 35/3 Mbps will be achievable by the vast majority of potential 5G Fund bidders and legacy support recipients, and is consistent with other 5G universal support requirements in insular areas. We likewise disagree with CRWC's suggestion to use signal strength requirements and a link budget as the manner of measuring compliance with performance requirements, rather than data speed and latency. We do not believe there is, and CRWC does not offer, a meaningful way to impose a single set of signal strength and link budget parameters that can reliably predict network performance for every network design and configuration.

86. Though AST&Science argues that low-earth orbit satellite service should be able to meet the 100 milliseconds or lower latency standard, other satellite companies seek to allow higher latency, perhaps via a tiered system similar to Rural Digital Opportunity Fund's performance and latency tiers. We agree with RWA that an increase in permitted latency could reduce service quality, however. We also decline to add the complexity of adopting a tiered system to the 5G Fund auctions. We believe that adopting a round-trip latency requirement of 100 milliseconds or better for all areas better achieves our goal of ensuring access to services reasonably comparable to those in urban areas. One of the key benefits of 5G over other mobile technologies is reduced latency.

87. While the New York Public Service Commission generally supported requiring a data allowance that corresponds to the average United

States subscriber data usage, we received no specific comments addressing a data source for the average United States subscriber data usage, on the time during the support term that any increases in the required data allowance should be established, or on whether there should be a cap on what minimum monthly data allowance should be required at future points during the support term. We continue to believe that tying the minimum monthly data allowance to average United States subscriber usage will ensure that rural Americans are not provided second-rate service, and we therefore adopt this standard for the minimum monthly data allowance. We defer to the proceeding in which the Office and Bureau adopt carrier-specific 5G coverage requirements for legacy support recipients and to the pre-auction process for 5G Fund auction support recipients to determine the data source from which we will evaluate the average United States subscriber data usage and the further parameters necessary to implement an evolving minimum monthly data allowance, respectively.

4. Additional Public Interest Obligations

88. *Reasonably Comparable Rates.* Consistent with section 254(b)(3) of the Act, we will require as a public interest obligation for the receipt of mobile high-cost support that all legacy high-cost and 5G Fund support recipients offer 5G service in the areas where they receive support for deploying 5G service at rates that are reasonably comparable to rates they offer in urban areas, as proposed in the *5G Fund NPRM.* In the *USF/ICC Transformation Order,* the Commission concluded that, as a condition of receiving federal high-cost universal service support, all recipients of such support must offer broadband service in their supported area that meets certain basic performance requirements at rates in rural areas that are reasonably comparable to rates offered in urban areas.

89. For both voice and broadband services, the Commission considers rural rates to be ''reasonably comparable'' to urban rates under section 254(b)(3) if rural rates fall within a reasonable range of urban rates for reasonably comparable voice and broadband services. As an initial matter, we will define ''urban'' for this purpose consistent with the definition from the latest decennial U.S. Census Bureau data. Currently, the latest decennial data available from the U.S. Census Bureau for this purpose is from 2010. We anticipate that 2020 data will be available in the near future. Consequently, we will update our definition of ''urban'' when new decennial data becomes available. Consistent with suggestions filed in the Mobility Fund Phase II docket and our decision in that proceeding, we conclude that if a legacy high-cost or 5G Fund support recipient is offering the same rates, terms, and conditions (including usage allowances, if any, for a specified rate) to both urban and rural customers, then it would fulfill the requirement that its rates are reasonably comparable. We also will allow a support recipient to demonstrate it provides reasonably comparable rates if one of its stand-alone voice plans and one service plan offering data are substantially similar to plans offered in urban areas. We note that we may define more precisely the circumstances under which a legacy or 5G Fund support recipient can demonstrate compliance with this certification in later proceedings, and retain our authority to look behind recipients' certifications and take action to address any violations.

90. Where a legacy high-cost or 5G Fund support recipient does not serve urban areas and therefore cannot demonstrate that it is offering reasonably comparable rates based upon its own offerings, we will require the support recipient to identify the carrier and specific rate plans upon which it is basing its compliance certification so that we can verify that its rates are reasonably comparable. We note that allowing for cross-carrier comparison is broadly similar to our decision in the Mobility Fund Phase II Report and Order to require that a support recipient offer at least one service plan that includes a minimum monthly data allowance equivalent to a mid-level plan offered by a nationwide provider. In such a case, we will require that the support recipient submit corroborating evidence of reasonably comparable rates from the web page or other marketing materials of the other mobile carrier that does serve urban areas.

91. The New York Public Service Commission supports the proposed method for a support recipient to demonstrate that it offers reasonably comparable rates if it offers stand-alone voice plans and one service plan with data that is substantially like those offered in urban areas. NTCA also supports this approach, stating that ''[a]ll who receive or win funding must . . . commit to offering a terrestrial mobile wireless product that is similar in features and price to the 5G mid-level plan offered in urban areas by large, nationwide providers.'' We note that AST&Science supports our proposal to adopt a reasonably comparable rate requirement, but suggests that we include handset costs when determining whether rates are reasonably comparable. We decline to mandate specific prices for handsets because handsets are broadly available from vendors other than service providers, and thus market forces establish handset prices. We received no comments on the proposed method of demonstrating reasonably comparable rates if the support recipient does not serve urban areas by identifying a carrier and specific rate plan upon which the support recipient is basing its compliance certification, and requiring the submission of corroborating evidence of reasonably comparable rates from the web page or other marketing materials of the mobile carrier serving urban areas on which the demonstration is based. We adopt this proposal as a reasonable and not burdensome method of demonstrating compliance with the reasonably comparable rate requirement.

92. Emphasizing the obligation to offer voice and broadband service at reasonably comparable rates further ensures that service made available with universal service funds in rural areas is not beyond the financial reach of rural customers. We note that all ETCs must advertise the availability of their voice services throughout their service areas, and we require support recipients also to advertise the availability of their broadband services within their service area.

93. *Collocation and Voice and Data Roaming.* We adopt our proposal to require competitive ETCs to allow collocation and voice and data roaming as a public interest obligation of the receipt of both legacy high-cost and 5G Fund support, and will require the same general collocation and voice and data roaming obligations that the Commission adopted for Mobility Fund Phase I, with certain minor changes for legacy support recipients. Until a competitive ETC ceases to receive legacy support, we will require the support recipient to allow reasonable collocation by other carriers of services that would meet the technological requirements of the 5G Fund on all cell-site infrastructure that it owns or manages in the subsidized service area for which it receives legacy support. For 5G Fund support recipients, to ensure that a support recipient does not use public funds to achieve unfair competitive advantage, we require that during the 5G Fund support term, a support recipient allow reasonable collocation by other providers of services that meet the technological requirements of the 5G Fund on all

newly-constructed 5G cell-site infrastructure that the support recipient owns or manages in the areas for which it receives support. We note that this public interest obligation for legacy high-cost support recipients differs slightly from what we adopt for 5G Fund support recipients and from the requirements adopted by the Commission in Mobility Fund Phase I and Mobility Fund Phase II. We conclude it is appropriate to apply a broader collocation requirement for legacy support recipients because we anticipate that such recipients will have already built their infrastructure and allowing reasonable collocation on those facilities serves our underlying policy goals of allowing other service providers to benefit from the public universal service funds. During the period of time that a carrier receives either legacy high-cost or 5G Fund support, we will also prohibit each support recipient from entering into facilities access arrangements that restrict any party to the arrangement from allowing others to collocate on the respective cell-site infrastructure.

94. RWA purports to support this collocation proposal, but asserts that collocation should only be required to the extent that the tower can support multiple carriers, and suggests that any reinforcement or upgrade costs would have to be borne by the last provider desiring to collocate on the tower. We disagree with RWA's view regarding reasonable collocation because it conflicts with the underlying policy of ensuring that universal service support is used in a manner that does not allow one provider to gain an unfair competitive advantage over another. As the Commission explained in the context of adopting a similar requirement for Mobility Fund Phase II, the goal of having a public interest obligation to require reasonable collocation is to ensure that ''publicly funded investments can be leveraged by other service providers.'' We decline to adopt RWA's position regarding collocation because we conclude it would place an undue burden on those service providers seeking to take advantage of the public benefits that can be gained for rural consumers from the 5G Fund, and would run counter to our efforts to close the digital divide. We remind both legacy high-cost and 5G Fund support recipients that they must also comply with the Commission's voice and data roaming requirements in effect as of the effective date of these rules on networks that are built using high-cost support.

E. Additional Mobile Legacy High-Cost Support Requirements

1. Reporting Requirements

95. *Initial Report of Current Service Offerings.* We adopt our proposal to require each competitive ETC receiving legacy high-cost support for mobile wireless service to file an initial report of its current service offerings in each of its subsidized service areas detailing how it is using legacy support. Legacy support recipients must file this report no later than three months after the Commission receives Paperwork Reduction Act approval for this requirement. RWA broadly supported requiring an initial report since ''[t]his information will help the Commission ensure that support is actually being used for its intended purpose.'' We agree. No other commenters discussed this point. We note that RWA addressed this proposed requirement only at a high-level, as was proposed in the *5G Fund NPRM,* and not the specific certifications and requirements that we adopt herein. Moreover, we disagree with RWA's suggestion that the initial report of current service offerings should be required only after the Commission determines the final areas eligible for support in the 5G Fund Phase I auction, as doing so would unnecessarily delay our efforts to bring accountability to the high-cost program and to gain a more complete understanding of how legacy high-cost support is being used.

96. Consistent with our decision herein to require annual reports from legacy support recipients, we will require initial reports to be filed with USAC via a web portal, and the reports will be made available to the Commission and the relevant state, territory, and Tribal governmental agencies, as applicable. A legacy support recipient must maintain the accuracy and completeness of the information provided its initial report, and any substantial change in the accuracy or completeness of any initial report submitted by a legacy support recipient must be reported within 10 business days after the reportable event occurs. We retain our authority to look behind recipients' initial reports and to take action to address any violations. We additionally direct the Office and Bureau to further specify the process by which legacy high-cost support recipients will be required to file their initial reports.

97. In order to have a complete understanding of current service offerings, we will require in the initial report information about the service each legacy support recipient offers in each subsidized service area where it receives legacy support. Such information will include an indication of the highest level of technology deployed, a target date for when 5G broadband service meeting the performance requirements we adopt today will be deployed within the subsidized service area (for any service area in which 5G has not been deployed), and an estimate of the percentage of area covered by 5G deployment meeting the adopted performance requirements (for any area in which 5G has been deployed). To help us better understand the services offered, we will also require that each recipient provide infrastructure information on the cell sites that the carrier uses to provide mobile service within each subsidized service area in a standardized template. We note that we are currently considering in our Digital Opportunity Data Collection proceeding whether to require from all mobile service providers the submission of infrastructure information more generally across providers' networks. Our decision to adopt a requirement here that legacy support recipients provide infrastructure information for subsidized service areas is without prejudice to the matter of whether to adopt a similar requirement in the Digital Opportunity Data Collection proceeding. We recognize that carriers may consider infrastructure information to be sensitive, and so we will treat such data submitted as part of the initial report as presumptively confidential. While the Commission and USAC will treat as presumptively confidential and withhold from public inspection infrastructure information submitted as part of this report, USAC will provide these data to the Commission and the relevant state, territory, and Tribal governmental entities that have jurisdiction over a particular service area, as applicable.

98. We will require each legacy support recipient to provide, as part of the initial report, a brief narrative describing its current service offerings and providing a high-level accounting of how it has used legacy high-cost support received for the 12-month period prior to the deadline for the initial report. We direct the Office and Bureau to issue further guidance on the level of detail required and manner in which such initial accounting information must be provided consistent with our decision. Finally, we will require that each legacy support recipient provide certain certifications related to its current service offerings and use of legacy high-cost support, as

part of its initial report. These will include, among other certifications, a certification that the carrier has filed relevant deployment data (either via FCC Form 477 or the Digital Opportunity Data Collection, as appropriate) that reflect its current deployment covering its subsidized service area. To the extent that the Digital Opportunity Data Collection is not yet in place at the time that the initial report of current service offerings is due, we will require that each legacy support recipient certify to submitting coverage data consistent with the specifications adopted in the Digital Opportunity Data Collection proceeding via the existing FCC Form 477 system.

99. *Annual Reports.* We also adopt our proposal to require recipients of mobile legacy high-cost support to file annual reports regarding their efforts to provide 5G services throughout their subsidized service areas meeting the public interest obligations and performance requirements we adopt today. To that end, we will require that each legacy high-cost support recipient submit an annual report by July 1 in each year that includes updated information about the carrier's service offerings for the previous calendar year in its subsidized service areas, and how legacy support is being used, as well as certifications that the support recipient is in compliance with its public interest obligations and performance requirements. RWA was the only commenter to address our annual reporting proposal, of which it was supportive. Similar to initial reporting requirements above, we conclude that requiring annual reports will ensure accountability in the high-cost program by ensuring that legacy support recipients meet their public interest obligations and performance requirements.

100. Legacy high-cost support recipients must file annual reports with USAC via a web portal and filing these reports will replace the carrier's current obligation to annually file the existing FCC Form 481 with USAC. The requirement for legacy high-cost support recipients to file annual reports, and that these reports will replace the current obligation to file the existing FCC Form 481, will take effect following submission of the initial report of current service offerings. As with the initial reports, we will require a legacy support recipient to report any substantial change in the accuracy or completeness of any annual report it submits within 10 business days after the reportable event occurs, and we retain our authority to look behind recipients' annual reports and to take action to address any violations. And as with the initial reports, USAC will make the annual report filings available to the Commission and the relevant state, territory, and Tribal governmental agencies, as applicable. We direct the Office and Bureau to further specify the process by which legacy high-cost support recipients will be required to file their annual reports, including whether these reports will be incorporated into a modified FCC Form 481 or will be collected via a new form.

101. In addition to collecting the same general information collected as part of FCC Form 481, and broadly similar to the initial report, we will require annual reports to include updated information about the services each legacy support recipient offers in each subsidized service area where it receives legacy support for the previous calendar year, including the highest level of technology deployed, a target date for when 5G broadband service meeting the performance requirements will be deployed within the subsidized service area (for any service area in which 5G has not been deployed), and an estimate of the percentage of area covered by 5G deployment meeting the performance requirements we adopt today (for any area in which 5G has been deployed), as well as other relevant information that the Office and Bureau decide may be necessary. We will also require that each recipient provide updated infrastructure information on the cell sites that are located within each subsidized service area in a standardized template. As with the submission of these data as part of the initial report, we will treat infrastructure data submitted as part of an annual report as presumptively confidential.

102. We will require legacy support recipients to provide as part of each annual report an accounting of the support a carrier has received and how legacy support is being used, including a brief narrative with high-level accounting of how it used legacy high-cost support received for the previous calendar year. In addition, we will require that the legacy support recipient indicate which of these expenditures were for the deployment, maintenance, and/or operation of networks capable of offering 5G service that meet the performance requirements we adopt herein. Requiring this information will allow us to ensure that legacy support recipients meet their public interest obligation to use an increasing percentage of their legacy support toward the deployment of 5G service. We note that all ETCs that receive high-cost support remain subject to periodic audits by USAC to ensure compliance, and while we will not require legacy support recipients to submit detailed accounting information on its expenditures as part of its annual reports, opting instead to require only a brief submission of a high-level narrative alongside certifications on the use of support, we emphasize to competitive ETCs that they should retain adequate accounting records as evidence that they have met their public interest obligations to spend a minimum percentage of legacy support on the deployment of 5G in the case of an audit.

103. Finally, we will require that each legacy support recipient provide a number of certifications related to its current service offerings and use of legacy high-cost support as part of its annual reports. These will include, among other certifications, a certification that the carrier has used the required minimum percentage of legacy support toward the deployment and/or operation of 5G service meeting the minimum performance requirements, as well as that it has filed relevant deployment data either as part of FCC Form 477 or in the Digital Opportunity Data Collection, as appropriate, that reflect its current deployment covering the subsidized service area. As with our decision to require an initial report of current service offerings, to the extent that the Digital Opportunity Data Collection is not yet in place at the time that an annual report is due, we will require that each legacy support recipient certify to submitting coverage data consistent with the specifications adopted in the Digital Opportunity Data Collection proceeding via the existing FCC Form 477 system.

104. *Service Milestone Reports.* We adopt a high-level requirement that legacy high-cost support recipients submit 5G service milestone reports, and direct the Office and Bureau to propose and adopt, after notice and comment, the content and schedule of such reports in the proceeding in which they adopt carrier-specific 5G service deployment coverage requirements. We anticipate that the particular service milestone report requirements that the Office and Bureaus adopt would be generally similar to the requirements we adopt herein for 5G Fund support recipients to file interim and final service milestone reports.

2. Demonstrating Compliance With Performance Requirements

105. We adopt a modified version of our proposal to require legacy support recipients to demonstrate compliance with performance requirements. This

decision is consistent with requiring legacy support recipients to spend an increasing percentage of support on the deployment, maintenance, and operation of networks capable of supporting 5G broadband service that meets the performance requirements we adopt. In the *5G Fund NPRM,* we proposed to require that legacy support recipients, as with 5G Fund support recipients, demonstrate compliance with performance requirements by submitting milestone coverage maps reflecting 5G service deployment in conjunction with comprehensive on-the-ground measurement testing. Because we are not specifying carrier-specific 5G broadband service coverage requirements at this time, we will require a legacy support recipient to demonstrate the performance of any 5G networks deployed using legacy support by certifying in its annual report that it filed the relevant mobile deployment data as part of its FCC Form 477 filing or in the Digital Opportunity Data Collection, as appropriate, and that such data reflect any 5G deployment covering its subsidized service area. To the extent that the Digital Opportunity Data Collection is not operational at the time that a legacy support recipient is required to demonstrate compliance via the submission of 5G coverage maps, the support recipient will be required to submit maps generated consistent with the propagation model parameters adopted in the Digital Opportunity Data Collection proceeding through the legacy FCC Form 477 system. Additionally, we adopt a high-level requirement that legacy support recipients substantiate deployment coverage data with on-the-ground measurement tests, but defer a decision on the precise requirements for such tests, as well as the methodologies for conducting and validating on-the-ground measurement tests for legacy support recipients, to the proceeding in which the Office and Bureau adopt carrier-specific 5G broadband service coverage requirements.

106. Because the requirements adopted for the filing of 5G coverage maps in the Digital Opportunity Data Collection proceeding mirror the propagation model parameters specified for 5G deployment maps proposed in the *5G Fund NPRM,* requiring that legacy support recipients verify to the submission of coverage data in their FCC Form 477 or Digital Opportunity Data Collection filings will still provide us with the same information. Deferring to the Digital Opportunity Data Collection's requirements for the generation and submission of mobile coverage data therefore avoids the burden on legacy support recipients of having duplicative or conflicting requirements, as suggested by AT&T and CTIA, without undermining the public interest obligations and performance requirements we adopt. We note, however, that legacy support recipients will be required to file 5G broadband coverage maps otherwise generated using the standardized propagation model parameters adopted in the Digital Opportunity Data Collection proceeding for 5G coverage data (*i.e.,* minimum cell edge speeds of 7/1 Mbps with 50% cell loading and 90% cell edge probability) via FCC Form 477 prior to filing any annual reports, to the extent that a report is due prior to the first collection of mobile coverage data in the Digital Opportunity Data Collection.

107. Although we adopt a general requirement that legacy high-cost support recipients submit on-the-ground measurement tests to demonstrate compliance with 5G performance requirements, we do not adopt specific requirements at this time because of our decision deferring adoption of carrier-specific 5G broadband service coverage requirements for these recipients. Instead, we direct the Office and Bureau to adopt, after notice and comment, appropriate parameters for legacy high-cost support recipients to demonstrate compliance with 5G broadband public interest obligations and performance requirements, as necessary, concurrent with adoption of carrier-specific 5G broadband service coverage requirements for legacy support recipients. We anticipate that the test metrics and data specifications that the Office and Bureaus adopt, along with the methodologies for conducting on-the-ground tests and validating results, would be generally similar to the requirements we adopt herein for 5G Fund support recipients to demonstrate compliance.

108. Several commenters oppose the on-the-ground measurement testing methodology proposed in the *5G Fund NPRM,* or even the use of on-the-ground tests at all to demonstrate buildout. The Vermont Department of Public Service, on the other hand, argues that on-the-ground testing, including drive testing, is critical to verify deployment, though it ''does not oppose [AT&T's] proposed approach of determining validation methodology for the 5G Fund through the [Digital Opportunity Data Collection] proceeding.''

109. We agree with the Vermont Department of Public Service that on-the-ground testing is important to verify appropriate use of legacy support. We nevertheless acknowledge commenters' concerns that on-the-ground testing may be burdensome, and expect the Office and Bureau will give appropriate weight to those concerns in determining the appropriating testing methodology for legacy support recipients. Although the issue of whether to adopt a requirement that service providers substantiate coverage maps with on-the-ground testing data remains open in the Digital Opportunity Data Collection proceeding, the outcome of that proceeding is not determinative here.

110. Because this is a universal service subsidy program, our obligations as stewards of the Fund require that we take steps to ensure that support is being used for its intended purpose and to minimize waste, fraud, and abuse. This view is consistent with our treatment of fixed broadband deployments in the universal service high-cost program, where support recipients' subsidized networks are subject to mandatory speed and latency testing, even though we did not adopt a similar testing requirement for fixed broadband networks in the Digital Opportunity Data Collection Proceeding.

3. Non-Compliance Measures for Failure To Comply With Public Interest Obligations and Performance Requirements

111. We adopt our proposal to terminate support payments to mobile competitive ETCs receiving legacy high-cost support that fail to comply with their public interest obligations and performance requirements. As stewards of the Universal Service Fund, it is our obligation to ensure that all Americans living in areas served by these carriers receive the most advanced wireless services. We do this, and create a powerful incentive to meet obligations, by ending support payments to legacy mobile competitive ETCs that fail to comply with their obligations and/or performance requirements. While ending support payments is a stricter consequence than what other high-cost support recipients face for failing to meet their public interest obligations and performance requirements, the continuation of legacy support is an interim mechanism in place as we implement the 5G Fund, and therefore, unlike the Commission's other modernized support mechanisms, the non-compliance measures here do not benefit from allowing legacy support recipients to come back into compliance prior to the end of the support term.

112. The rule we adopt is a modified version of our proposal. As we proposed, mobile competitive ETCs

receiving legacy high-cost support that fail to comply with public interest obligations or performance requirements must notify the Bureau and USAC within 10 business days of non-compliance. We initially proposed that upon receipt of this notification, we would deem the carrier to be in default, and the carrier would no longer be eligible to receive support disbursements, and would be subject to recovery of support disbursed since the effective date of the public interest obligations and performance requirements. We modify the language of the proposed rule in two ways. First, we make clear that in addition to basing a finding of default on a legacy high-cost support recipient's notification of its non-compliance, the Bureau or USAC may in the absence of any such notification determine that the support recipient is in default and subject to the same consequences if they become aware of a recipient's non-compliance. Second, to address concerns of ''disproportionate penalties,'' we limit the amount of support that may be subject to recovery to the legacy support not spent on the deployment, operation, and/or maintenance on voice and broadband networks that support 5G meeting the performance requirements. The amount of support we make subject to recovery, therefore, goes beyond Verizon's proposal to simply adopt the approach that the Commission used for fixed legacy high-cost support. Under the approach we adopt, for example, if the amount of legacy high-cost support disbursed to a mobile competitive ETC since the effective date of the public interest obligations and performance requirements is $10 million and the carrier spent $2 million on 5G deployment at the time of default, the carrier would be subject to up to $8 million in recovery. We conclude this modified approach for non-compliance better incentivizes 5G deployment, and thus we tweak our proposal in the *5G Fund NPRM* to avoid adverse outcomes. For instance, if a carrier foresaw its inability to meet its public interest obligations, under the approach proposed in the *5G Fund NPRM,* it could be incentivized to stop spending altogether knowing that all legacy support is subject to recovery. By making any support spent on 5G not subject to recovery, such a carrier is better incentivized to keep spending on 5G. While Verizon's proposal would incentivize continued spending, such spending would not necessarily be 5G related.

113. CRWC's argument that provisions in the Consolidated Appropriations Act of 2020, Public Law 116–93 (2020 Appropriations Act), barring the Commission from modifying its rules to reduce competitive mobile ETCs' support below 60% of their monthly baseline support amount until the Commission begins disbursing Mobility Fund Phase II support has no bearing on our authority to impose the non-compliance measures we adopt. The 2020 Appropriations Act does not relieve competitive ETCs of their obligation to comply with the high-cost program's rules, including public interest obligations. Consequently, the Commission, even after enactment of the 2020 Appropriations Act, maintains its authority to subject competitive ETCs to reductions in support amounts for failing to comply with program rules. Nor does any provision of the 2020 Appropriations Act prohibit us from adopting new rules or obligations for mobile competitive ETCs, which if not adhered to, would result in reductions in support. Congress was aware that the Commission in 2011 had expressed its intent to subject legacy high-cost support recipients to additional mobile broadband public interest obligations if the phase down in support were paused when it passed the later-in-time 2016 Appropriations Act, Public Law 114–113. The proviso to the appropriations statute permits the adoption of additional public interest obligations. The proviso states that it ''shall not prohibit the Commission from . . . adopting other support mechanisms as an alternative to Mobility Fund Phase II.'' Because this Report and Order implements a comprehensive alternative plan for mobile high-cost support that would replace Mobility Fund Phase II (much like the Alaska Plan, Uniendo a Puerto Rico Fund, and Connect USVI Fund), including a transition for legacy support recipients, the adoption of the 5G Fund and the associated public interest obligations on legacy support recipients are consistent with the statutory language.

114. In addition, the public interest obligations we adopt here do not ''modify, amend, or change the rules or regulations of the Commission for universal service high-cost support for competitive eligible telecommunications carriers in a way that is inconsistent with'' the relevant rules in place in 2015—support amounts for competitive ETCs that comply with their obligations are still determined pursuant to those rules. In fact, the public interest obligations we adopt today do not alter the support amounts competitive ETCs receive and are consistent with the statutory requirement that recipients use support ''for the provision, maintenance, and upgrading of facilities and services for which the support is intended.'' Finally, in enacting the 2020 Appropriations Act, Congress was legislating against the background of the established principle that we can impose additional conditions on the continued receipt of universal service funds.

4. Geographic Flexibility on Use of Legacy High Cost Support

115. We adopt our proposal to give mobile competitive ETCs receiving legacy high-cost support for a particular subsidized service area the flexibility to use support for the provision, maintenance, and upgrading of facilities and services within any of the designated service areas for which they receive legacy mobile support. Mobile competitive ETCs may also use legacy support within any of the designated service areas of an affiliated mobile competitive ETC (*e.g.,* where several ETCs share a common holding company), regardless of whether those areas span more than one state. Our decision also applies to U.S. territories where competitive ETCs receive mobile legacy high-cost support. As we reasoned in the *5G Fund NPRM,* this allows for more efficient decisions about use of legacy support while still satisfying the statutory obligation to use support for its intended purposes.'' This effectively makes permanent a waiver, which has since expired, of the Commission's rules granted by the Bureau in response to the COVID–19 pandemic.

116. Commenters were generally supportive of our proposal, and we agree with CRWC that providing geographic flexibility on the use of legacy high-cost support ''is a no-cost means of improving the efficiency of investments to cover the greatest number of rural citizens.'' AT&T supports providing legacy support recipients with this flexibility, but cautions that doing so could result in state regulators being ''unwilling to include the carrier in its annual [section 54.314] certification, rendering the ETC ineligible for support the following year.'' AT&T proposes that the Commission ''permit ETCs that avail themselves of this flexibility to certify directly to the Commission pursuant to section 54.314(b).'' We believe adopting such a procedure at this time is premature because we cannot say whether this perceived issue will develop. Moreover, nothing we adopt permits a competitive ETC to use high-cost support to provide service outside of its or an affiliated competitive ETC's

designated service areas, nor do we permit any competitive ETC to use high-cost support for anything but its intended purposes. As such, we expect a state regulator to include a carrier that otherwise complies with its ETC obligations as required in its annual certification, and further note that we expect recipients that take advantage of this flexibility to be able to certify and produce evidence to document compliance as necessary.

5. Freeze of Non-Frozen Legacy High-Cost Support

117. We adopt our proposal to freeze the mobile high-cost support of Standing Rock, the sole competitive ETC that continues to receive non-frozen support. Standing Rock, a competitive ETC in North Dakota (study area code: 389014) and South Dakota (study area code: 399020) has been exempt from the freeze and phase-down of competitive ETC support. The pause of the phase down of competitive ETC support in 2014 adopted in the *USF/ICC Transformation Order* extended Standing Rock's exemption. While the phase down of frozen support for every other legacy support recipient was paused at 60% level specified in section 54.307(e)(2)(iii) of our rules, in this particular case, we will treat Standing Rock's support amount for the most recent 12-month period prior to the effective date of this Report and Order as the level specified in section 54.307(e)(2)(iii) for purposes of transitioning such support to 5G Fund support. The Commission adopted this approach in 2011 in order to provide time for Standing Rock, a ''nascent Tribally-owned ETC . . . to reach a sustainable scale so that consumers on the Reservation can realize the benefits of connectivity that, but for Standing Rock, they might not otherwise have access to.'' Standing Rock is no longer nascent and has had ample time—more time than the Commission anticipated in 2011—to reach a sustainable scale, and so the rationale for special treatment no longer exists and Standing Rock has not demonstrated a reason for continued special treatment. Accordingly, we now freeze Standing Rock's high-cost support at the level it received for the most recent 12-month period prior to the effective date of this Report and Order, after which it will be subject to the same disaggregation and phase-down rules we adopt for all competitive ETCs whose legacy support was frozen pursuant to the *USF/ICC Transformation Order.*

118. Standing Rock urges the Commission to delay freezing support until release of the final eligibility map and in that time continue to use line counts for determining support amounts. It reasons that due to the COVID–19 pandemic, it ''expects'' line counts to increase (which would result in more support) as ''Tribal residents continue to adapt to social distancing requirements and the need for online learning and online business.'' With increased line counts, Standing Rock's support will increase, and it claims that it will therefore be in a better position to meet the ''needs of Tribal residents.'' However, Standing Rock offers no data to support this claim. Given that its comments were filed more than three months after the President declared a national emergency due to the COVID–19 pandemic, we would expect Standing Rock to demonstrate that its line counts have already increased, but it did not. Without adequate support for the claim, we find no reason to deviate from our proposal.

6. Limitations on Mobile Legacy High Cost Support

119. We now clarify, as we proposed, that only terrestrial mobile wireless carriers may receive mobile high-cost support, and that recipients of mobile legacy high-cost support must use such support only for the provision, maintenance, and upgrading of terrestrial mobile voice and broadband facilities and services. Consequently, carriers offering only non-terrestrial services, such as mobile-satellite service, will no longer be eligible to receive mobile legacy high-cost support after the effective date of these rules. We must ensure that we are funding advanced mobile services with our limited universal service funds, even for carriers receiving legacy support, and non-terrestrial services receiving legacy support cannot meet the appropriate broadband public interest obligations that we adopt for legacy support recipients. However, an affected carrier is not prohibited from bidding for, and winning, new 5G Fund support in an auction, provided that it is otherwise determined to be eligible. Moreover, we clarify that legacy support and 5G Fund support recipients may use whatever backend technologies, including satellite backhaul, to meet 5G public interest obligations so long as they offer to the end user terrestrial 5G service that complies with the 5G–NR standard and meets all performance requirements. We are not, therefore, categorically excluding satellite technology from networks supported by the 5G Fund so long as a carrier seeking 5G Fund support is capable of providing voice and 5G broadband terrestrial service meeting necessary program requirements.

F. Schedule for Transition From Legacy High-Cost Support to 5G Fund Support

120. *Authority to Modify the Legacy High-Cost Support Rules.* We adopt our tentative conclusion that the 5G Fund constitutes a comprehensive mechanism for mobile high-cost support that serves as an alternative to Mobility Fund Phase II and likewise conclude that the framework we adopt for the 5G Fund is consistent with the Commission's statutory authority to modify the rules for legacy high-cost support. We reached similar conclusions with respect to both the Alaska Plan and the Uniendo a Puerto Rico Fund and the Connect USVI Fund.

121. The statutory language expressly allowed for the Commission to ''consider[ ], develop[ ], or adopt[ ] other support mechanisms as an alternative to Mobility Fund Phase II.'' Indeed, the Commission has adopted alternate support mechanisms and otherwise ceased disbursement of legacy high-cost support based upon the phase down schedule in section 54.307(e)(2) of our rules to mobile competitive ETCs in Alaska, as well as in Puerto Rico and the U.S. Virgin Islands. Similar to the schedule we adopt here, 12 months after release of the *Alaska Plan Order,* 81 FR 69772, Dec. 7, 2016, adopting the Alaska Plan as a ''comprehensive alternative plan for high-cost mobile support in Alaska,'' the Commission commenced a three-year phase down of support for carriers in Alaska that did not elect to participate in the Alaska Plan. As with the adoption of those alternate support mechanisms, the 5G Fund for Rural America will serve as a comprehensive alternative mechanism for mobile legacy high-cost mobile support adopted as an alternative to Mobility Fund Phase II. Because the statute does not prohibit the Commission from adopting other comprehensive support mechanisms for high-cost mobile support as an alternative to Mobility Fund Phase II, we conclude that there is no legal issue with us adopting rules that will allow for the phase down of legacy support in areas that will be ineligible for 5G Fund support in the Phase I auction, and doing so prior to that auction.

122. In the *5G Fund NPRM,* we proposed a schedule for phasing down legacy high-cost support over two years for areas that are ineligible for 5G Fund support once the final eligible areas are known prior to conducting the 5G Fund Phase I auction. Several commenters question our legal authority to resume the phase down of legacy high-cost support before we conclude the 5G

Fund Phase I auction. These commenters focus on statutory language limiting our ability to modify our rules for competitive ETCs receiving legacy high-cost support in a manner inconsistent with sections 54.307(e)(5) and (e)(6) of our rules, as in effect in 2015. Section 54.307(e)(5) of the 2015 rules provided that legacy high-cost support competitive ETCs would continue to receive support at 60% of the frozen support level until ''Mobility Fund Phase II is implemented.'' We do not address former section 54.307(e)(6) because the language in that rule applies only to competitive ETCs that become eligible to receive Mobility Fund Phase II support, whereas our proposal to resume the phase down of legacy support prior to the 5G Fund Phase I auction to which some commenters object pertains only to those areas that are determined to be ineligible for support.

123. The assertion by CRWC that ''a competitive ETC is currently entitled to receive 60 percent of its monthly base line support amount each month until Mobility Fund Phase II is implemented'' widely misses the mark. As the Commission has consistently made clear and the courts have recognized, carriers are not ''entitled'' to receipt of universal service funds. The statutory provision is best read as a limitation on our ability to resume the currently-paused phase down of legacy support without ensuring that recipients can avail themselves of a high-cost support mechanism to replace legacy support, and not as establishing an ''entitlement'' for competitive ETCs to receive mobile legacy high-cost support at 60% of the frozen support level. As an alternative to Mobility Fund Phase II, the 5G Fund, along with the transition schedule adopted herein, provides an alternate comprehensive mechanism for distributing high-cost support as provided for within our statutory authority.

124. We also disagree with CRWC's argument that we are ''barred from finding that, by adopting new rules [the Commission] will have successfully 'implemented' '' the 5G Fund, which CRWC considers to be simply a ''rebranded Mobility Fund [Phase] II.'' This ''implementation'' argument lacks merit because nothing in the express language of the statute precludes us from adopting rules for a comprehensive support mechanism that is an alternative to Mobility Fund Phase II, and in so doing, reducing the legacy support for areas that are found to be ineligible for support under this new, alternate mechanism. We also do not consider the 5G Fund simply to be Mobility Fund Phase II by another name. Rather, this Report and Order establishes an entirely new program for mobile high-cost support that builds upon lessons we have learned from our previous efforts to reform high-cost support and close the digital divide, and includes an integrated plan with performance requirements, public interest obligations, and compliance provisions for both legacy high-cost support recipients and 5G Fund support recipients to ensure the efficiency and the good stewardship of our limited universal service fund dollars.

125. Even if our ability to reduce the amount of mobile legacy high-cost support that we distribute were to turn on whether we have ''implemented'' the 5G Fund, CRWC's argument still fails. In finalizing the rules and determining the final map of areas eligible for 5G Fund support, we will have implemented the 5G Fund for ineligible areas because we will have ''give[n] practical effect to'' the new program and ensured its ''actual fulfillment by concrete measures.'' In reading the language of the statute and our rules, CRWC seemingly confuses the concept of adopting a support mechanism, *i.e.,* Mobility Fund Phase II, with the concept of holding the Mobility Fund Phase II *auction,* which was included in the framework of that support mechanism and was to be the means with which we would determine the amounts of support a recipient would receive. Indeed, in 2015, when Congress originally adopted the appropriations rider, the Commission had not even adopted the use of an auction to distribute Mobility Fund Phase II support, something we did only in 2017. By analogy here, the fact that steps will remain after we finalize both the rules for the 5G Fund and the final list of areas that will be eligible for support in the Phase I auction is also not dispositive, and is in fact irrelevant, to a determination of when the 5G Fund is ''implemented.'' To the extent that the time at which we determine final eligible areas would have been earlier under the Option A approach, which appears to be of concern to CRWC, we note that, consistent with our decision adopting Option B, we anticipate that the final eligible areas will be determined no earlier than the time at which we finalize the Phase I auction procedures as part of our typical pre-auction process. While CRWC contends that the 5G Fund would not be ''implemented'' until the first month that a winning bidder receives 5G Fund support, it is wholly unclear why such a particular action definitively marks the implementation of the 5G Fund more plausibly than other actions, such as when the rulemaking is complete and final rules become effective, when the Phase I auction closes but before 5G Fund support is authorized, or when all winning bidders have either been authorized for 5G Fund support or defaulted. CRWC's reading that only when new 5G Fund support is awarded can legacy high-cost support be reduced below the 60% level would seemingly mean that if we conducted a Phase I auction and no carriers were ultimately authorized for 5G Fund support (due to, *e.g.,* the auction failing to close, or auction defaults for failure to file a long form application) we would continue to be obligated to disburse legacy support indefinitely. Neither the Commission nor Congress would have intended such a result.

126. Further, we are also not persuaded by CRWC's argument that its reading of the verb ''implement'' is most consistent with section 54.307(e)(5) and (e)(6) of our rules, as in effect in 2015. Former section 54.307(e)(5) specifies the legacy support amount that a competitive ETC shall receive ''[i]n the event that the implementation of Mobility Fund Phase II has not occurred by'' 2014, whereas former section 54.307(e)(6) specifies the ''[e]ligibility after [i]mplementation of Mobility Fund Phase II'' of a competitive ETC to continue receiving legacy support after it becomes eligible to receive Mobility Fund Phase II support. These rules are meant to override the general phase down schedule in section 54.307(e)(2), establishing the legacy high-cost support amounts that a competitive ETC is eligible to receive at points in time before and after future high-cost support amounts are determined via the support mechanism that replaces legacy high-cost support. In the 5G Fund, we will have determined the future high-cost support amounts for areas that are ineligible for 5G Fund (no support) after the final rules are effective and eligible areas are finalized.

127. Lastly, reading the statute and our rules in the manner that CRWC proposes, providing potentially endless entitlement to legacy high-cost support after a final conclusion that no support is warranted, would broadly conflict with our responsibility to be good stewards of universal service support and our long standing policy goal to reform our high-cost program. We do not believe Congress could reasonably have intended such a result. Indeed, this reading would provide a competitive ETC with legacy support at the same level until the close of the Phase I auction, even after we have made a final

determination that the area is no longer in need of ongoing support. CRWC would have us delay reform of the legacy support program for such areas for months or even longer after finalizing the rules and procedures for the program, regardless of whether we have made a determination that the supported area is currently being served by an unsubsidized competitor and is therefore ineligible for 5G Fund support in the Phase I auction. Such an outcome is not in the public interest, and CRWC has identified no reasons why Congress or the Commission intended to require this outcome. We therefore conclude that there is no legal bar to commencing phase down of legacy high-cost support in areas that are ineligible for 5G Fund support as soon as those areas are finalized. This is especially true because we are proceeding with Option B, and using new, granular mobile broadband data to render such determinations. Our decision here is guided by our need to balance competing priorities when managing our universal service support programs.

128. *Legacy High-Cost Support Transition Schedule.* We adopt a modified version of our proposed schedule for transitioning from legacy high-cost support to 5G Fund support that will reform mobile high-cost support while minimizing the disruption to carriers currently receiving legacy support. Similar to the transition schedule we adopted for Mobility Fund Phase II, legacy high-cost support will be converted to 5G Fund support, maintained for no more than five years to preserve service, or subject to phase down over two years depending upon whether the area was eligible for 5G Fund Phase I support and if eligible for the auction, whether there was a winning bidder for the area. We do not set an absolute date on which mobile legacy high-cost support would cease, regardless of when the 5G Fund Phase I auction is conducted. For legacy high-cost support that is subject to two-year phase down, support will be provided at two-thirds of the level of the disaggregated legacy support for the first 12 months, and one-third of the level of the disaggregated legacy support for the next 12 months. We will exempt competitive ETCs from 5G deployment public interest obligations and performance requirements for any areas where legacy support is being phased down, including the requirement that support recipients spend an increasing percentage of support on 5G services and that recipients demonstrate compliance through the submission of on-the-ground measurement tests. We will continue to require that competitive ETCs meet public interest obligations relating to offering service at reasonably comparable rates, collocation and voice and data roaming requirements, and reporting requirements for subsidized service areas where legacy support is being phased down, however. Once legacy support has been completely phased down for a service area, the competitive ETC will no longer need to meet any public interest obligations for such an area. All legacy high-cost support received by a competitive ETC in areas subject to phase down will end no later than two years after announcement of the conclusion of the auction. With the exception of the timing of the phase down of legacy support in ineligible areas previously discussed or our proposal to cease all support after five years discussed below, commenters generally did not object to our general transition schedule, including our proposals to phase down support over two years or to continue legacy support for up to five years to preserve service.

129. Under the transition schedule we adopt, in areas determined not to be eligible for 5G Fund Phase I support, legacy support will be phased down starting the first day of the month after the release of the final map of areas eligible for 5G Fund support. Because we expect that carriers will not require support in order to deploy 5G service in areas ineligible for 5G Fund support, and legacy support recipients will not be able to win 5G Fund support in the 5G Fund Phase I auction for those areas, we conclude that it is not in the public interest to continue legacy support for ineligible areas. As previously discussed, we will exempt areas determined to be ineligible for support from the 5G broadband public interest obligations and performance requirements we adopt for legacy high-cost support recipients. However, legacy support recipients will continue to have a public interest obligation to file annual reports, offer services at reasonably comparable rates, and allow for reasonable collocation and voice and data roaming for areas ineligible for support until support is fully phased down and they cease to receive legacy high-cost support for such areas. We will commence the phase down of support in ineligible areas after release of the final map of eligible areas and prior to the conclusion of the Phase I auction. While CRWC asserts that it would be ''arbitrary'' to adopt the phase down of support in ineligible areas prior to the close of the 5G Fund Phase I auction because carriers' support funds have already been committed through 2020 and 2021, in view of our decision to base the areas eligible for Phase I support on a new collection of coverage data, we now anticipate that it may be a year or more before this phase down would commence. Competitive ETCs that receive legacy high-cost support should therefore be able to factor into their capital expenditure plans that the amount of support they receive may be reduced in areas also served by an unsubsidized competitor in the near future.

130. However, we decline to adopt our proposal to end all legacy high-cost support to mobile carriers at the frozen high-cost support level no later than five years after the effective date of this Order, regardless of when the 5G Fund Phase I auction is conducted. No commenters support this proposal, and we agree that providing more certainty to legacy support recipients will promote expansive 5G deployment in these otherwise high-cost areas. Instead, for areas that are eligible for 5G Fund Phase I support, on the first day of the month following the release of a public notice announcing the close of the 5G Fund Phase I auction, legacy support for current recipients will either be maintained, pending authorization of the winning bidder to receive 5G Fund support, maintained in order to preserve service in areas without a winning bidder in the Phase I auction, or subject to phase down for all other legacy support recipients. That is, for eligible areas not won in the 5G Fund Phase I auction, legacy support will begin to phase down over two years or be maintained in order to preserve service for no more than five years after the Phase I auction closes regardless of whether the eligible area may be won in the 5G Fund Phase II auction.

131. In eligible areas won in the 5G Fund Phase II auction, legacy support (whether subject to phase down or preservation-of-service support) will either be maintained, pending authorization of the winning bidder to receive 5G Fund support, maintained in order to preserve service for the legacy support recipient receiving preservation-of-service support in areas without a winning bidder, or be subject to phase down beginning the first day of the month following release of a public notice announcing the close of the 5G Fund Phase II auction. Legacy high-cost support subject to phase down after the 5G Fund Phase I auction will continue to follow the original phase down schedule that commenced after the close of the 5G Fund Phase I auction for support recipients that were not the winning bidder in eligible areas won

during the 5G Fund Phase II auction. If the carrier receiving maintenance of support in order to preserve service is not the winning bidder for an eligible area won during the 5G Fund Phase II auction, that carrier would begin to receive phased down support at this time. Legacy high-cost support maintained to preserve service after the 5G Fund Phase I auction will continue for eligible areas not won during the 5G Fund Phase II auction, but for no more than five years after the close of the Phase I auction.

132. More specifically, we adopt our proposal that for a winning bidder that is receiving legacy support in the area of its bid, legacy support will cease and 5G Fund support will commence on the first day of the month following release of a public notice authorizing that carrier to receive 5G Fund support. For portions of a legacy support recipient's subsidized service area that are eligible for 5G Fund support but for which there is no winner in a 5G Fund auction, the carrier will continue to receive legacy support in areas that do not overlap another legacy support recipient's subsidized service area. In those portions where more than one carrier receives legacy support (*i.e.,* overlapping subsidized service areas), the recipient that receives the lowest amount of disaggregated legacy support for that area among the carriers that have reported deployment of the highest level of technology—*e.g.,* 5G—in the state will continue to receive legacy support for the overlapping area while all others recipients will receive phase down support, based upon the recipients' submitted mobile broadband coverage data. In the case of ties where two carriers receive an identical amount of legacy support, we adopt our proposal to choose the preservation-of-service support recipient that has subsidized service areas covering a larger total area within the state. If the winning bidder defaults on its bid prior to authorization, or otherwise fails to be authorized, we will not award 5G Fund support for that area. However, to avoid perverse incentives, consistent with our decision to maintain support to preserve service only in areas that lack a winning bid, a carrier receiving legacy support in the area of its winning bid will not receive preservation-of-service support and will instead be subject to phase down if not authorized to receive 5G Fund support.

133. In eligible areas where there is no winning bidder in the 5G Fund Phase I auction, the legacy support recipient receiving the minimum level of sustainable support will continue to receive support until further Commission action, but for no more than five years after the first day of the month following the release of a public notice announcing the close of the 5G Fund Phase I auction. We adopt our proposal to define the minimum level of sustainable support to be the lowest amount of legacy support among carriers that have deployed the highest level of mobile technology within the state. In eligible areas where there is no winning bidder in the 5G Fund Phase II auction, the legacy support recipient receiving the minimum level of sustainable support would continue to receive such ''preservation-of-service'' support until further Commission action, but for no more than five years after the first day of the month following the release of a public notice announcing the close of the 5G Fund Phase I auction.

134. The following chart summarizes the schedule we adopt to transition from legacy support to 5G Fund support for areas in the 5G Fund Phase I auction:

TRANSITION SCHEDULE FOR LEGACY HIGH-COST SUPPORT TO 5G FUND SUPPORT

Area eligibility	Auction result	Bidder or recipient status	Support type & timing
Ineligible			2-year phase down commences after effective date of rules and release of final eligible areas.
Eligible	Won in auction	Carrier is the winning bidder and is a legacy support recipient for the area it won.	Legacy support ceases and 5G Fund support commences after auction closes and bidder is authorized for area.
Eligible	Won in auction	Carrier is a legacy support recipient but is not the winning bidder in the area for which it receives support.	2-year phase down of legacy support commences after auction closes.
Eligible	Not won in auction	Carrier is a legacy support recipient but does not receive the minimum level of sustainable support for the area for which it receives support.	2-year phase down of legacy support commences after auction closes.
Eligible	Not won in auction	Carrier is a legacy support recipient and receives the minimum level of sustainable support for the area for which it receives support.	Legacy support continues for no more than 5 years after auction close.

Consistent with the existing high-cost disbursement schedule, all legacy support transition schedule timing will be aligned to the first day of the month following a triggering action.

G. Additional 5G Fund Support Requirements

1. Reporting Requirements

135. Consistent with the requirements adopted for CAF Phase II and the Rural Digital Opportunity Fund, we will require that a 5G Fund support recipient file annual reports certifying its compliance with the public interest obligations, performance requirements, and any other terms and conditions associated with receipt of 5G Fund support, and file interim and final service deployment milestone reports demonstrating that it has met the 5G Fund performance requirements for deployment of service. We also adopt a rule that would require a support recipient authorized to receive 5G Fund support and its agents to retain any documentation prepared for, or in connection with, the award of the 5G Fund support for a period of not less than 10 years after the date on which the support recipient receives its final disbursement of 5G Fund support.

136. *Annual Reports.* We adopt our proposal to require that each 5G Fund support recipient file an annual report by July 1 of each year after the year in which it was authorized to receive 5G Fund support. We will require a support recipient's annual report to cover the preceding calendar year and will require the support recipient to certify that it has complied with the public interest obligations, performance requirements, and any other terms and conditions

associated with receipt of 5G Fund support in order to continue receiving 5G Fund disbursements. As each annual report covers the preceding calendar year, no report would be due in the year in which the auction is held. The annual report must be filed with USAC via a web portal, and USAC will make all such data available to the Commission and the relevant state, territory, and Tribal governmental entities, as applicable. A 5G Fund support recipient must maintain the accuracy and completeness of the information provided its annual reports. Any substantial change in the accuracy or completeness of any annual report submitted by a 5G Fund support recipient must be reported within 10 business days after the reportable event occurs. We retain our authority to look behind recipients' annual reports and to take action to address any violations. A 5G Fund support recipient must maintain the accuracy and completeness of the information provided its annual reports. Any substantial change in the accuracy or completeness of any annual report submitted by a 5G Fund support recipient must be reported within 10 business days after the reportable event occurs. Other than AST&Science's general agreement that the proposals for annual reports and interim and final milestone reports are consistent with the Commission's obligation to assure that fund recipients are meeting their public interest obligations, we received no comment on our annual reporting proposals, and we direct the Office and Bureau to develop further specifics of reporting instructions in the pre-auction process.

137. *Service Milestone Reports.* We adopt the *5G Fund NPRM's* proposal that 5G Fund support recipients must submit interim and final service milestone reports, but in an effort to reduce data collection burdens and streamline reporting for Universal Service Fund participants, we do not adopt the *5G Fund NPRM's* proposals regarding specific data to be collected in these reports, choosing instead to rely on the data reporting as developed further in the Digital Opportunity Data Collection proceeding that is considering more broadly applicable standards. The service milestone reports would include certifications as to compliance with the interim and final service milestones and the performance requirements for the 5G Fund, as substantiated by the timely submission of milestone 5G coverage maps in the Digital Opportunity Data Collection, or if the Digital Opportunity Data Collection is not yet operational at the time 5G Fund reports are due, by the timely submission of its 5G coverage maps (generated consistent with the propagation modeling parameters adopted in the Digital Opportunity Data Collection proceeding) through the existing FCC Form 477 system.

138. The New York Public Service Commission supports the proposal to establish interim and final service milestones ''to ensure 5G Fund support recipients meet their public interest obligations.'' We adopt interim and final service milestone reporting requirements to ensure that support recipients continually document their progress toward meeting their meeting 5G Fund public interest obligations and performance requirements, as a mechanism to reveal and remedy non-compliance. We will also require that each 5G Fund support recipient provide infrastructure information on the cell sites that the carrier uses to provide mobile service within the areas for which it is authorized to receive 5G Fund support in a standardized template as part of its interim and final milestone reports, as suggested by the Massachusetts Department of Telecommunications and Cable. We note that we are currently considering in the Digital Opportunity Data Collection proceeding whether to require from all mobile service providers the submission of infrastructure information more generally across providers' networks. Our decision to adopt a requirement that 5G Fund support recipients provide infrastructure information for areas in which the carrier is authorized to receive 5G Fund support is without prejudice to the matter of whether to adopt a similar requirement in the Digital Opportunity Data Collection proceeding. We recognize that carriers may consider infrastructure information to be sensitive, and so we will treat such data submitted as part of the initial report as presumptively confidential. While the Commission and USAC will treat as presumptively confidential and withhold from public inspection infrastructure information submitted as part of this report, USAC will provide these data to the relevant state, territory, or Tribal governmental entity that has jurisdiction over a particular service area, if applicable.

139. While we adopt our proposal from the *5G Fund NPRM* that these reports will be submitted to USAC, as adopted for CAF Phase II and the Rural Digital Opportunity Fund, we clarify that we will share the relevant coverage data submitted via the Digital Opportunity Data Collection portal to which 5G Fund support recipients certify with USAC for the purposes of verifying these reports. USAC personnel would be responsible for verifying submitted data to determine compliance with 5G Fund requirements.

140. We adopt our proposal to require a support recipient to file interim and final service deployment milestone reports by March 1 of the calendar year following each applicable December 31 milestone deadline. Failing to timely submit a service milestone report that includes the required certification concerning performance and coverage requirements by the established deadline would subject support recipients to defined consequences (as specified in the non-compliance requirements below). We also adopt the proposal that standards for related data submissions align with those adopted for the Digital Opportunity Data Collection, as modified below.

2. Demonstrating Compliance With Performance Requirements

141. We adopt a modified version of our proposals regarding the 5G Fund support recipients' demonstration of compliance with performance requirements. We will not require customized propagation modeling and mapping data, as we proposed in the *5G Fund NPRM,* but instead will require 5G Fund support recipients to certify at the established interim and final milestones to filing, in the Digital Opportunity Data Collection portal, 5G mobile broadband coverage data reflecting deployments in the eligible areas for which they are authorized to receive 5G Fund support. We will also require that 5G Fund support recipients conduct on-the-ground measurement tests to substantiate 5G broadband coverage data, and adopt a modified version of the methodologies and requirements proposed in the *5G Fund NPRM* for conducting and validating results of such testing. The methodologies we adopt for conducting on-the-ground tests and validating test results are intended to be broadly consistent with the framework we proposed for the submission of governmental and third-party challenges in the Digital Opportunity Data Collection. We will defer to the pre-auction process, however, the adoption of additional requirements and parameters for on-the-ground measurement tests.

142. We decide neither to specify distinct 5G Fund requirements for propagation modeling nor to require the separate submission of coverage data because the requirements adopted for the filing of 5G coverage maps in the Digital Opportunity Data Collection proceeding mirror the propagation

model parameters specified for 5G deployment maps proposed in the *5G Fund NPRM.* Therefore, requiring that 5G Fund support recipients verify to the submission of coverage data in their Digital Opportunity Data Collection filings will provide us with the same information while reducing the burden of potentially duplicated or conflicting requirements, as suggested by some commenters, without undermining the public interest obligations and performance requirements we adopt here.

143. We will require 5G Fund support recipients to substantiate reported 5G deployment with on-the-ground measurement tests submitted at interim and final milestones, as proposed. Rather than adopt customized 5G Fund testing requirements at this time, we adopt as a starting point test metrics, data specifications, and permitted testing applications at least as stringent as those already adopted or that may be adopted for the governmental and third party challenges in the Digital Opportunity Data Collection proceeding. Such requirements will serve as a minimum for the on-the-ground tests that we require for the 5G Fund, and we defer to the pre-auction process specifying any additional parameters, to allow for similar matters to be resolved in the Digital Opportunity Data Collection proceeding. However, because we have a heightened obligation to ensure the prudent use of universal service support, we note that we may go further than the requirements adopted in the Digital Opportunity Data Collection proceeding, or otherwise adopt more stringent requirements during the pre-auction process.

144. As for the methodologies for conducting on-the-ground tests and validating test results, we adopt the *5G Fund NPRM*'s proposals with certain modifications that will reduce the burden on 5G Fund support recipients. We note that the methodology adopted herein for conducting on-the-ground testing may not be identical to that adopted for the purposes of ensuring that T-Mobile meets its transaction commitments. We note that 5G Fund support recipients must validate geographically based 5G deployment, whereas T-Mobile's commitments are population-based, and other obligations such as data speed requirements also differ between T-Mobile's commitments and requirements for 5G Fund support recipients. Similarly, this methodology may also not be identical to that used to determine whether DISH has met its commitments as set forth in the *Order of Modification and Extension of Time to Construct,* DA 20–1072 (WTB Sept. 11, 2020). Specifically, we will require that 5G Fund support recipients submit on-the-ground measurement tests with at least three tests conducted per square-kilometer, measured by overlaying a uniform grid of one square kilometer (1 km by 1 km) on recipients' submitted 5G coverage maps within the area for which 5G Fund support was awarded, as we proposed, but only for a subset of grid cells. In response to concerns about the burdens of on-the-ground testing, we will require only that a support recipient conduct such tests in a percentage of all drive-testable grid cells where the recipient reports deployment of 5G by the service milestone. We will define as drive-testable any grid cell that has more than a *de minimis* amount of total roads, based upon the most recent roadway data from the U.S. Census Bureau available for this purpose, considering roads classified in the primary road (S1100), secondary road (S1200), local road (S1400), and service drive (S1640) categories. We defer to the pre-auction process establishing the *de minimis* road threshold for what is considered a drive-testable grid cell. Additionally, we will require that the minimum percentage of drive-testable grid cells tested equal the minimum percentage of coverage required for each service buildout milestone (*i.e.,* 40%, 60%, 80%, 85%). When verifying that the minimum number of grid cells have been tested, we will compare against the in-vehicle 5G broadband coverage maps modeled to a 7/1 Mbps minimum cell edge speed submitted by 5G Fund support recipients in the Digital Opportunity Data Collection portal. To avoid duplicative testing, we will only require such testing in grid cells that report new 5G deployment for each milestone, so that previously reported testing will be cumulative.

145. Finally, we adopt a methodology to validate results of on-the-ground testing based on the *5G Fund NPRM*'s proposed approach. To broadly align with the specifications for generating 5G mobile broadband coverage maps, we will require that cumulative test data results show at least 90% of measurements report 5G service record download and upload speeds of at least 7/1 Mbps, and record median download and upload speeds of at least 35/3 Mbps. Additionally, to avoid confusion and simplify alignment of requirements, we will reduce our proposed requirement that 96% of latency tests show data latency of 100 milliseconds or less, and will instead require that cumulative test data results show at least 90% of tests record data latency of 100 milliseconds or less at the cell edge. This modification will simplify testing requirements and reduce the burden on carriers by aligning the probability of meeting the cell edge latency requirement value (of 100 milliseconds or less) with the probability of meeting the cell edge speed requirement value (of 7/1 Mbps or greater).

146. The Vermont Department of Public Services generally supports on-the-ground testing, arguing it provides the most accurate information regarding availability of broadband, and would serve as a check on what is reported based on propagation modeling alone. We agree, and believe that requiring on-the-ground measurement testing will help ensure that 5G Fund support recipients are actually providing the level of service necessary to help close the digital divide. CTIA supports aligning the 5G Fund demonstrations of compliance and testing with the Digital Opportunity Data Collection proceeding and the Broadband DATA Act, noting that doing so will promote consistent information about mobile coverage, avoid confusion, and prevent wasted resources. AT&T urges the Commission not to adopt the *5G Fund NPRM*'s proposed Mobility Fund Phase II challenge process-like approach to demonstrating compliance with on-the-ground measurement testing and to allow the Digital Opportunity Data Collection process to be completed before establishing milestone mapping and speed test requirements for the 5G Fund so we can look at lessons learned from that proceeding in designing its validation methodology, but supports the proposal to require median speeds of 35/3 Mbps with a 7/1 Mbps cell edge as reasonable. AT&T specifically objects to any requirement that every kilometer in an eligible area be tested. Verizon emphasizes that all definitions and specifications of testing must be clear across propagation mapping and speed testing.

147. We agree with CTIA and AT&T that we should generally align the framework for 5G Fund support recipients to demonstrate compliance with public interest obligations and performance requirements with the Digital Opportunity Data Collection to the extent appropriate, and have taken steps to do just that. We also acknowledge the concerns raised by AT&T and have modified the requirements and methodologies proposed in the *5G Fund NPRM* to reduce the amount of area that must be tested, learning from the experience of the Mobility Fund Phase II challenge process. RWA, CTIA, and the CRWC advocate for changes to the proposed

on-the-ground testing methodology, or to avoid an on-the-ground testing requirement altogether, with more focus on sampling or propagation maps. CCA encourages the Commission to consider alternatives and grant waivers as necessary for the most rural and difficult to test areas. While we recognize that there is a cost to requiring 5G Fund support recipients to conduct on-the-ground measurement tests, we conclude that the burden of conducting such tests is justified by our obligation to responsibly manage ratepayer funds. Moreover, bidders in a 5G Fund auction will be able to factor in the expected costs of complying with these requirements when bidding in an auction.

148. The California Public Utilities Commission urges the Commission to require 5G Fund recipients to demonstrate milestone compliance with drive test data, until and unless recipients demonstrate that such test results validate the accuracy of propagation modeling and maps predicting coverage based on on-the-move radio frequency sampling. The California Public Utilities Commission notes that ''drive tests'' often includes two types of testing—tests taken from a moving vehicle and stationary tests taken at specific designated points—and that drive tests should be designed to capture the service parameters likely to be experienced by consumers and thus should be conducted using stationary testing, rather than testing from moving vehicles, because stationary testing will most accurately capture this user experience. The Institute for the Wireless Internet of Things at Northeastern University advocates for site surveying through unmanned aerial systems, with methodology hardened by experimentation at the AERPAW PAWR platform or other test environments where controlled flights are permitted, and for realistic, at-scale validation and testing using the world's largest radiofrequency emulation platform—Colosseum. We anticipate that the possible use of UAS for mobile coverage testing will be addressed subsequently along with other testing metrics and specifications.

149. In light of comments suggesting that we harmonize requirements in the 5G Fund with the Digital Opportunity Data Collection proceeding, we decline to adopt these alternative methods of demonstrating coverage. Our decision to align the test metrics, data specifications, and permitted testing applications as part of the 5G Fund's reporting requirements with those already adopted or that may be adopted for the Digital Opportunity Data Collection moots many of the issues raised in these comments. We anticipate that standardizing the data required for compliance reporting will ease the burden on support recipients throughout universal service programs, while collecting sufficient data to confirm that the 5G Fund's requirements have been met.

150. We disagree with the assertion that propagation modeling alone, in the absence of on-the-ground measurements to substantiate predicted coverage, is sufficient for 5G Fund support recipients, and note that our obligation to be good stewards of limited ratepayer funds weighs on our conclusion to also require on-the-ground tests. To the extent that commenters raise concerns about the burden of requiring such on-the-ground tests, we conclude that by relaxing the requirement to conduct a test in every grid cell, we have substantially reduced the burden of demonstrating compliance with 5G Fund public interest obligations and performance requirements. Moreover, we believe that bidders in a 5G Fund auction will adequately take into account the expected costs of demonstrating compliance when placing their bids, and that such costs would be less than the cost to the fund, in the absence of any on-the-ground testing requirement, of providing support to carriers that have not fully met their obligations. We defer to the pre-auction process specifying any further speed test parameters.

3. Non-Compliance Measures

151. We adopt post-authorization non-compliance measures for the 5G Fund that are similar to the non-compliance measures and framework for support reductions applicable to all high-cost ETCs and the process adopted by the Commission for drawing on letters of credit for CAF Phase II and Rural Digital Opportunity Fund support recipients to address a support recipient's failure to meet a service milestone. We will require any support recipient to notify the Commission, USAC, and the relevant state, U.S. Territory, or Tribal government, if applicable, within 10 business days of its non-compliance with any interim milestone. Upon such notification, the Bureau will issue a letter evidencing the default, and the issuance of this letter will initiate reporting obligations and withholding a percentage of the 5G Fund support recipient's total monthly 5G Fund support, if applicable, starting the month after issuance of the letter. We will rely on the following non-compliance tiers for failure to meet the 5G Fund performance requirements as of the deadline for each interim service milestone:

NON-COMPLIANCE FRAMEWORK

Compliance gap	Non-compliance measure
Tier 1: 5% to less than 15% required square kilometers coverage.	Quarterly reporting.
Tier 2: 15% to less than 25% required square kilometers coverage.	Quarterly reporting + withhold 15% of monthly support.
Tier 3: 25% to less than 50% required square kilometers coverage.	Quarterly reporting + withhold 25% of monthly support.
Tier 4: 50% or more required square kilometers coverage.	Quarterly reporting + withhold 50% of monthly support for six months; after six months withhold 100% of monthly support and recover percentage of support equal to compliance gap plus 10% of support disbursed to date.

152. A compliance gap is the percentage of required square kilometers that a recipient has not served by the relevant service milestone. A 5G Fund support recipient will have the opportunity to move tiers as it comes into compliance and will receive any support that has been withheld if it moves from one of the higher tiers (*i.e.,* Tiers 2–4) to Tier 1 status (or comes into full compliance) during the service milestones. Except that consistent with what we adopted for the Rural Digital Opportunity Fund, non-compliance of 50% or more at the Year Three Interim Milestone will result in default with no additional time permitted to come back into compliance. Consistent with the

approach adopted for the CAF Phase II auction and for the Rural Digital Opportunity Fund, we reserve the right to impose reporting obligations in individual instances if a 5G Fund support recipient misses an interim milestone by less than 5% of the required coverage for that interim milestone where the support recipient shows no progress in addressing the shortfall by the fifth year of support.

153. We separately require a support recipient that has not deployed service that meets the performance requirements adopted for the 5G Fund to at least 20% of the total square kilometers associated with the eligible areas for which it is authorized to receive support in a state by the Year Three Interim Service Milestone deadline to notify the Commission and USAC within 10 business days of its non-compliance. Upon such notification, the Bureau will issue a letter evidencing the default, and the support recipient will be subject to full support recovery and will not be permitted to avail itself of the opportunity provided by the non-compliance tier framework to come into greater or full compliance.

154. We will require any support recipient to notify the Commission, USAC, and the relevant state, U.S. Territory, or Tribal government, if applicable, within 10 business days of its non-compliance with the Year Six Final Service Milestone. If a support recipient misses the Year Six Final Service Milestone, it will have 12 months from the date of the Year Six Final Service Milestone deadline within which to come into full compliance.

155. If the support recipient is not able to come into full compliance with the Year Six Final Service Milestone deployment requirements within this 12-month grace period, as verified by USAC, the Wireline Competition Bureau will issue a letter to that effect and support will be recovered as follows: (1) If the support recipient has deployed service to at least 80%, but less than the required 85%, of the total eligible square kilometers in a state, USAC will recover 1.25 times the average support amount per square kilometer that the recipient has received in the state times the number of square kilometers unserved, up to the 85% coverage requirement; (2) if the support recipient has deployed service to at least 75% but less than 80% of the total eligible square kilometers in a state, USAC will recover 1.5 times the average support per square kilometer that the recipient has received in the state times the number of eligible square kilometers unserved, up to the 85% coverage requirement, plus 5% of the recipient's total 10-year support in the state; and (3) if the support recipient has deployed service to less than 75% of the total eligible square kilometers in a state, USAC will recover 1.75 times the average support per square kilometer that that the recipient has received in the state times the number of eligible square kilometers unserved up to the 85% coverage requirement, plus 10% of the recipient's total 10-year support for the state.

156. We will apply the same support reduction if USAC subsequently determines in the course of a compliance review that a support recipient did not provide evidence to demonstrate that it was offering service at the required performance levels to the square kilometers required by the Year Six Final Service Milestone. The non-compliance measures we adopt are consistent with those adopted for the Rural Digital Opportunity Fund, with adjustments to account for the fact that we are proposing that the Year Six Final Service milestone require service to at least 85% of the total eligible square kilometers in a state.

157. We also adopt a service deployment requirement pursuant to which a 5G Fund support recipient must demonstrate that it provides service that aligns with the 5G Fund performance requirements established by the Commission to least 75% of the total square kilometers within each biddable area (*e.g.,* census block group or census tract) for which it is authorized to receive support by the Year Six Final Service Milestone. If the support recipient is not able to come into full compliance with this service deployment requirement after the 12-month grace period we adopt, USAC will recover an amount of support that is equal to 1.5 times the average amount of support per square kilometer that the support recipient had received in the eligible area times the number of square kilometers unserved within that eligible area, up to the 75% requirement.

158. As for CAF Phase II and the Rural Digital Opportunity Fund, USAC will be authorized to draw on a 5G Fund support recipient's letter of credit to recover the full value of the support covered by the letter of credit in the event that a support recipient does not meet the relevant service milestones, does not come into compliance during the Year Six Final Service Milestone grace period, and does not repay the Commission the support associated with the non-compliance gap within a certain amount of time. If a support recipient is in Tier 4 status during the deployment period or has missed the Year Six Final Service Milestone, and USAC has initiated support recovery as described above, the support recipient will have six months to pay back the support that USAC seeks to recover. If the support recipient does not repay USAC by the deadline, the Wireline Competition Bureau will issue a letter to that effect and USAC will draw on the letter of credit to recover all of the support covered by the letter of credit, with any remaining balance due being a debt owed to the Commission by the support recipient.

159. If a support recipient has closed its letter of credit and it is later determined that the support recipient have ceased offering service at the required performance levels to the required square kilometers of eligible area in a state during the 10-year term of support, the support recipient will be subject to additional non-compliance measures, such as withholding of monthly payments and enforcement action, if it does not repay the Commission after six months. As for other high-cost universal service support programs, the failure to comply with the public interest obligations or any other terms and conditions associated with receipt of 5G Fund support may subject the support recipient to the Commission's existing enforcement procedures and penalties, reductions in support amounts, potential revocation of ETC designation, and/or suspension or debarment.

160. And as for CAF Phase II and the Rural Digital Opportunity Fund, 5G Fund support recipients will be subject to compliance reviews. If subsequent to the Year Six Final Service Milestone USAC determines that a support recipient does not have sufficient evidence to demonstrate that it continues to offer service that meets the performance requirements adopted for the 5G Fund to all of the eligible square kilometers in the state as required by the Year Six Final Service Milestone, USAC will immediately recover a percentage of support from the support recipient.

161. As we concluded in the *CAF Phase II Auction Order,* 81 FR 44413 (Jul. 7, 2016), ''drawing on the letter of credit in the event that the ETC fails to repay the support that USAC is instructed to recover will ensure that the Commission will be able to recover the support in the event that the ETC is unable to pay.'' Through the support reduction framework we are adopting, a 5G Fund support recipient will have a number of opportunities to cure its non-compliance before we will seek to recover the support that is associated with the compliance gap. Moreover, we will only recover 100% of the support that has been disbursed in those cases

where a 5G Fund support recipient has not repaid the support associated with its compliance gap. Because a 5G Fund support recipient that fails to repay the support associated with its compliance gap is also unlikely to be able to meet its obligations to use the support to offer service that meets the 5G Fund performance requirements, we conclude that recovering 100% of the support will allow us to re-award such support through an alternative mechanism to an ETC that will be able to meet its obligations.

H. Eligibility Requirements

162. We adopt our proposal to require parties seeking 5G Fund support to satisfy eligibility requirements that are consistent with those adopted for Mobility Fund Phase I, CAF Phase II, and the Rural Digital Opportunity Fund.

1. Eligible Telecommunications Carrier Eligibility Requirements

163. *ETC Designations.* We adopt the same flexibility adopted for CAF Phase II and the Rural Digital Opportunity Fund with respect to ETC designations and will not require an entity seeking to participate in a 5G Fund auction to obtain designation as an ETC in the areas where it seeks support prior to applying for or bidding in a 5G Fund auction. Rather, we will permit a 5G Fund auction winning bidder to be designated as an ETC after it is announced as a winning bidder for a particular area. A 5G Fund auction winning bidder will be required to obtain an ETC designation from the relevant state commission, or this Commission if the state commission lacks jurisdiction, that covers the each of the geographic areas in which it won support within 180 days after the release of the public notice announcing winning bidders.

164. As the Commission determined in CAF Phase II, permitting entities to obtain ETC designation after the announcement of winning bidders for support encourages broader participation in the competitive process by a wider range of entities. It will also conserve participants' resources by avoiding obligations for auction participants who do not win any coverage areas in the auction, as well as safeguarding potential bidding strategies of applicants seeking ETC designation before an auction. The Commission's experience with CAF Phase II indicates that most applicants were ultimately designated within the long-form review period, even if it took them longer than the deadline for submitting proof of ETC designation. If the ETC process takes longer than 180 days, we will entertain requests from winning bidders for waiver of the ETC deadline. Consistent with the approach adopted for CAF Phase II and the Rural Digital Opportunity Fund, we will require such waiver requests to demonstrate that the ETC application was filed no later than 30 days after the release of the public notice announcing that it is a winning bidder or that the petitioner has a persuasive good-faith case for not having done so. As the Commission discovered with both the rural broadband experiments and CAF Phase II auction, there were various circumstances impacting the ability of individual bidders to file their ETC applications, and when an application was filed did not always determine whether an applicant was designated within the 150 remaining days. We note that any circumstances where a state will need more time due to procedural requirements or resource issues can be dealt with through the waiver process. The limited comment we received on our ETC designation eligibility requirement proposals support this approach.

165. *Forbearance from Service Area Redefinition Process.* Consistent with the approach adopted for Mobility Fund Phase I, CAF Phase II, and the Rural Digital Opportunity Fund, we will forbear from the statutory requirement that the ETC service area of a 5G Fund support recipient conform to the service area of the rural telephone company serving the same area. Following the approach the Commission adopted for CAF Phase II and the Rural Digital Opportunity Fund, we will likewise be maximizing the use of 5G Fund support by making it available for only one provider per geographic area. Thus, forbearance is appropriate and in the public interest. RWA, the only commenter that commented on our proposal to forbear from the service area redefinition process, supports this approach.

166. Therefore, for those entities that obtain ETC designations after becoming winning bidders in a 5G Fund auction, we forbear from applying section 214(e)(5) of the Act, insofar as this section requires that the service area of such an ETC conform to the service area of any rural telephone company serving an area eligible for 5G Fund support. We note that forbearing from the service area conformance requirement eliminates the need for redefinition of any rural telephone company service areas in the context of 5G Fund competitive bidding process. Accordingly, Commission rules regarding the redefinition process are inapplicable to petitions that are subject to this Report and Order. However, if an existing ETC seeks support through the 5G Fund competitive bidding process for areas within its existing service area, this forbearance will not have any impact on the ETC's pre-existing obligations with respect to other support mechanisms and the existing service area. For the Mobility Fund Phase I auction, the Commission forbore from requiring that the service areas of an ETC conform to the service area of any rural telephone company serving the same area, pursuant to section 214(e)(5) of the Act and section 54.207(b) of the Commission's rules. Similarly, the Commission concluded that like Mobility Fund Phase I, some of the price cap carrier study areas that may become eligible for the CAF Phase II and the Rural Digital Opportunity Fund competitive bidding processes meet the statutory definition so that the carrier serving those study areas would be classified as a rural telephone company.

167. We find that forbearance is warranted in these limited circumstances. Our objective is to distribute support to winning bidders as soon as possible so that they can begin the process of deploying new broadband service to consumers in those areas. Case-by-case forbearance would likely delay our post-selection review of entities once they are announced as winning bidders.

168. The Act requires the Commission to forbear from applying any requirement of the Act or our regulations to a telecommunications carrier if the Commission determines that: (1) Enforcement of the requirement is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of that requirement is not necessary for the protection of consumers; and (3) forbearance from applying that requirement is consistent with the public interest. We conclude each of these statutory criteria is met for the 5G Fund for the same reasons we concluded they were met for Mobility Fund Phase I, CAF Phase II, and the Rural Digital Opportunity Fund.

169. *Just and Reasonable.* We conclude that compliance with the service area conformance requirement of section 214(e)(5) of the Act and section 54.207(b) of the Commission's rules is not necessary to ensure that the charges, practices, and classifications of carriers designated as ETCs in areas for which support will be authorized through a 5G Fund auction are just and reasonable

and not unjustly or unreasonably discriminatory. As discussed herein, we find that the three factors traditionally taken into account by the Commission and the states when reviewing a potential redefinition of a rural service area pursuant to section 214(e)(5) of the Act no longer apply in the context of designating ETCs in areas for which support will be authorized through a 5G Fund auction. Forbearance from the service area conformance requirement would not prevent the Commission from enforcing sections 201 or 202 of the Act, which require all carriers to charge just, reasonable, and non-discriminatory rates. We note that all ETCs—whether rural ETCs or other entities designated as ETCs in areas eligible for 5G Fund support in order to receive such support—will continue to be subject to the requirements of the Act that consumers have access to reasonably comparable services at reasonably comparable rates. Moreover, we adopt herein a public interest obligation for a 5G Fund support recipient to offer its services in the areas for which it is authorized to receive support at rates that are reasonably comparable to those rates offered in urban areas. In fact, as we discuss herein, the deployment of voice and 5G broadband-capable networks into these areas will expand the choice of telecommunications services for consumers in the relevant areas. The resulting competition is likely to help ensure just, reasonable, and nondiscriminatory offerings of services. For these reasons, we find that the first prong of section 10(a) is met.

170. *Consumer Protection.* We also conclude that it is not necessary to apply the service area conformance requirement to a winning bidder in the 5G Fund competitive bidding process to protect consumers. Forbearance from the service area conformance requirement in these limited circumstances will not harm consumers currently served by the rural telephone companies in the relevant service areas. To the contrary, these consumers will benefit from the use of 5G Fund support to deploy voice and 5G broadband-capable networks in these areas. Moreover, 5G Fund support recipients, like all ETCs, will be required to certify that they will satisfy applicable consumer protection and service quality standards in their service areas. For these reasons, we find that the second prong of section 10(a) is met.

171. *Public Interest.* We conclude that it is in the public interest to forbear from the service area conformance requirement in these limited circumstances. Because we adopt our proposal to distribute 5G Fund support through competitive bidding, we set up a system under which only one ETC will receive support to serve a given area eligible for 5G Fund support. Geographic eligibility for 5G Fund support is based on whether specific areas show a lack of unsubsidized 4G LTE and 5G broadband service by at least one carrier, a definition that is unrelated to the boundaries of rural carrier service areas. Thus, a rural telephone carrier's service area is not a relevant consideration in determining where a 5G Fund support recipient that is awarded support through competitive bidding should be designated as an ETC. Accordingly, the analysis that the relevant state and the Commission historically undertook when deciding whether to redefine a rural telephone carrier's service area is not applicable to the 5G Fund competitive bidding process. Because the service area redefinition analysis is not relevant to the 5G Fund competitive bidding process, we find it is not in the public interest for the states and the Commission to work together to define the service area of 5G Fund support recipients serving rural telephone companies' service areas. However, we note that forbearance in these limited circumstances does not otherwise impact the state's primary role in designating ETCs. State commissions are still required to consider the public interest, convenience and necessity of designating an ETC in a rural area already served by a rural telephone company. We note that the redefinition process is still required for ETCs seeking other kinds of support, and that our action today does not disturb the roles of state commissions and this Commission in the ETC designation process or in the redefinition process in other circumstances where redefinition is required. We find that forbearing from the conformance requirement will encourage participation by assuring that obligations of new ETCs will not extend to portions of rural service areas for which a new ETC may not receive support. By providing this assurance, we reduce the cost of auction participation, encourage lower bids, and improve auction outcomes.

172. Similarly, enabling new ETC service areas to be defined in a more targeted manner for the 5G Fund is consistent with our approach of targeting support to areas with a specific need for the support, helps preserve those efficiencies, and thus serves the public interest. 5G Fund support will be determined by a competitive bidding process in which ETCs will bid for the support they need to serve a specific area, rather than any larger area, such as an underlying rural telephone company study area. Absent forbearance, we find that entities seeking 5G Fund support may be required to take on unsupported ETC obligations in portions of rural carriers' study areas—areas that may not be eligible for support or for which they may not win support—and that this is likely to discourage participation in a 5G Fund auction. We conclude that requiring 5G Fund support recipients to serve a wider area runs counter to the Commission's recent and ongoing efforts to serve the public interest by focusing Universal Service Fund resources on defined areas of need.

173. We also note that requiring each 5G Fund support recipient to conform its service areas to those of the rural telephone companies in the states they seek to serve could result in lengthy redefinition proceedings, which may delay our post-auction review of winning bidders' long-form applications and consequently delay our distribution of 5G Fund support and the deployment of voice and 5G broadband services in the area(s) won by the support recipient.

174. In addition, we find that in these limited circumstances requiring conformance is not essential to protect the ability of rural telephone companies to continue to provide service. Past concerns that an ETC serving only a relatively low-cost portion of a rural carrier's service area might cream skim by receiving per line support based on the rural carrier's costs of serving the entire area are not relevant to 5G Fund support, which will be awarded through a competitive process. Unlike the legacy identical support rule, under which a competitive ETC received the same per-line support as an incumbent calculated based on the incumbent's cost of serving its entire service area, the amount of 5G Fund support is not linked to the support received by an overlapping rural carrier but is determined by the results of competitive bidding for support. Consequently, cream skimming concerns that arose under the identical support rule are not relevant for purposes of seeking 5G Fund support. Moreover, because the Commission decided in the *USF/ICC Transformation Order* that universal service could support both mobile and fixed services in a given area, we see no inherent conflict between a mobile provider receiving support to offer previously unavailable service in a portion of a rural telephone company's study area and the rural telephone company continuing to provide its pre-existing service. We note that our decision to grant forbearance in these limited circumstances does not impose any

additional administrative requirements on rural telephone companies.

175. For similar reasons, we conclude that forbearance in these limited circumstances will not harm competitive market conditions. The public interest benefits of forbearance go beyond efficiently enabling consumer access to 5G services. If anything, forbearance may enhance competition by introducing new service providers to the market and, as discussed above, will not eliminate any existing market participants or introduce concerns about cream skimming. ETCs that receive 5G Fund support will have the obligations of any other ETCs, including an obligation to make available Lifeline service to eligible low-income consumers, and thus an ETC deploying 5G services to new areas as part of the 5G Fund also will be making its services available to low-income consumers who may qualify to receive reduced charges for these advanced services. Moreover, as a 5G Fund support recipient is deploying service in its funded areas, it may also find that it has a business case to deploy service in surrounding areas, thereby increasing competition and providing more options for consumers.

176. We further note that forbearance from the conformance requirement and redefinition process for these limited purposes should not affect rural carriers' abilities to serve their entire rural service territories. Moreover, the Act contains safeguards to address any such potential concerns. The Act already requires designating commissions to affirmatively determine that designating a carrier as an ETC within a rural service area is in the public interest, and this is not affected by this grant of forbearance.

2. Spectrum Access

177. We will require that an applicant seeking to participate in a 5G Fund auction have exclusive access to licensed spectrum with sufficient bandwidth in an area that enables it to satisfy the applicable performance requirements in order to receive 5G Fund support for that area. As more fully explained in the application process requirements we adopt herein, we will require an applicant to have exclusive access to licensed spectrum with sufficient bandwidth (*i.e.,* spectrum for which the applicant holds a license or lease) and to describe its access to such spectrum. We also will require an applicant to certify that the description is accurate, that it has access to such spectrum in the area(s) in which it intends to bid for support, that it has such access to spectrum at the time it applies to participate in competitive bidding and at the time it applies for support if it is a winning bidder, and that it will retain its access to such spectrum for at least 10 years after the date on which it is authorized to receive support.

3. Financial and Technical Capability

178. Consistent with what the Commission has required in other universal service proceedings, we adopt our proposal to require an entity to certify that it is financially and technically qualified to meet the 5G Fund public interest obligations and performance requirements within the 10-year support term in the geographic areas for which it seeks support. We implemented such a requirement for Mobility Fund Phase I, Tribal Mobility Fund Phase I, CAF Phase II, and the Rural Digital Opportunity Fund, and we conclude it is an equally appropriate requirement for the 5G Fund. As we have previously stated, ''it would not be administratively efficient to conduct a competitive bidding process with participation from entities that are not prepared to make such commitments.'' Accordingly, requiring this certification is a reasonable protection for the auction process and to safeguard the award of universal service funds. As more fully explained in the application process requirements we adopt herein, we will require an applicant to certify as to its financial and technical qualifications in both its pre-auction short-form application and its post-auction long-form application.

4. Encouraging Participation

179. To encourage participation by the widest possible range of entities, we adopt our proposal to permit all qualified applicants to participate in a 5G Fund auction. Our commitment to fiscal responsibility requires that we distribute our finite budget cost effectively in light of our goals for the 5G Fund and consistent with the bidding procedures we adopt for the auction. The Commission did not prohibit any particular class of parties from participating in Mobility Fund Phase I based on size or other concerns or from seeking Mobility Fund Phase I support based solely on a party's past decision to relinquish universal service support provided on another basis. In order to avoid potentially limiting our ability to close the 5G coverage gap, we follow the same approach here. We expect that our general auction rules and procedures will provide the basis for an auction process that promotes our objectives for the 5G Fund and provide a fair opportunity for all serious, interested parties to participate.

180. AST&Science asks the Commission to allow mobile-satellite companies capable of providing 5G–NR broadband service to standard smartphones and off-the-shelf user devices to participate meaningfully in closing the digital divide by partnering with terrestrial broadband providers in the 5G Fund auction. It states that providers should be invited to demonstrate, on a case-by-case basis at the short-form application stage, the capability of these transformational, mobile-satellite-based technologies to meet the technical and performance standards for the 5G Fund, consistent with the Commission's longstanding policy of implementing regulatory policies in a technologically-neutral fashion and in a manner that avoids picking winners and losers. AST&Science submits that this approach would enable it to more quickly implement its business plan of formulating cooperative arrangements with wireless carriers to extend high-quality 5G services to areas that are extremely unlikely to be covered by traditional terrestrial technologies. SES Americom and O3B Limited similarly state the Commission ''should not stifle 5G deployment by barring mobile service providers from using satellite technologies that can support latency-sensitive mobile services, such as SES's Medium Earth Orbit (''MEO'') satellite network.''

181. RWA asserts that satellite providers should be eligible to participate in a 5G Fund auction ''if they can (1) meet the proposed speed and latency performance requirements; and (2) provide for continuity of mobile service by being capable of holding voice and data sessions while moving across the country at speeds of 75 miles per hour without regularly dropping the session, and being able to provide roaming services at reasonable rates to other carriers pursuant to the Commission's roaming rules.'' We decline to adopt RWA's continuity of mobile service threshold for being capable of holding voice and data sessions without regularly dropping a session because we find it adds a qualifier to the definition of what we consider to be a component of 5G mobile service. We are unconvinced that this qualifier is how reasonably comparable 5G services in urban environment are defined. We therefore conclude that the requirements we adopt for median data speed, latency, and technology standards are sufficient to capture the range of services that customers reasonably expect 5G services to provide.

182. Consistent with our decision to permit all qualified applicants to participate in a 5G Fund auction, we will not categorically preclude a satellite provider from applying for, bidding in, and winning 5G Fund support in a 5G Fund auction, provided that it is otherwise eligible. We note that pursuant to the rules we adopt herein, entities seeking 5G Fund support must satisfy certain eligibility requirements, and 5G Fund support recipients must be capable of providing mobile, terrestrial voice and broadband services that meet public interest obligations and performance requirements we adopt for the 5G Fund as a condition of receiving support—which include among other things offering voice and 5G broadband service that conforms to the 5G–NR standard using permitted spectrum bands directly to an off-the-shelf handset (*e.g.,* an iPhone), and otherwise meets our adopted median data speed and end-to-end round-trip latency requirements of at least 35/3 Mbps and 100 milliseconds or less, respectively. Accordingly, while a carrier could potentially use non-terrestrial services, such as satellite service, to augment its provision of mobile, terrestrial voice and data services in the areas for which it is awarded 5G Fund support, it cannot rely solely on any such non-terrestrial services to meet its 5G Fund public interest obligations and performance requirements.

5. Enforceable Commitments To Deploy 5G

183. In the *5G Fund NPRM,* we tentatively concluded that T-Mobile should not be allowed to use any eligible areas for which it might win 5G Fund support to fulfill its transaction-specific rural commitments to deploy 5G. As a threshold matter, today we adopt restrictions on the use of 5G Fund support to fulfill enforceable commitments to deploy 5G. We do this to ensure that our limited universal service funds are spent in the most cost-effective manner. We conclude it would be inefficient to allow any provider with enforceable 5G deployment obligations to use universal service support to fund those deployments. At the same time, we are concerned that it would be equally inefficient to use our limited universal service funding to overbuild T-Mobile's extensive rural 5G deployment commitments. We sought comment on two approaches to avoiding such an outcome: (1) Allowing T-Mobile to make pre-auction binding commitments to deploy 5G services in eligible areas within the time frames adopted as deployment milestones for the 5G Fund without receiving 5G Fund support and otherwise prohibiting T-Mobile from participating in the auction; and (2) permitting T-Mobile to identify areas before the auction where they intend to deploy 5G service and removing these areas from the list of eligible areas.

184. AT&T, the California Public Utilities Commission, CCA, RWA, and Verizon agree with our tentative conclusion that T-Mobile should not be allowed to use 5G Fund support to fulfill its transaction commitments to deploy 5G. T-Mobile does not object to prohibiting it from using 5G Fund support to meet its transaction commitments, but argues that such a prohibition should not apply only to it, asserting that it would be unfair to single out T-Mobile in this way and that such a prohibition applied only to T-Mobile would be an inefficient use of funds. T-Mobile has encouraged the Commission to rely on objective criteria such as rurality and population density or coverage data to determine the areas that are eligible for 5G Fund support, and to keep T-Mobile's transaction commitments separate from the 5G Fund. We believe that establishing 5G Fund auction eligibility based upon a new mobile data coverage collection, combined with the procedures we adopt herein regarding enforceable commitments to deploy 5G, appropriately address this concern while balancing our priorities in distributing universal service fund support.

185. CRWC asserts that T-Mobile could game any pre-auction commitment process by strategically selecting areas thereby excluding them from the 5G Fund auction for anti-competitive reasons, cross-subsidize its merger commitments, and then face no consequences if it ultimately does not decide to deploy in those areas. Accordingly, CRWC argues that T-Mobile should be barred from participating in a 5G Fund auction. CRWC attempts to show that it would be optimal to exclude T-Mobile from the auction through a stylized numerical simulation of subsidy auctions in Missouri. CRWC quantifies the benefits of excluding T-Mobile by comparing its simulations to two baseline scenarios making the following assumptions about T-Mobile's conduct: (1) T-Mobile might not deploy 5G in an eligible area if another provider could cover that area for a lower cost, or (2) T-Mobile would not deploy at all in any eligible area. However, it is likely T-Mobile will deploy in many eligible areas regardless of where other providers deploy or what happens in an auction, especially in light of its transaction commitments; in those cases, the area would not require a subsidy to be served. These baseline scenarios are therefore inappropriate. Further, the analysis ignores the auction budget constraint, and therefore cannot capture the benefits of increased competition by including T-Mobile. The analysis also attempts to demonstrate that T-Mobile could use the pre-selection process to strategically disadvantage rival service providers, but it is based on a single simplified theoretical scenario with no evidence of its practical relevance. RWA also argues that T-Mobile should not be able to make pre-auction binding commitments to deploy 5G that would remove areas from the auction.

186. In advocating for Commission approval of its transaction with Sprint, T-Mobile made several commitments to deploy 5G, which were adopted as conditions of approval. T-Mobile is subject to significant financial penalties if it does not meet its 5G deployment commitments. We expect T-Mobile to be able to fulfill these commitments without 5G Fund support based upon their claimed merger synergies. Accordingly, we agree that T-Mobile should not be allowed to use 5G Fund support to fulfill its transaction commitments to deploy 5G. We are mindful that other entities could be similarly situated to T-Mobile, with enforceable commitments to deploy 5G, and any such entities will likewise not be allowed to use 5G Fund support to fulfill their commitments. We note that on July 26, 2019, DISH filed applications seeking more time to satisfy the construction requirements for its AWS–4, Lower 700 MHz E Block, and AWS H block licenses, and that DISH has enforceable commitments to deploy 5G and is subject to significant penalties if it fails to meet its commitments. Accordingly, DISH cannot use 5G Fund support to meet its enforceable 5G deployment commitments. We will nevertheless evaluate enforceable commitments other than T-Mobile's on a case-by-case basis considering the specific commitments and our goals in the 5G Fund.

187. We are mindful that prohibiting carriers with enforceable commitments from participating in a 5G Fund auction would accomplish the goal of preventing universal service funds from being used to fulfill those commitments. Such a prohibition, however, would not address our interest in avoiding the use of universal funds to overbuild areas that will already see 5G deployment. As we noted in the *5G Fund NRPM,* ''failing to adequately account for T-Mobile's enforceable 5G deployment commitments would risk using our

limited universal service support to overbuild areas that would see timely, unsubsidized 5G deployment [as defined by the Commission] by T-Mobile.'' Moreover, prohibiting participation by otherwise qualified carriers would undermine our interest in maximizing auction participation so as to achieve the most efficient auction result and covering the most area at the least cost. All recipients of high-cost funds are subject to a statutory requirement to only use those funds for the universal service purposes for which they were granted. Recipients of 5G Fund support will be subject to reporting requirements, as well as auditing, to ensure that funding awards are spent as intended.

188. We conclude that our approach to enforceable commitments to deploy 5G must promote our goals of: Prohibiting the use of 5G Fund support to fulfill enforceable 5G deployment commitments; avoiding the use of 5G Fund support to overbuild areas that will see unsubsidized 5G deployment; and establishing procedures that will ensure a fair and competitive auction. Accordingly, we will allow T-Mobile to make pre-auction, binding commitments to deploy 5G in certain areas, thus removing those areas from the auction inventory of areas eligible for support. We note that if T-Mobile does remove areas from the auction inventory of areas eligible for support, then those areas would be subject to the drive-testing requirements negotiated in the transaction and not to the 5G Fund performance requirements. We direct the Office and Bureau to establish the specific procedures for pre-auction binding commitments, that would cover, as appropriate, qualifications and restrictions on participating in the pre-selection process. These pre-auction commitment procedures will address which entities with enforceable commitments can use these procedures. For example, these procedures will address whether DISH should receive the same or similar treatment as T-Mobile. These procedures can address, as appropriate, deterrence of any anti-competitive behavior, performance measures, noncompliance penalties, and any actions (before, during, or after the auction) that would run contrary to the goals of the 5G Fund. We are confident that the Office and Bureau can develop and implement procedures that accord with enforceable commitments, balance our priorities, ensure the most efficient use of our limited funds, and appropriately address anti-competitive concerns.

189. In addition, we will allow T-Mobile to participate—and win support—in the 5G Fund auction, but consistent with our prohibition on using universal service support to fulfill other 5G deployment obligations, we will not allow T-Mobile to claim any population in areas won in the 5G Fund auction toward their population-based merger commitments. Similar to T-Mobile's commitment concerning its potential participation in the Puerto Rico/U.S. Virgin Islands Stage 2 Competition, population in any areas won by T-Mobile in a 5G Fund auction will be added to its merger population commitments, such that T-Mobile's total deployment commitment shall increase in equal measure. The same condition will apply to any similarly situated carrier with enforceable commitments for 5G deployment that participates in the 5G Fund auction, preventing the 5G Fund supported deployments from counting toward satisfying the carrier's enforceable commitments to deploy 5G.

190. These measures balance our interests in prohibiting entities from using universal service funding to fulfill enforceable commitments, limiting overbuilding by not subsidizing areas that will already see timely 5G deployment without universal service support, and holding an efficient, open auction in which entities can compete vigorously for funding to serve areas that they would not otherwise serve without support.

6. Inter-Relationship With Other Universal Service Mechanisms and Obligations

191. We adopt our proposal to allow recipients of other high-cost universal service support to participate in a 5G Fund auction. While we will not prohibit applicants from participating in a 5G Fund auction merely because they have won support through other universal service mechanisms, we note that the goals of 5G Fund are to help ensure the availability of *mobile* voice and broadband services across rural areas of the country. Accordingly, we will prohibit a 5G Fund support recipient from using 5G Fund support to satisfy any pre-existing high-cost deployment obligations to fixed locations and prohibit a recipient of other high-cost support from using that support to satisfy its 5G Fund deployment obligations.

I. Application Process

192. Consistent with prior Commission auctions and the process adopted for the Rural Digital Opportunity Fund, we adopt a two-stage application process for the 5G Fund, consisting of pre-auction and post-auction requirements. Each entity interested in participating in a 5G Fund auction will be required to file a pre-auction short-form application that provides basic information and certifications regarding its qualifications to receive support. If determined to be qualified to bid, an applicant will be allowed to participate in the auction. After the auction concludes, a winning bidder must file a post-auction long-form application with more extensive information about its qualifications, funding, and the network it intends to use to meet its 5G Fund public interest obligations and performance requirements to demonstrate to the Commission that it is legally, technically and financially qualified to receive 5G Fund support. As we did for CAF Phase II and the Rural Digital Opportunity Fund, we stress that each potential bidder has the sole responsibility to perform its due diligence research and analysis before proceeding to participate in a 5G Fund auction. We direct the Office and Bureau and to adopt the format and deadlines for the submission of documentation for the short-form and long-form application processes.

1. Short-Form Application Process

193. As more fully explained below, we adopt our proposal to apply the Commission's existing Part 1, Subpart AA universal service competitive bidding rules to entities seeking to participate in the competitive bidding process for 5G Fund support so that such entities will be required to: (1) Provide information that would establish their identity, including disclosing parties with ownership interests and any agreements they may have relating to the support to be sought through the competitive bidding process, (2) identify their authorized bidders, (3) make various universal service support specific certifications, (4) provide any additional information that may be required by the Commission in order to evaluate their qualifications to participate in the competitive bidding process, and (5) comply with the rule prohibiting certain communications during the competitive bidding process. We also adopt our proposed amendments to various Part 1, Subpart AA rules to codify policies and procedures applicable to the auction application process that have been adopted for CAF Phase II and the Rural Digital Opportunity Fund, better align provisions in Part 1, Subpart AA with like provisions in the Commission's Part 1, Subpart Q spectrum auction rules, and make other updates for consistency, clarification, and other purposes. We received no comments on our proposed

amendments to the Part 1, Subpart AA rules, and adopt them as proposed in the *5G Fund NPRM.* The Part 1, Subpart AA universal service competitive bidding rules, as amended herein, will apply to participants in a 5G Fund auction. In addition, we adopt our proposal to require entities seeking to participate in a 5G Fund auction to also provide certain 5G Fund specific information in their short-form applications. The limited comments we received on our 5G Fund specific short-form application proposals are summarized and discussed in this section as necessary to address any issues or alternative approaches raised by commenters concerning our proposals. We conclude the pre-auction short-form requirements we adopt here provide for a fair and efficient process and will best serve the Commission's ability to determine whether an applicant is qualified to bid for 5G Fund support.

194. An entity interested in participating in the 5G Fund competitive bidding process will submit a pre-auction short-form application in which it must provide, among other things, information as to the applicant's identity, ownership, and any agreements into which it has entered, as well as a description of the applicant's access to spectrum and various applicant certifications. Commission staff then will review the submitted short-form applications to determine whether applicants have provided the necessary information required at the short-form stage and thereafter release a public notice indicating which short-form applications are deemed complete and which are deemed incomplete. Consistent with CAF Phase II and the Rural Digital Opportunity Fund, applicants whose short-form applications are deemed incomplete will be given a limited opportunity to cure defects and to resubmit correct applications, excluding major modifications. As in CAF Phase II and the Rural Digital Opportunity Fund, following the conclusion of the short-form application review process and a determination of which applicants are qualified to participate in the auction, a public notice will be released identifying those applicants that may bid in the auction.

195. *Ownership Disclosures.* Section 1.21001(b)(1) of the Commission's rules currently requires each universal service auction applicant to provide information in its short-form application to establish its identity, including information concerning its real parties in interest and information regarding parties that have an ownership or other interest in the applicant. For past universal service support auctions, the Commission has adopted separate, program specific rules specifying that the type of ownership information to be provided by applicants is the information required by section 1.2112(a) of the Commission's rules. To simplify the ownership disclosure requirements for all universal service auction applicants going forward and eliminate the need for the Commission to continue to separately adopt the same ownership disclosure requirements in the program specific rules for each universal service auction, we adopt our proposed amendment to section 1.21001(b)(1) to specify that the type of ownership information to be provided by such applicants is the information set forth in section 1.2112(a).

196. *Authorized Bidders.* Section 1.21001(b)(2) of the Commission's rules currently requires each universal service auction applicant to identify in its short-form application up to three individuals authorized to make or withdraw a bid on behalf of the applicant. The Commission's spectrum auction rules prohibit the same individual from serving as an authorized bidder for more than one applicant in an auction in order to ensure that an individual is not in a position to be privy to the bidding strategies of more than one applicant in a spectrum auction, which could allow it to be a conduit—intentional or unintentional—for bidding information between auction applicants. The same concerns that prompted the Commission to adopt this prohibition in spectrum auctions exist in the universal service auction context. We note that a violation of the Commission's prohibited communications rule could occur if an individual acts as the authorized bidder for two or more applicants because a single individual may, even unwittingly, be influenced by the knowledge of the bids or bidding strategies of multiple applicants, in his or her actions on behalf of such applicants. Therefore, to align with our spectrum auction rules and to help guard against potential violations of the prohibited communications rule, we adopt our proposed amendment to this rule and will prohibit the same individual from serving as an authorized bidder for more than one auction applicant in a given universal service auction.

197. *Agreement Disclosures; Certification Concerning Agreement Disclosures.* Sections 1.21001(b)(3) and (b)(4) of the Commission's rules currently require each universal service auction applicant to identify in its short-form application all real parties in interest to any agreements relating to the participation of the applicant in the competitive bidding and to certify that its application discloses all real parties in interest to any agreements involving the applicant's participation in the competitive bidding. To better align the agreement disclosure requirement and associated certification for universal service auctions with the agreement disclosure requirement in our spectrum auction rules and with the procedures adopted for the CAF Phase II auction and the Rural Digital Opportunity Fund, we adopt our proposed amendments to these rules. Accordingly, an applicant must disclose all real parties in interest to any agreements and provide a brief description of each agreement it discloses, and must certify that its application discloses all real parties in interest to any agreements and that it has provided a brief description of, and identified each party to, any partnerships, joint ventures, consortia or other agreements, arrangements, or understandings of any kind, including any joint bidding arrangements, relating to the applicant's participation in the competitive bidding and the support being sought.

198. *Certification Concerning Auction Defaults.* Section 1.21001(b)(7) of the Commission's rules currently requires each universal service auction applicant to certify that it will make any payment that may be required in the event of an auction default. To confirm an applicant's understanding that it will be deemed in default and thus liable for a payment, we adopt our proposed amendment to this rule to require an applicant to also acknowledge, as part of making this certification and as a condition of participating in the auction, that it will be deemed in default and subject to either a default payment or a forfeiture in the event of an auction default.

199. *Due Diligence Certification.* We adopt our proposal to require each universal service auction applicant to acknowledge through a certification that it has sole responsibility for investigating and evaluating all technical and marketplace factors that may have a bearing on the level of support it submits as a bid, and that if the applicant wins support, it will be able to build and operate facilities in accordance with the obligations applicable to the type of support it wins and the Commission's rules generally. This certification will help ensure that each applicant acknowledges and accepts responsibility for its bids and any forfeitures imposed in the event of an auction default, and that the applicant will not attempt to place

responsibility for the consequences of its bidding activity on either the Commission or third parties.

200. *Technical and Financial Qualifications Certification.* In connection with the eligibility requirements relating to technical and financial qualifications we adopt herein, we adopt our proposal to require each 5G Fund auction applicant to certify that it is technically and financially capable of meeting the 5G Fund public interest obligations and performance requirements in each area for which it seeks support. Based on our experience with Mobility Fund Phase I, CAF Phase II, and the Rural Digital Opportunity Fund, this approach is an appropriate screening process to ensure serious participation, without being overly burdensome to applicants and recipients.

201. *Status as an Eligible Telecommunications Carrier.* Although we will not to require an applicant to obtain an ETC designation prior to applying to participate in a 5G Fund auction, consistent with the approach taken in the CAF Phase II and Rural Digital Opportunity Fund auctions, we adopt our proposal to require each 5G Fund auction applicant to disclose in its short-form application its status as an ETC in any area for which it will seek 5G Fund support or as an entity that will become an ETC in any such area after if it is a winning bidder for 5G Fund support, and to certify that its disclosure is accurate. As for CAF Phase II and the Rural Digital Opportunity Fund, we will also require each auction applicant to disclose in the short-form application any study area codes (SACs) associated with an applicant (or its parent company) if the applicant indicates it is currently an ETC.

202. *Access to Spectrum.* In connection with the eligibility requirements relating to spectrum access we adopt herein, we adopt our proposal to require each 5G Fund auction applicant to describe in its short-form application the spectrum access it plans to use to meet its 5G Fund public interest obligations and performance requirements in the particular area(s) for which it intends to bid. Specifically, an applicant must (1) disclose whether it currently holds or leases the spectrum, (2) identify the license applicable to the spectrum to be accessed, the type of service covered by the license, the particular frequency band(s), the call sign, and any necessary renewal expectancy, and (3) indicate whether such spectrum access is contingent on obtaining support in a 5G Fund auction.

203. Because the spectrum an applicant plans to use to meet its 5G Fund public interest obligations and performance requirements must be capable of supporting 5G service as it is defined in the performance requirements adopted for 5G Fund support, we will require that entities seeking to receive support from the 5G Fund have access to spectrum and sufficient bandwidth (at a minimum, 10 megahertz x 10 megahertz using frequency division duplex (FDD) or 20 megahertz using time division duplex (TDD)) capable of supporting 5G services in the particular area(s) for which it intends to bid. An applicant will be required to disclose the total amount of bandwidth (in megahertz) to which the applicant has access under the license applicable to the spectrum to be accessed.

204. In addition, we will permit an applicant to rely only on licensed spectrum to which the applicant has exclusive use (*i.e.,* spectrum licensed by the Commission for which the applicant holds a license or lease and that it is not required to share use of with others pursuant to such license or lease) to meet its 5G Fund public interest obligations and performance requirements, and will require an applicant to have secured any Commission approvals necessary for the required spectrum access prior to submitting an auction application for the described spectrum access to be considered sufficient. A pending request for such an approval would not be considered sufficient to satisfy this requirement. Each applicant will be required to certify in its short-form application that it has access to spectrum in each area in which it intends to bid for 5G Fund support within each state and/or Tribal land area selected in this application, that it will retain such access for at least ten (10) years after the date on which it is authorized to receive support, and that the description of spectrum access in the area(s) for which it intends to bid for support provided in its application is accurate.

205. AST&Science supports requiring applicants to demonstrate that they have access to spectrum in an area sufficient to satisfy the 5G Fund performance requirements, but asks the Commission to clarify that an applicant with a binding contract to gain access to the requisite spectrum at the time of the auction meets this eligibility requirement. AST&Science submits that a contractual right to access spectrum should be sufficient even if Commission approval is necessary to consummate the contract, as long as there is no apparent regulatory disability that would prevent the applicant from securing the requisite consent, and advocates allowing a winning bidder to file the requisite request for Commission approval promptly (*e.g.,* within 30 days) after the auction concludes, rather than having to demonstrate the receipt of all necessary Commission spectrum access approvals in advance of the auction, as is the case with post-auction securing of ETC designations.

206. We decline to allow a winning bidder to obtain any necessary spectrum access approvals after the auction because we find that doing so in an auction where spectrum is the sole technology that will be relied upon by a winning bidder to meet the public interest obligations and performance requirements associated with receiving support could increase the risk of defaults if it is ultimately unable to secure the necessary approvals. Unlike the post-auction ETC designation process with state entities or the Commission, pre-auction agreements between private parties for exclusive use of licensed spectrum that are contingent upon a party winning in the auction could raise auction integrity concerns involving, for example, prohibited communications between potential bidders and joint bidding. In addition, such agreements present more risk of default for multiple reasons, including the statutory requirements for Commission approval of such agreements. In addition, it would not be appropriate for the short-form application review process to effectively grant an advisory opinion on whether an applicant is likely to receive Commission approval for spectrum access after due consideration of the spectrum screen and any potential competitive implications. Accordingly, we conclude that requiring an applicant to have secured any Commission approvals necessary for the required spectrum access prior to submitting its short-form application to participate in a 5G Fund auction, as we did for Mobility Fund Phase I, CAF Phase II, and the Rural Digital Opportunity Fund, will serve to avoid these issues.

207. RWA supports our proposal to require 5G Fund auction applicants to demonstrate that they have access to sufficient bandwidth to meet their 5G Fund public interest obligations and performance requirements, and submits that a minimum of 15 megahertz of spectrum should be available in a given census tract that can be devoted to 5G use because 15 megahertz is a sufficient amount of spectrum to support 35/3 Mbps speed when used in coordination with Multiple Input Multiple Output

(MIMO). We find that RWA's proposed minimum amount of dedicated 15 megahertz TDD spectrum for 5G is sufficient to meet the 35/3 Mbps speeds requirement when the downlink to uplink ratio is 2:1. However, we conclude that 15 megahertz FDD paired spectrum (or 7.5 megahertz x 7.5 megahertz) is insufficient to satisfy the 35/3 Mbps speeds requirement even for mid-band spectrum which generally has higher spectral efficiency than low-band spectrum. The minimum bandwidth requirement of 10 megahertz x 10 megahertz FDD (or 20 megahertz TDD in ratio of 1:1) we adopt is based on the need for 10 megahertz of downlink spectrum to achieve the required download speed of 35 Mbps that we adopt for 5G Fund support recipients. For this reason, we would consider 15 megahertz TDD of dedicated bandwidth to be sufficient if it has a downlink to uplink ratio of 2:1 and thus provides 10 megahertz of bandwidth for downlink, but would not consider 15 megahertz FDD (*i.e.,* 7.5 megahertz x 7.5 megahertz) of dedicated bandwidth to be sufficient because it does not provide the minimum amount of spectrum (*i.e.,* at least 10 megahertz of downlink spectrum) necessary to achieve a download speed of 35 Mbps.

208. RWA opposes allowing unlicensed spectrum to be used to satisfy the spectrum access eligibility criterion because its availability cannot be relied upon, but submits that General Authorized Access (GAA) spectrum in the Citizens Broadband Radio Service should be considered qualifying spectrum if enough is available in the rural area due to the presence of Spectrum Access System (SAS) administrators in the 3550–3700 MHz band (3.5 GHz band). The Commission adopted a three-tiered access and authorization framework to coordinate shared federal and non-federal use of the 3.5 GHz band, with incumbents comprising the first tier (Incumbent Access) and receiving protection from all other users, followed by Priority Access Licenses (PALs) in the second tier, and GAA in the third tier. GAA spectrum is available on a shared/non-exclusive basis throughout the 3550–3700 MHz band (3.5 GHz band), and GAA users are also permitted to use frequencies in the 3550–3650 MHz band when higher-tier Incumbent Access tier users and Priority Access Licensees are not using the spectrum, as determined by the SAS, and consistent with the rules governing PAL protection areas. GAA users must avoid causing harmful interference to higher-tier users and must accept interference from all other users, including other GAA users. We decline to allow 5G Fund support recipients to rely only on GAA spectrum to satisfy the spectrum access requirements we adopt for the 5G Fund. We find that the criteria for gaining and retaining access to GAA spectrum and the interference provisions associated with its use are inconsistent with the spectrum access requirements we adopt for an applicant seeking to participate in the 5G Fund, which require an applicant to demonstrate that it has secured access to spectrum and sufficient bandwidth to meet the 5G Fund public interest obligations and performance requirements in the areas for which it seeks support prior to submitting its short-form application and to certify that it will retain such access over the ten year support term if it is authorized to receive 5G Fund support. We therefore conclude that, similar to unlicensed spectrum, the availability of GAA spectrum cannot be relied upon by a 5G Fund support recipient to meet its public interest obligations and performance requirements because the recipient may not be able to predictably and/or consistently gain and/or retain access to GAA spectrum throughout the support term, which could significantly increase its risk of default. Thus, while we will permit a 5G Fund support recipient to use GAA spectrum to augment its spectrum access in its provision of 5G service in areas for which it is awarded support, it must have exclusive access to a sufficient amount of spectrum that enables it to meet the 5G Fund public interest obligations and performance requirements independently of any GAA spectrum use. Consistent with our decision not to allow 5G Fund support recipients to rely on GAA spectrum alone to satisfy the spectrum access requirements we adopt for the 5G Fund, we will similarly not allow 5G Fund support recipients to rely on GAA spectrum alone to meet the associated minimum bandwidth requirement we adopt. Thus, while a 5G Fund support recipient may use GAA spectrum to augment the amount of bandwidth it has available to meet the 5G Fund public interest obligations and performance requirements, it must have access to sufficient bandwidth that enables it to meet the minimum bandwidth requirement independently of any GAA spectrum use.

209. *Technical and Financial Qualifications.* Similar to the approach adopted for CAF Phase II and the Rural Digital Opportunity Fund, we establish two pathways for a 5G Fund auction applicant to demonstrate its technical and financial qualifications to participate in a 5G Fund auction. To determine which pathway an applicant needs to take, we will first require the applicant to indicate in its application whether it has been providing mobile wireless voice and/or mobile wireless broadband service for at least three years prior to the short-form application deadline (or that it is a wholly-owned subsidiary of an entity that has been providing such service for at least three years). As for applicants in the CAF Phase II auction, an applicant for a 5G Fund auction will be deemed to have started providing mobile wireless broadband service on the date it began commercially offering service to end users. If the applicant is applying as a consortium or joint venture, we will allow the applicant to rely on the length of time a member of the consortium or joint venture has been providing mobile service prior to the short-form application deadline in responding to this question.

210. *Applicants That Have Been Providing Mobile Wireless Service for at Least Three Years.* We adopt our proposal to require an applicant that indicates it has been providing mobile wireless voice and/or mobile wireless broadband service to end user subscribers for at least three years prior to the short-form application deadline (or is a wholly owned subsidiary of an entity that has been providing such service for at least three years) to certify to that effect, and to: (1) Specify the number of years it (or its parent company, if it is a wholly owned subsidiary) has been providing such service, (2) certify that it (or its parent company, if it is a wholly owned subsidiary) has submitted mobile wireless voice and/or mobile wireless broadband data on FCC Form 477 as required during that time period, and (3) provide any FCC Registration Numbers (FRNs) that the applicant or its parent company (and in the case of a holding company applicant, its operating companies) have used to submit mobile wireless voice and/or mobile wireless broadband data with FCC Form 477 data for the past three years. We conclude that data regarding where a service provider offers mobile wireless voice and/or mobile wireless broadband service, the number of mobile wireless voice and/or mobile wireless broadband subscribers it has, and the mobile wireless broadband speeds it offers will provide insight into an applicant's experience in providing such service that will help Commission staff in determining whether an applicant can reasonably be expected to be capable of

meeting the 5G Fund public interest obligations and performance requirements. We also expect that it will generally be sufficient to review FCC Form 477 data (and/or Digital Opportunity Data Collection filings, as applicable) from only the past three years because those data would reflect the services that the applicant is currently offering or recently offered and will illustrate the extent to which an applicant was able to scale its network in the recent past.

211. *Applicants That Have Been Providing Mobile Wireless Service for Fewer Than Three Years, or Not at All.* If an applicant indicates that it has not been providing mobile wireless voice and/or mobile wireless broadband service for at least three years prior to the short-form application deadline (or is not a wholly owned subsidiary of an entity that has been providing such service for at least three years), we will require the applicant to submit certain high-level operational history, technical, and financial information to enable Commission staff to determine whether the applicant can reasonably be expected to be capable of meeting the 5G Fund public interest obligations and performance requirements. Specifically, we will require such an applicant to submit (1) information concerning its operational history and a preliminary project description, (2) a letter of interest from a qualified bank stating that the bank would provide a letter of credit to the applicant if the applicant becomes a winning bidder for bids of a certain dollar magnitude, as well as the maximum dollar amount for which the bank would be willing to issue a letter of credit to the applicant, and (3) a statement that the bank would be willing to issue a letter of credit that is substantially in the same form as set forth in the model letter of credit in Appendix C to this *Report and Order.* Consistent with the procedures adopted for CAF Phase II and the Rural Digital Opportunity Fund, we will treat the information submitted by an applicant concerning its operational history and its preliminary project description, along with any associated supporting information, as confidential, and will withhold such information from routine public inspection both during and after a 5G Fund auction.

212. As in any Commission auction for universal service fund support, we seek to balance the burdens on 5G Fund auction applicants of completing a short-form application with the Commission's statutory obligation to protect universal service funds, the integrity of the auction, and rural consumers. We conclude that requiring a potential bidder to submit evidence in its short-form application that it can meet the 5G Fund public interest obligations and performance requirements in the area(s) for which it seeks 5G Fund support strikes the correct balance of helping to safeguard consumers from situations where bidders unable to meet such obligations divert support from bidders that can meet them while not being unduly burdensome for auction applicants.

213. *Limit on Filing Applications.* To simplify the application process for applicants, reduce the administrative burden on Commission staff, and align with the Commission's spectrum auction rules and the approach adopted in recent universal service auctions, we will prohibit the filing of more than one application by the same entity or by commonly controlled entities in a single universal service auction under any circumstances. To be clear, we will not restrict smaller carriers that do not individually submit short-form applications from entering into joint ventures and bidding consortia in order to combine resources and achieve other efficiencies. We adopt the definitions for the terms ''controlling interest,'' ''consortium,'' and ''joint venture'' proposed in the *5G Fund NPRM,* which we will use to identify commonly controlled entities for purposes of this prohibition and for purposes of an applicant making any required auction application certifications. As in our spectrum auctions, in the case of a consortium, each member of the consortium would be considered to have a controlling interest in the consortium filing an application for an auction and thus a consortium member would not be able to separately file its own application to participate in that auction (or be a member of another consortium applicant in that auction). In addition, we adopt our proposal that in the event that applications for a universal service auction are filed by applicants with overlapping controlling interests, both applications will be deemed incomplete and at most only one such applicant may be deemed qualified to bid. In our experience in the spectrum auction context, this has helped to minimize unnecessary burdens on the Commission's resources by eliminating the need to process duplicative, repetitious, or conflicting applications.

214. *Certification Concerning Non-Controlling Interests.* Although we prohibit the filing of more than one application by commonly controlled entities in a single universal service auction, we recognize that in some circumstances, entities may have non-controlling interests in other entities and both entities may wish to bid in an auction. To the extent that there is no overlap between the employees in both entities that leads to the sharing of bidding information, such an arrangement may not implicate our concerns over joint bidding among separate applicants in an auction. However, such an arrangement could allow for the non-controlling interest or shared employees to act as a conduit for communication of bidding information unless the applicants establish internal controls to ensure that bidding information would not flow between them. To address this possibility and ensure that such arrangements do not serve or appear to be conduits for information, and align with the Commission's spectrum auction rules, we will require an applicant that has a non-controlling interest with respect to more than one application in a single universal service auction to certify that it is not, and will not be, privy to, or involved in, in any way, the bids or bidding strategy of more than one auction applicant and that it has established internal control procedures to preclude any person acting on behalf of the applicant from possessing information about the bids or bidding strategies of more than one applicant or communicating such information with respect to either applicant to another person acting on behalf of and possessing such information regarding another applicant. We caution, however, that submission of such certification by an applicant will not outweigh specific evidence that a communication violating the Commission's rules has occurred, nor will it preclude the initiation of an investigation when warranted.

215. *Application Processing.* Consistent with the limits on filing applications we adopt, we adopt our proposed amendment to the application processing rules to specify that if an entity submits multiple applications in a single universal service auction, or if entities that are commonly controlled by the same individual or same set of individuals submit more than one application in a single auction, only one of such applications may be found to be complete when reviewed for completeness and compliance with the Commission's rules. In our experience in the spectrum auction context, this has helped to minimize unnecessary burdens on the Commission's resources by eliminating the need to process duplicative, repetitious, or conflicting applications. We also adopt our clarifying amendments to the

application processing rules in order to simplify the application process for applicants, reduce the administrative burden on Commission staff, and align with the Commission's spectrum auction rules and the approach adopted in recent universal service auctions.

216. *Prohibition on Joint Bidding Arrangements; Prohibited Communications Rule.* In view of our decision to prohibit commonly controlled entities from filing more than one application in a single universal service auction, and to align with the Commission's practice in spectrum auctions and with the approach adopted for the Rural Digital Opportunity Fund Phase I auction, we adopt our proposal to prohibit applicants from entering into joint bidding arrangements relating to their participation in a universal service auction. We also adopt our proposals to amend the definition of ''applicant'' and add a definition of ''bids or bidding strategies'' in section 1.21002(a), and add a requirement that each universal service auction applicant certify in its short-form application that it has not entered into any explicit or implicit agreements, arrangements, or understandings of any kind related to the support to be sought through the auction, other than those disclosed in the short-form application.

217. Further, we adopt our other proposed amendments to section 1.21002 to better align with our spectrum auction rules and the decisions adopted herein. We will require an applicant that has a non-controlling interest with respect to more than one application to implement internal controls that preclude any person acting on behalf of the applicant from possessing information about the bids or bidding strategies of more than one applicant or communicating such information with respect to either applicant to another person acting on behalf of and possessing such information regarding another applicant. We will also require an applicant to modify its application for an auction to reflect any changes in ownership or in membership of a consortium or a joint venture or agreements or understandings related to the support being sought. In addition, we adopt our proposed clarification and accuracy amendments to section 1.21002 concerning the procedure for reporting a prohibited communication.

2. Red Light Rule for Universal Service Auctions

218. The Commission adopted rules, including a provision referred to as the ''red light rule,'' that implement the Commission's obligation under the Debt Collection Improvement Act of 1996, which governs the collection of debts owed to the United States, including debts owed to the Commission. Under the red light rule, applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission will not be processed. Applicants seeking to participate in a universal service auction are subject to the Commission's red light rule. Pursuant to the red light rule, unless otherwise expressly provided for, the Commission will withhold action on an application by any entity found to be delinquent in its debt to the Commission.

219. Concluding that robust participation would be critical to the success of the CAF Phase II auction, the Commission provided a limited waiver of the red light rule for any CAF Phase II auction applicant seeking to participate in the auction that was red lighted for debt owed to the Commission at the time it timely filed its short-form application. Because we consider robust participation to be critical to the success of any universal service auction, including a 5G Fund auction, we adopt our proposed amendments to the Commission's rules to codify the relief granted by the CAF Phase II auction limited waiver, to provide an applicant seeking to participate in any universal service auction the opportunity to resolve its red light issue(s) by the close of the application resubmission filing window. Under this approach, a red lighted applicant seeking to participate in a universal service auction will have until the close of the application resubmission filing window for that auction to resolve with its red light issue(s). If the applicant has not resolved its red light issue(s) by the close of the initial application filing window for a given auction, its application would be deemed incomplete, and if the applicant has not resolved its red light issue(s) by the close of the application resubmission window for the auction, Commission staff will immediately cease all processing of the applicant's short-form application, and the applicant will be deemed not qualified to bid in the auction.

220. We provide no further opportunity for an applicant to cure any red light issue beyond what we describe here. Moreover, we emphasize that the amendments we adopt here do not waive or otherwise affect the Commission's right or obligation to collect any debt owed to the Commission by a universal service auction applicant by any means available to the Commission, including set off, referral of debt to the United States Treasury for collection, and/or by red lighting other applications or requests filed by the affected auction applicant.

3. Long-Form Application Requirements

221. After the close of the auction, a public notice will be released declaring the auction closed, identifying the winning bidders, and establishing details and deadlines for next steps. A winning bidder will then be required to submit a post-auction long-form application with more extensive information about its qualifications, funding, and the network it intends to use to meet its 5G Fund public interest obligations and performance requirements, allowing for a further in-depth review of its qualifications prior to authorization of support.

222. We adopt our proposal to apply the Commission's existing Part 1, Subpart AA universal service competitive bidding rules (including the amendments to those rules adopted herein) to 5G Fund auction winning bidders applying for 5G Fund support, as well as our proposed amendments to such rules. We also adopt our proposal to require 5G Fund auction winning bidders to provide the information described below in their post-auction long-form applications to demonstrate their qualifications for support. We conclude the long-form application requirements we adopt here provide for a fair and efficient review process and will best serve the Commission's ability to determine whether the applicants are ultimately eligible for 5G Fund support authorization funding.

223. *Ownership Disclosures.* We will require a winning bidder to disclose in its long-form application ownership information as set forth in section 1.2112(a) of the Commission's rules. Ownership reported by a winning bidder during the short-form application process must be updated in the long-form application if any ownership disclosed in its short-form application has changed.

224. *Agreement Disclosures.* We will require a winning bidder to provide in its long-form application any updated information regarding the agreements, arrangements, or understandings related to its 5G Fund support disclosed in its short-form application. A winning bidder may also be required to disclose in its long-form application the specific terms, conditions, and parties involved in any agreement into which it has entered and the agreement itself.

225. *ETC Designation.* Consistent with our decision to permit a winning bidder

to obtain its ETC designation after the close of the auction, we will require a winning bidder to submit appropriate documentation of its ETC designation in all the areas for which it will receive support in its long-form application, or certify that it will do so within 180 days of the public notice identifying winning bidders. We will also require a winning bidder to demonstrate that it has been designated an ETC covering each of the geographic areas for which it seeks to be authorized for support and that its ETC designation allows it to fully comply with the 5G Fund coverage requirements within the time provided to meet this requirement before 5G Fund support is authorized.

226. *Financial and Technical Capability Certification.* As for the short-form application, we will require a winning bidder to certify in its long-form application that it is financially and technically capable of providing the required coverage and performance levels within the specified timeframe in the geographic areas in which it won support.

227. *Project Description.* We will require a winning bidder to submit for its winning bids a detailed project description that describes the network to be built; identifies the proposed technology; demonstrates that the project is technically feasible; discloses the complete project budget; discusses each specific phase of the project (*e.g.,* network design, construction, deployment, and maintenance); and includes a complete project schedule with timelines, milestones, and costs. As we did for the Rural Digital Opportunity Fund, additional details and guidance concerning the project description will be provided during the pre-auction process.

228. *Spectrum Access.* As for the short-form application, we will require a winning bidder to provide in its long-form application a description of the spectrum access that will be used to meet its obligations in areas for which it is the winning bidder, including whether it currently holds or leases the spectrum, the license applicable to the spectrum to be accessed, the type of service covered by the license, the particular frequency band(s), and the call sign, the total amount of bandwidth (in megahertz) to which the applicant has access under the license applicable to the spectrum to be accessed, and any necessary renewal expectancy. We will also require a winning bidder to certify that the description is accurate, that it has access to spectrum in the area(s) for which it is applying for support, and that it will retain such access for the entire 10-year support term. Consistent with the requirements adopt for 5G Fund auction applicants, we will permit winning bidders to rely only on licensed spectrum to which they have exclusive use (*i.e.,* spectrum licensed by the Commission for which a winning bidder holds a license or lease and that it is not required to share use of with others pursuant to such license or lease).

229. *Certifications as to Program Requirements.* We will require a winning bidder to make various certifications in its long-form application as to program requirements. Specifically, a winning bidder must certify that it has the funds available for all project costs that exceed the amount of support to be received and that it will comply with all program requirements, including the public interest obligations and performance requirements adopted for the 5G Fund. A winning bidder must also certify that it will meet the applicable deadlines and requirements for demonstrating interim and final construction milestones adopted for the 5G Fund, and will comply with the data speed, data latency, data allowance, collocation, voice and data roaming, and reasonably comparable rate performance requirements and public interest obligations adopted for the 5G Fund.

230. *Additional Information.* Similar to what the Commission is afforded under its Part 1, Subpart AA rules for competitive bidding for universal service support with respect to short-form applications, we adopt our proposal to permit the Commission to request in connection with its review of long-form applications such additional information as the Commission may require to determine whether a long-form applicant should be authorized to receive 5G Fund support.

4. Letters of Credit and Bankruptcy Opinion Letters

231. *Letters of Credit.* Consistent with the requirements adopted for Mobility Fund Phase I, CAF Phase II, and for the Rural Digital Opportunity Fund, we adopt our proposal to require a long-form applicant to submit an irrevocable standby letter of credit prior to being authorized for support. As the Commission has previously explained, requiring all long-form applicants to obtain a letter of credit is ''an effective means for accomplishing [the Commission's] role as stewards of the public's funds'' because they ''permit the Commission to immediately reclaim support'' from support recipients that are not meeting their auction obligations. The value of the letter of credit must escalate as more funds are disbursed, until such time as the recipient has met the Interim Milestones, which would permit reductions. A support recipient must maintain an open letter of credit until its certifications and data reporting regarding the final service milestone have been verified by USAC. The letter of credit requirements we adopt for the 5G Fund will establish a mechanism to recover disbursed funding efficiently in the event of non-compliance and fulfill our responsibility to protect program funds, while also reducing the costs for applicants to participate in the 5G Fund. The Commission will draw on the letter of credit in the event that the support recipient does not meet its service milestones or take advantage of the opportunities to cure or pay back the relevant support.

232. We adopt the same letter of credit rules for the 5G Fund as adopted for the Rural Digital Opportunity Fund, inclusive of subsequent guidance concerning the issuance of letters of credit by non-United States banks. Letters of credit must be issued by a bank that is acceptable to the Commission in substantially the same form as set forth in the model letter of credit in Appendix C to this *Report and Order* and that is otherwise acceptable in all respects to the Commission. Letters of credit must be obtained from a domestic or foreign bank meeting the requirements adopted herein. For United States banks, the bank must be insured by the Federal Deposit Insurance Corporation (FDIC) and have a Weiss bank safety rating of B− or higher. Similarly, for non-United States banks, the bank must be among the 100 largest non-United States banks in the world (determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit, determined on a U.S. dollar equivalent basis as of such date) and must meet the Commission's other non-United States bank eligibility requirements. Winning bidders also have the option of obtaining a letter of credit from CoBank or the National Rural Utilities Cooperative Finance Corporation so long as they continue to meet the Commission's requirements.

233. In addition, to ensure uniformity and transparency across our high-cost universal service rules, we adopt our proposed amendments to the Commission's letter of credit rules for other universal service programs to codify the expansion of the definition of branch offices of non-United States banks that are considered eligible to issue letters of credit concerning such programs.

234. Prior to being authorized for support, a 5G Fund long-form applicant must obtain a letter of credit valued at

an amount equal to one year of the total support it will receive. For Year Two of its support term, a 5G Fund support recipient must obtain a letter of credit valued at an amount equal to eighteen months of its total support, and for Year Three, must obtain a letter of credit valued at an amount equal to two years of its total support. For Year Four of its support term, a support recipient must obtain a letter of credit valued at an amount equal to three years of its total support, which it must maintain at that level until the support recipient meets the requirements we adopt herein for reducing the value of letters of credit.

235. Consistent with the rules adopted for the Rural Digital Opportunity Fund, we will allow a 5G Fund support recipient to reduce the value of its letter of credit after it meets—and USAC verifies that a support recipient has completed—a relevant service milestone deadline. Specifically, we require support recipients to submit their service milestone reports to USAC by March 1 of the calendar year following each applicable December 31 milestone deadline. Upon verification by USAC that the support recipient has timely met a service milestone, we will then allow the recipient to reduce the value of its letter of credit to an amount equal to only one year of total support. Once a support recipient reduces the value of its letter of credit to an amount equal to one year of total support, we will allow the recipient to maintain its letter of credit at that level for the remainder of the service milestones, as long as USAC verifies that the support recipient has successfully and timely met each of its remaining service milestone obligations and deadlines.

236. Additionally, consistent with the rules adopted for the Rural Digital Opportunity Fund, we adopt our proposal to create an Optional Year Two Interim Service Milestone to provide an accelerated approach for a 5G Fund support recipient to reduce its letter of credit. Under this approach, a support recipient may reduce the value of its letter of credit to an amount equal to one year of total support if it is providing—and USAC has verified that it is providing—service that meets the performance requirements adopted for the 5G Fund to at least 20% of the total square kilometers associated with the eligible areas for which it is authorized to receive support in a state by December 31 of the second full calendar year following support authorization. This approach allows a support recipient to demonstrate concrete progress in service deployment earlier than its required milestones (*i.e.,* 40% in Year Three), thereby enabling it to reduce its letter of credit earlier than it could otherwise. We reiterate that this 20% service deployment benchmark is optional; if a support recipient does not meet this optional milestone, it will not be able to reduce the value of its letter of credit, but it also will not face any reductions in support.

237. Consistent with the approach adopted for the Rural Digital Opportunity Fund, a 5G Fund support recipient does not need to wait for a specific support year to end to meet a deployment milestone. For example, if a support recipient is able to deploy to 20% of the total square kilometers associated with the eligible areas for which it is authorized to receive support in a state by the end of Year One, it may report its deployment progress and request that USAC complete the verification process in order to allow it to reduce the value of its letter of credit to an amount equal to one year of support. In those instances, we require that a support recipient be able to promptly produce the necessary documentation to minimize the time required for USAC to verify its milestone.

238. As we determined for the Rural Digital Opportunity Fund, we find it necessary to maintain larger letters of credit for support recipients that fail to meet their service deployment milestones by the applicable deadlines. Specifically, if a support recipient misses a required interim service milestone, it will be required to obtain a new letter of credit (or renew its existing letter of credit) that it is valued at an amount equal to its existing letter of credit, plus an additional year of support, up to a maximum of three years of its total support. Likewise, any support recipient that fails to meet two or more service milestones (that is, fails to catch up after missing a service deployment milestone and remains behind on service deployed to the required percentage of square kilometers at the next service milestone deployment deadline) will be required to maintain a letter of credit in the amount of three years of support and will be subject to the additional non-compliance measures we adopt herein. We find that these increased letter of credit requirements will both protect federal funds from potential non-compliance and serve as an incentive to timely deployment. Under the non-compliance measures we adopt herein, a support recipient that fails to meet any required service milestone must file a letter informing the Commission of the missed milestone within 10 business days of the conclusion of the relevant support year for which that milestone was applicable, which will allow the Wireline Competition Bureau to determine whether it is necessary to direct USAC to suspend disbursements to the recipient or engage other mechanisms, including requiring a greater value letter of credit going forward.

239. We will require a 5G Fund support recipient to maintain a letter of credit until it has certified, and USAC has verified, that it is providing service that meets the 5G Fund performance requirements to at least 85% of the total square kilometers associated with the eligible areas for which it is authorized to receive support in a state, and at least 75% of the total square kilometers in each eligible census tract in a state, by the Year Six Final Service Milestone deadline. Consistent with the approach adopted for CAF Phase II and the Rural Digital Opportunity Fund, a 5G Fund support recipient may be subject to other action if it does not comply with the public interest obligations or any other terms and conditions associated with receiving 5G Fund support, including but not limited to the Commission's existing enforcement procedures and penalties, reductions in support amounts, revocation of ETC designations, and suspension or debarment.

240. We find that the letter of credit schedule we adopt for 5G Fund support recipients balances the need to safeguard federal funds with the costs a support recipient many incur to maintain a letter of credit.

241. Consistent with CAF Phase II and the Rural Digital Opportunity Fund, we will only authorize USAC to draw on the letter of credit for the entire amount of the letter of credit if the entity does not repay the Commission for the support associated with its compliance gap. Additionally, as stated in CAF Phase II, ''[i]f the entity fails to pay this support amount, we conclude that the risk that the entity will be unable to continue to serve its customers or may go into bankruptcy is more likely, and thus it is necessary to ensure that the Commission can recover the entire amount of support that it has disbursed.''

242. In instances where the amount of the letter of credit fails to satisfy the amount owed, such deficiency will be a debt due to the Commission and, if not paid, will be collected pursuant to the Commission's rules. Where the draw on the letter of credit results in a greater recovery than is required to satisfy the default, we direct the Wireline Competition Bureau to take appropriate

measures to promptly return any excess funds.

243. As we have previously recognized, we will again allow greater flexibility regarding letter of credit for Tribally owned and controlled winning bidders. Consistent with our approach for CAF Phase II and the Rural Digital Opportunity Fund, if any Tribally owned and controlled 5G Fund winning bidder is unable to obtain a letter of credit, it may file a petition for a waiver of the letter of credit requirement. Consistent with our precedent, a petitioner must show, with evidence acceptable to the Commission, that the Tribally owned and controlled winning bidder is unable to obtain a letter of credit.

244. As for the Rural Digital Opportunity Fund, we provide a letter of credit trajectory for 5G Fund support recipients that recognizes that once a recipient has demonstrated significant and verifiable progress toward meeting its service deployment obligations, it should have the opportunity to avoid some of the more costly letter of credit requirements. For support recipients that elect to deploy service quickly and meet the Optional Year Two Service Milestone early in their support term, and continue to meet all of their service milestones, their letters of credit may never exceed 18 months' support at any time during their support term. At the same time, the more gradual increase in the letter of credit requirements we adopt for support recipients that do not chose to take advantage of the Optional Year Two Service Milestone will nonetheless reduce potential financial strain on support recipients, and still allow those support recipients to maintain a smaller letter of credit after they timely meet their Year Three Interim Service Milestone.

245. Only two parties commented on our letter of credit proposals. RWA supports our proposal to adopt an early service milestone that would allow a support recipient to reduce the value of its letter of credit if it offers service that meets the established 5G performance requirements in at least 20% of the total square kilometers in its winning bid areas in a state by the end of Year Two. RWA submits that the letter of credit should be further reduced by another 20% at the end of Year Four, provided the recipient has met its Year Four 40% benchmark coverage, and by another 20% at the end of Year Six, provided the recipient has met its 60% coverage benchmark.

246. We decline to adopt the additional letter of credit reductions at the end of Year Four and Year Six advanced by RWA. We note that RWA's proposal is similar to proposals we received in the Rural Digital Opportunity Fund proceeding which we declined to adopt after determining that such proposals fail to sufficiently account for the Commission's interests in ensuring that universal service dollars are being used efficiently and for their intended purposes, as well as protecting against the potential for those carriers that may fail to fulfill their broadband deployment obligations. We conclude that the rules we adopt permitting 5G Fund support recipients to reduce their letters of credit after meeting the Optional Year Two Interim Milestone or the Year Three Interim Milestone—which are modeled on those adopted for the Rural Digital Opportunity Fund, and which took into account lessons learned from CAF Phase II and comments received in the Rural Digital Opportunity Fund proceeding—provide sufficient flexibility and will help reduce the costs of participating in the 5G Fund.

247. The National Association of Surety Bond Producers (NASBP) supports broadening the range of options for performance security to include a surety bond because it asserts that doing so would help rural internet service providers (ISPs) who are having difficulty securing sufficient collateral to obtain a letter of credit, and creates greater competition and participation, which may reduce costs while still protecting the government's financial interest. NASBP submits that a performance bond assures that carrier awarded support is qualified to perform its obligations under the award, and serves as a ''deep pocket'' in the event the carrier fails. It states that by comparison, a letter of credit is secured by a specific liquid asset(s), has a specific expiration date, and does not provide the same financial guarantee to the government. RWA supports NASBP's request to allow surety bonds as an option for performance security, stating that they are more economical than letters of credit, and that allowing their use would enable support recipients to make greater investment in their networks rather than tying up money on securing letters of credit.

248. We decline to allow the use of a surety bond as security for a 5G Fund participant's failure to meet its public interest obligations and/or and performance requirements. We note that these commenters' requests are similar to those we received in the Rural Digital Opportunity Fund proceeding, where we noted that letters of credit, unlike performance bonds, allow for an immediate reclamation of support in the event the recipient is not properly using those funds, and that performance bonds would not provide the same level of protection and would require the involvement of a third party to adjudicate any disputes that arise, which would complicate our process and unnecessarily limit the Commission's authority to allocate funds. A letter of credit, unlike a performance bond, has the benefit of the ''independence principle'' in that the letter of credit is independent of the underlying transaction. The bank's obligation to pay under the letter of credit does not depend on the auction winner's default but on the presentation of documents evidencing the default. As in the Rural Digital Opportunity Fund, we conclude that being independent in this way assures that USAC can collect monies due to it promptly without engaging in disputes with the winning bidder, the performance bond guarantor or the winning bidder's trustee in bankruptcy over whether the funds should be paid or even whether the funds are available to the 5G Fund due to competing claims of creditors.

249. As we noted in the *Rural Digital Opportunity Fund Report and Order,* while we appreciate that there are costs associated with the letter of credit, we find that the letter of credit requirement will best protect the 5G Fund and continue to believe that bidders can incorporate these costs when determining their bidding strategies prior to an auction. And as we have previously stated, letters of credit have ''the added advantage of minimizing the possibility that the support becomes property of a recipient's bankruptcy estate for an extended period of time, thereby preventing the funds from being used promptly to accomplish our goals.'' We therefore conclude that the letter of credit requirements we adopt here, which establish a mechanism to easily recover disbursed funding in the event of non-compliance, fulfill our responsibility to protect program funds while also reducing the costs of participating in the 5G Fund.

250. *Opinion Letter.* Consistent with our requirements for past universal service fund auctions, we will require a winning bidder to also submit with its letter(s) of credit a bankruptcy opinion letter from outside legal counsel. The opinion letter must clearly state, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under the Bankruptcy Code, the bankruptcy court would not treat the letter of credit or proceeds of the letter of credit as property of the winning bidder's bankruptcy estate, or the bankruptcy estate of any other winning bidder-related entity requesting

issuance of the letter of credit under section 541 of the Bankruptcy Code.

5. Defaults

251. *Forfeiture in the Event of an Auction Default.* In the *5G Fund NPRM,* we made proposals for establishing the framework pursuant to which a 5G Fund winning bidder would be subject to a forfeiture under section 503 of the Act if it defaults on its winning bid(s) before it is authorized to begin receiving support. We received no comments on any aspect of our 5G Fund auction default proposals and adopt them as proposed, with one modification described below.

252. A winning bidder will be considered in default and will be subject to forfeiture if it is not authorized to receive 5G Fund support (*e.g.,* it fails to timely file or prosecute a long-form application, fails to meet any document submission deadline, has its long-form application dismissed or denied, is found ineligible or unqualified to receive support, or otherwise defaults on its bid or is disqualified for any reason prior to the authorization of 5G Fund support). Consistent with the approach taken in CAF Phase II and the Rural Digital Opportunity Fund, a winning bidder will be subject to a $3,000 base forfeiture for each separate violation of the Commission's rules. We define a violation as any form of default with respect to each geographic unit subject to a bid, in order to ensure that each violation has a relationship to the area affected by the auction default. In other words, there shall be separate violations for each geographic unit assigned in a bid. Similar to the approach taken in CAF Phase II and the Rural Digital Opportunity Fund, we will limit the total base forfeiture in order to ensure that the amount of the base forfeiture is not disproportionate or unduly punitive. Notwithstanding the limitation on the total base forfeiture, in instances where the facts of an auction default in a 5G Fund auction indicate that a winning bidder engaged in anticompetitive behavior, the total forfeiture that could be owed by winning bidder in such circumstances may be adjusted up to the amount associated with preservation of service in the applicable area.

253. We conclude that it is reasonable to subject all bidders to the same $3,000 base forfeiture per violation subject to adjustment based on the criteria set forth in our forfeiture guidelines. To determine the final forfeiture amount, the Commission's Enforcement Bureau will consider the ''nature, circumstances, extent and gravity of the violations and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.''

254. As the Commission has previously stated, auction defaults undermine the stability and predictability of the auction process and impose costs on the Commission and higher support costs for the Universal Service Fund. They also hinder the disbursement of funds that could have gone to another carrier, and thereby further delay the deployment of broadband service offerings in unserved areas. The 5G Fund represents our biggest undertaking for any mobile universal service program thus far, and will award the largest amount of support for mobile service deployments to date. The areas eligible for 5G Fund support will be those that have been determined to lack unsubsidized 4G LTE and 5G broadband service by at least one carrier. Therefore, in keeping with our goal of facilitating the deployment of 5G mobile services to as many of these areas as possible with the limited funds that are available, and as responsible stewards of 5G Fund support, it is imperative that we ensure that there are appropriate safeguards in place to deter auction defaults by 5G Fund winning bidders to the greatest extent possible.

255. In adopting procedures for competitive bidding in advance of an auction, the Commission makes a determination through notice and comment regarding how it will calculate payments or forfeitures for an auction default, taking into account the nature of the auction, lessons learned from past auctions, and other relevant factors. We note that in our typical spectrum auctions, where the *highest bid* is the winning bid, basing the amount owed for an auction default on a percentage of the defaulted winning bid, which will increase with each round of bidding as bids increase, serves as a sufficient deterrent to auction defaults. However, in an auction where the *lowest bid* is the winning bid, basing the amount owed for an auction default on a percentage of the winning bid, which will decrease with each round of bidding as bids decrease, could increase the risk that an auction default will not sufficiently deter insincere bidding or anti-competitive behavior. We find this risk to be especially concerning in the context of a 5G Fund auction, where the stakes for closing the mobile digital divide have never been higher.

256. In view of this, we modify our proposal to limit the total base forfeiture to a percentage of a winning bidder's total winning bid amount for the support term, and will instead limit the total base forfeiture to 15% of the support at the opening price for an area for the entire 10-year support term for each separate violation. The opening price multiplied by the number of adjusted square kilometers in an area represents the highest support amount that a winning bidder could receive for that area in the auction for the 10-year support term. Given the nature of 5G Fund auctions, we find that basing the limit of the forfeiture on the support at the opening price for an area, rather than the winning bid price for an area, will better balance our interest in ensuring that the amount of any forfeiture assessed for a 5G Fund auction default is sufficient to deter insincere bidding while at the same time having a relationship to the area affected by the auction default, and is thus a better approach for achieving our desired effect. We recognize this is a departure from the approach taken in our recent universal service auctions but find it appropriate under these circumstances after taking into account the nature of auctions for 5G Fund support and what is at stake to meet our goals for the 5G Fund.

257. As we did for CAF Phase II and the Rural Digital Opportunity Fund, we conclude that the rules we adopt governing forfeitures for auction defaults and requiring auction applicants to acknowledge in their short-form applications that they will be subject to a forfeiture in the event of an auction default will impress upon entities that apply to participate in a 5G Fund auction the importance of being prepared to meet the requirements adopted for the post-auction support authorization process, and highlight the need to conduct a due diligence review to ensure that they are qualified to both participate in the 5G Fund competitive bidding process and to meet the terms and conditions for being authorized to receive support if they become winning bidders.

258. *Dismissal of Long-Form Application for Failure to Prosecute.* Section 1.21004(a) of the Commission's rules requires a winning bidder in any universal service auction to submit a timely and sufficient application for universal service support associated with its winning bids and provides that a winning bidder that fails to file an application for support or that for any other reason is not authorized to receive support has defaulted on its winning bids. However, this rule does not discuss the timing within which a winning bidder with a pending support application must respond to

Commission staff requests for additional information regarding its application and become authorized for support before that winning bidder will be considered to have failed to prosecute its application. The rule also does not specify the timing or circumstances pursuant to which the Commission can take action to dismiss an application for the winning bidder's failure to prosecute and deem the winning bidder to be in default.

259. To allow the Commission to more efficiently and effectively process pending applications for universal service support, and taking into account lessons learned from the Mobility Fund Phase I and CAF Phase II post-auction application processes such as significant delays or failures by applicants in prosecuting their applications, we adopt our proposal to amend section 1.21004 to add a new rule that permits the Commission to dismiss any universal service auction winning bidder's long-form application with prejudice and deem the winning bidder to be in default if the winning bidder fails to prosecute its long-form application, fails to respond substantially within a specified time period to official correspondence or requests for additional information, or otherwise fails to comply with requirements for becoming authorized to receive universal service support. We received no comments on our proposal and adopt the rule as proposed in the *5G Fund NPRM.* The new rule will apply to winning bidders in any 5G Fund auction and all future universal service auctions. We conclude that this approach will encourage winning bidders to timely and diligently prosecute their long-form applications and take the steps necessary to become authorized to receive support, and will allow the Commission to efficiently dispose of applications for a winning bidder's failure to prosecute its application or otherwise comply with the requirements for becoming authorized to receive support and in turn deem the winning bidder to be in default.

IV. Procedural Matters

A. Paperwork Reduction Act Analysis

260. The *5G Fund Report and Order* contains new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA) Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements adopted in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, it previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

B. Congressional Review Act

261. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

C. Final Regulatory Flexibility Analysis

262. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *5G Fund NPRM.* The Commission sought written public comment on the proposals in the 5G Fund Notice of Proposed Rulemaking, including comment on the IRFA. The Commission did not receive any comments in response to this IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

263. *Need for, and Objectives of, the Report and Order.* Our nation is at the dawn of the 5G era of wireless connectivity. Recently, nationwide mobile wireless providers have deployed 5G networks covering more than 200 million Americans. And today the Commission ensures that all Americans benefit from the country's 5G future, no matter where they live. The Commission acts on its proposal to replace the Mobility Fund Phase II with the 5G Fund for Rural America and make certain that the Commission's limited Universal Service Fund dollars are directed to support the deployment of state-of-the art wireless networks that are more responsive, more secure, and faster than today's 4G LTE networks. Moreover, by establishing the 5G Fund, the Commission further secures the nation's leadership in 5G, which will promote technological innovation in the United States, enhance economic prosperity and protect national security. Closing the digital divide in rural areas of the country will provide all Americans with the opportunity to enjoy the benefits of the most modern, advanced communications technologies offered in the wireless telecommunications marketplace no matter where they live, work, or travel.

264. Many urban and suburban areas of the nation are already benefiting from the evolution to 5G networks. Nationwide providers have begun deploying 5G service in populated parts of the country, with even more widely-available 5G service expected in the near future. For example, T-Mobile has made enforceable commitments to the Commission as part of its acquisition of Sprint to deploy 5G service covering 85% of the population in rural areas and 97% of all Americans within three years, with coverage rising to 90% of the population in rural areas and 99% nationwide within six years. Moreover, it committed to deploy 5G service meeting minimum download speed performance benchmarks of at least 50 Mbps available to 90% of the rural population, with two-thirds of rural Americans able to receive download speeds of at least 100 Mbps. Late last year, T-Mobile announced that it switched on its 5G network across the nation using low-band spectrum.

265. 5G networks will improve the lives of Americans living and working in rural areas by providing much needed access to telehealth, telework, remote learning opportunities, precision agriculture, and other services and applications. The Commission anticipates that the deployment of 5G-capable networks in rural areas will drive job creation and have a powerful impact on the nation's economy. The framework for the 5G Fund that the Commission adopts today will bring technological innovation and economic benefits to the parts of the country that need them the most. The Commission embarks on this new 5G era recognizing that the next decade and beyond hold significant promise for rural America, and envisions that the 5G Fund will be an important catalyst to propel the nationwide deployment of networks capable of closing the digital divide, once and for all.

266. The 5G Fund for Rural America will use multi-round reverse auctions to distribute up to $9 billion, in two phases, bringing voice and 5G broadband service to those rural areas of the country that, absent subsidies, would be unlikely to see the deployment of 5G-capable networks. Based on lessons learned from the Mobility Fund, and overwhelming record support, the Commission adopts its proposal to determine which areas will be eligible for 5G Fund support through improved mobile broadband coverage data that will be gathered through the Commission's Digital Opportunity Data Collection

proceeding. Although this approach will not be the fastest possible path to the Phase I auction, it will allow us to identify with greater precision those areas of the country where support is most needed and will be spent most efficiently.

267. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* There were no comments filed that specifically addressed the rules and policies proposed in the 5G Fund Notice of Proposed Rulemaking.

268. *Response to* Comments *by the Chief Counsel for Advocacy of the Small Business Administration.* Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

269. Description and Estimate of the Number of Small Entities to which the Rules Would Apply. 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 rules adopted in the 5G Fund Report and Order. 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 SBA.

270. The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses.

271. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

272. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, the Commission estimates that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

273. Small entities potentially affected by the rules adopted herein include Wireless Telecommunications Carriers (except Satellite), internet Service Providers (Broadband), and Satellite Telecommunications.

274. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* In the *5G Fund Report and Order,* the Commission adopts public interest obligations, performance requirements, and reporting requirements that competitive ETCs receiving legacy high-cost support for mobile wireless service must meet in order to continue receiving legacy high-cost support, to ensure that the most advanced mobile services are available in all areas where a carrier is currently supported by legacy high-cost support. The Commission also establishes the framework for the 5G Fund by adopting rules that will apply in a 5G Fund auction and to recipients of 5G Fund support.

275. The Commission adopts a public interest obligation for both competitive ETCs receiving legacy high-cost support for mobile wireless service and 5G Fund support recipients to provide mobile voice and 5G broadband service in their subsidized areas, and to satisfy distinct, measured performance requirements as a condition of receiving support. Recipients of both legacy high-cost support and 5G Fund support will have minimum baseline performance requirements for data speed, data latency, and data allowance. Like all high-cost ETCs, both legacy high-cost support recipients and 5G Fund support recipients will be required to offer voice and broadband services meeting the relevant performance requirements at rates that are reasonably comparable to what they offer in urban areas. These performance requirements, along with public interest obligations the Commission adopts for data allowances, reasonably comparable rates, collocation, and voice and data roaming, will ensure that rural areas receive service comparable to high-speed, mobile broadband available in urban areas.

276. The Commission adopts a 10-year support term for 5G Fund support recipients, along with three interim service deployment milestones and a final service deployment milestone at which a support recipient must demonstrate that it provides 5G service that meets the performance requirements the Commission adopts in the *5G Fund Report and Order.* The Commission adopts a requirement that legacy high-cost support recipients use an increasing percentage of their support toward deploying 5G service in their subsidized service areas. Because the Commission recognizes that the amount received by each competitive ETC receiving legacy high-cost support for mobile wireless service varies considerably and bears no direct relation to the size of its subsidized service area or to the expected cost of deploying 5G broadband service, the Commission does not adopt its proposal to require legacy high-cost support recipients to meet the uniform 5G service deployment milestone coverage requirements proposed in the *5G Fund NPRM* that would require deployment to a specified percentage of each legacy support recipient's subsidized service area. Instead, the Commission adopts a general requirement for legacy high-cost support recipients to meet deployment coverage requirements, and direct the Office of Economics and Analytics and the Wireline Competition Bureau to develop and adopt, after notice and comment, specific 5G broadband service deployment coverage requirements and service deployment milestone deadlines for a legacy support recipient that take

into consideration the amount of legacy support the carrier receives.

277. The Commission adopts certain eligibility requirements for entities that are interested in participating in a 5G Fund auction, as well as a two-step application process. The Commission will require applicants to submit a pre-auction short-form application that includes information about their ownership, any agreements relating to the support to be sought through the auction, technical and financial qualifications, current status as an ETC, access to spectrum, and an acknowledgement of their responsibility to conduct due diligence. Commission staff will review the applications to determine if applicants are qualified to bid in the auction.

278. After the auction ends, winning bidders will be required to submit a post-bidding long-form application in which they will submit ownership, agreement, and spectrum access information, as well as information about their qualifications, funding, and the networks they intend to use to meet their obligations. During the long-form application review process, the Commission will also require winning bidders to obtain and submit documentation of an ETC designation from the state or the Commission, as appropriate, that covers each of the geographic areas in which they won support within 180 days after the release of the public notice announcing winning bidders. Prior to being authorized to receive support, winning bidders must submit an irrevocable stand-by letter of credit that meets the Commission's requirements from an eligible bank along with a bankruptcy opinion letter from outside legal counsel. The letter of credit must be valued at an amount equal to one year of the total support it will receive. Commission staff will review the applications and submitted documentation to determine whether long-form applicants are qualified to be authorized to receive support. The Commission will subject winning bidders or long-form applicants that default during the long-form application process to forfeiture.

279. A 5G Fund support recipient will be required to submit a modified, renewed, or new letter of credit annually in order to receive its next year's support. The value of the letter of credit must cover the support that has been disbursed and that will be disbursed in the coming year, subject to modest adjustments as support recipients meet—and the Universal Service Administrative Company (USAC) has verified they have timely completed—their required service deployment milestones.

280. The Commission also adopts specific reporting requirements to monitor the progress of both competitive ETCs receiving legacy high-cost support for mobile wireless service and 5G Fund support recipients in meeting the public interest obligations and distinct performance requirements the Commission adopts. The Commission will require each legacy high-cost support recipient to file an initial report of its current service offerings that includes accounting information on the support a carrier has received and how legacy support is being used, along with certifications related to its current service offerings and use of legacy high-cost support. The Commission will also require each legacy high-cost support recipient to file annual reports that include updated information about the carrier's service offerings for the previous calendar year in its subsidized service areas, and how legacy support is being used, along with certifications that the support recipient is in compliance with its public interest obligations and performance requirements. The Commission will require a 5G Fund support recipient to file service milestone reports demonstrating that it has met its interim and final milestones for deployment of 5G service that meets the 5G Fund performance requirements the Commission adopts. The Commission will also require a 5G Fund support recipient to file annual reports covering the preceding calendar year along with certifications that the support recipient is in compliance with each of the 5G Fund public interest obligations, performance requirements, and any other terms and conditions associated with receipt of 5G Fund support. As for other high-cost support recipients, both legacy high-cost support recipients and 5G Fund support recipients will be subject to record retention and audit requirements, and to support reductions and/or full recovery for untimely filings.

281. The Commission will subject a 5G Fund support recipient that fails to meet its public interest obligations and/or and performance requirements or other terms and conditions of receiving 5G Fund support to a reduction, or loss, in support, in accordance with the framework for support reductions that is applicable to all high-cost ETCs that are required to meet adopted service deployment milestones and to the process the Commission adopts in the *5G Fund Report and Order* for drawing on letters of credit. Additionally, if a 5G Fund support recipient fails to meet any interim or the final service deployment milestone, it must notify the Wireline Competition Bureau and USAC within 10 business days and provide information explaining its non-compliance. Upon receipt of the notification, the Commission will find the recipient to be default and the recipient will be subject to the non-compliance measures adopted in the *5G Fund Report and Order* until it is able to come into full compliance. If a support recipient has not deployed service to at least 20% of the total square kilometers associated with the eligible areas for which it is authorized to receive support in a state by the Year Three Interim Service Milestone it must notify the Wireline Competition Bureau and USAC of its non-compliance, and upon receipt of this notification, the recipient will be deemed in default and subject to full support recovery, rather than being given additional time to come into compliance.

282. The Commission will require a competitive ETC receiving legacy high-cost support for mobile wireless service that fails to comply with its public interest obligations or performance requirements to notify the Wireline Competition Bureau and USAC within 10 business days of its non-compliance. Upon receipt of the notification, the Commission will find the recipient to be in default, and the recipient will no longer be eligible to receive such support, will receive no further support disbursements, and may be subject to up to full recovery of all such support disbursed since effective date of the public interest obligations and performance requirement rules adopted in the *5G Fund Report and Order.* In addition to basing a finding of default on a legacy high-cost support recipient's notification of its non-compliance, the Wireline Competition Bureau or USAC may in the absence of any such notification deem the support recipient in to be in default and the same consequences if the they become aware of a recipient's non-compliance.

283. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its 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.'' The Commission has considered the economic impact on small entities in reaching its final conclusions and taking action in this proceeding. The rules that the Commission adopts in the *5G Fund Report and Order* will provide greater certainty and flexibility for all carriers, including small entities.

284. The Commission concludes that the minimum geographic area for bidding in a 5G Fund auction will be no larger than a census tract and no smaller than a census block group, as identified by the U.S. Census Bureau. Consistent with its approach in recent universal service auctions, the Commission will determine the exact geographic area for grouping eligible areas when it finalizes the auction design during the pre-auction process and have better data for determining eligible areas. The Commission finds that this approach is preferable because it ensures that a wide variety of interested bidders, including small entities, have the flexibility to design a network that matches their business model and that allows service providers to achieve their performance benchmarks and public interest obligations efficiently. We decline to adopt census blocks as the minimum geographic unit in a 5G Fund auction, as some commenters suggest, because doing so would significantly increase the complexity of the bidding process both for bidders and the bidding system and minimize the potential for broad coverage by winning bidders, and using census blocks as the minimum geographic area could create more challenges for providers in putting together a bidding strategy that aligns with their intended network construction or expansion. No commenter suggests that the Commission should adopt a geographic area larger than a census tract.

285. We are reserving up to $680 million of the $8 billion 5G Fund Phase I budget to support networks serving eligible areas in Tribal lands—which is double the amount that the Commission had estimated it would reserve to support Tribal lands from the Mobility Fund Phase II budget—to provide an incentive for service providers, including small entities, to bid on and serve Tribal lands.

286. Consistent with the approach taken in recent universal service auctions, the Commission adopts a two-step application process for participating in the 5G Fund consisting of a pre-auction short-form application and a post-auction long-form application. Entities interested in bidding to submit a short-form application in order to be deemed qualified to bid in the auction, which the Commission has found to be an appropriate but not burdensome screen to ensure participation by qualified carriers, including small entities. Only if an applicant becomes a winning bidder will it be required to submit a long-form application, which requires a more detailed information about, and a more thorough review of, an applicant's qualifications to be authorized to receive 5G Fund support.

287. We provide two pathways for an applicant to demonstrate its technical and financial qualifications to participate in a 5G Fund auction based on its experience providing mobile wireless voice and/or broadband service. Entities, including small entities, that have been providing mobile wireless voice and/or broadband service for at least three years will be required to submit information concerning the number of years they have been providing service and their FCC Form 477 filings and/or Digital Opportunity Data Collection filings, as applicable, for the past three years, but will not be required to submit any other technical or financial information, while entities that have been providing such service(s) for fewer than three years (or not at all) will need to submit information concerning their operational history, a preliminary project description, and an acceptable letter of interest from an eligible bank. We expect that by allowing experienced entities to submit less information at the short-form application stage to demonstrate their technical and financial qualifications, more entities, including small entities, will be able to participate in the auction.

288. We will also permit all long-form applicants, including small entities, to obtain their ETC designations after becoming winning bidders so that they do not have to go through the ETC designation process prior to finding out if they won support through the auction. We decline to adopt the alternatives to letters of credit that were suggested by commenters because letters of credit better achieve the Commission's objective of protecting the public's funds. But recognizing that some participants in the Commission's past universal auctions, including small entities, have expressed concerns about the costs of obtaining and maintaining a letter of credit, the Commission adopts rules allowing support recipients to cover less support with their letters of credit and further reduce the value of their letters of credit once it has been verified that they have met certain service deployment milestones. Additionally, consistent with the approach taken in recent universal service auctions, the Commission will allow greater flexibility regarding letters of credit for Tribally owned and controlled winning bidders by permitting any Tribally owned and controlled 5G Fund winning bidder that is unable to obtain a letter of credit to petition for a waiver of the letter of credit requirement.

289. To streamline the filing of annual reports by both mobile legacy high-cost support recipients and 5G Fund support recipients regarding their efforts to provide 5G services throughout their subsidized service areas that meet the public interest obligations and distinct performance requirements adopted in the *5G Fund Report and Order,* the Commission will require these reports to be filed with USAC via a web portal. Moreover, to reduce the burden on mobile legacy high-cost support recipients, these annual report filings will replace a mobile legacy high-cost support recipient's existing obligation to annually file FCC Form 481 with USAC.

290. The Commission also provides a competitive ETC receiving legacy high-cost support for a particular subsidized service area with the flexibility to use such support for the provision, maintenance, and upgrading of facilities and services within any of the designated service areas for which it receives legacy high-cost support for mobile services, which the Commission concludes could allow for more efficient decisions about use of legacy support while ''still satisfying the statutory obligation to use such support for its intended purposes.''

291. The additional public interest obligations, performance requirements, and reporting requirements adopted for current mobile legacy high-cost support recipients in order to continue receiving high-cost support, as well as the public interest obligations and performance requirements, interim and final construction milestones, reporting obligations, and non-compliance measures adopted for the 5G Fund, balance the Commission's responsibility to monitor the use of universal service funds with minimizing administrative and compliance costs and burdens on mobile legacy high-cost support recipients and 5G Fund support recipients, including small entities. The reporting requirements the Commission adopts for all mobile legacy high-cost support and for all 5G Fund support recipients are tailored to ensuring that support is used for its intended purpose and so that the Commission can monitor the progress of recipients in meeting

their public interest obligations and distinct performance requirements. The Commission finds that the importance of monitoring the use of the public's funds outweighs the burden of filing the required information on all entities, including small entities, particularly because much of the information that the Commission requires they report is information it expects they will already be collecting to ensure they comply with the terms and conditions of receiving support.

V. Ordering Clauses

292. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 4(i), 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 214, 254, 303(r), and 403, this Report and Order *is adopted.*

293. *It is further ordered* that the rules and requirements adopted herein *will become effective* thirty (30) days after publication in the **Federal Register**, with the exception of §§ 1.21001(b)(1), 1.21001(b)(2), 1.21001(b)(3), 1.21001(b)(4), 1.21001(b)(5), 1.21001(b)(6), 1.21001(b)(7), 1.21001(b)(8), 1.21001(b)(9), 1.21001(b)(10), 1.21001(b)(11), 1.21001(b)(12), 1.21001(b)(13), 1.21001(e), 1.21002(e), 1.21002(f), 54.313(n), 54.322(b), 54.322(c)(4), 54.322(g), 54.322(h), 54.322(i), 54.322(j), 54.1014(a), 54.1014(b)(2), 54.1016(b), 54.1018(a), 54.1018(b), 54.1018(c), 54.1019(a)(1), 54.1019(a)(2), 54.1019(a)(3), 54.1019(a)(4), 54.1020(a), 54.1020(b), 54.1020(c)(1), and 54.1020(c)(2), which contain new or modified information collection requirements that require review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The Commission will announce the effective date of those information collections in a document published in the **Federal Register** after the Commission receives OMB approval, and will cause §§ 1.21001(b)(1), 1.21001(b)(2), 1.21001(b)(3), 1.21001(b)(4), 1.21001(b)(5), 1.21001(b)(6), 1.21001(b)(7), 1.21001(b)(8), 1.21001(b)(9), 1.21001(b)(10), 1.21001(b)(11), 1.21001(b)(12), 1.21001(b)(13), 1.21001(e), 1.21002(e), 1.21002(f), 54.313(n), 54.322(b), 54.322(c)(4), 54.322(g), 54.322(h), 54.322(i), 54.322(j), 54.1014(a), 54.1014(b)(2), 54.1016(b), 54.1018(a), 54.1018(b), 54.1018(c), 54.1019(a)(1), 54.1019(a)(2), 54.1019(a)(3), 54.1019(a)(4), 54.1020(a), 54.1020(b), 54.1020(c)(1), and 54.1020(c)(2) to be revised accordingly.

294. *It is further ordered* that the Petition to Correct Mobility Fund Phase II Map of Presumptively Eligible and Ineligible Areas and to Extend Challenge Process Filing Window filed by Missouri RSA 5 Partnership d/b/a Chariton Valley Wireless Services in WC Docket No. 10–90 and WT Docket No. 10–208 on November 26, 2018, *is dismissed as moot* as indicated herein.

295. *It is further ordered* that the Petition for Waiver to Accept Certain Mobility Fund Challenge Records filed by Jeanne Dietsch in WC Docket No. 10–90 and WT Docket No. 10–208 on November 27, 2018, *is dismissed as moot* as indicated herein.

296. *It is further ordered* that the Request for Limited Waiver of Mobility Fund Phase II Designated Handset Requirements filed by the Vermont Department of Public Service in WC Docket No. 10–90 and WT Docket No. 10–208 on June 28, 2019, *is dismissed as moot* as indicated herein.

List of Subjects

47 CFR Part 1

Administrative practice and procedures, Reporting and recordkeeping requirements, Telecommunications.

47 CFR Part 54

Communications common carriers, internet, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1 and 54 to read as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461, unless otherwise noted.

■ 2. Amend § 1.1902 by revising paragraph (f) to read as follows:

§ 1.1902 Exceptions.

* * * * *

(f) Nothing in this subpart shall supersede or invalidate other Commission rules, such as the part 1 general competitive bidding rules (47 CFR part 1, subparts Q and AA) or the service specific competitive bidding rules, as may be amended, regarding the Commission's rights, including but not limited to the Commission's right to cancel a license or authorization, obtain judgment, or collect interest, penalties, and administrative costs.

■ 3. Amend § 1.21001 by:

■ a. Revising paragraph (b);

■ b. Redesignating paragraphs (c) and (d) as paragraphs (e) and (f), respectively;

■ c. Adding new paragraphs (c) and (d); and

■ d. Revising newly redesignated paragraph (f).

The revisions and additions read as follows:

§ 1.21001 Participation in competitive bidding for support.

* * * * *

(b) *Application contents.* Unless otherwise established by public notice, an applicant to participate in competitive bidding pursuant to this subpart shall provide the following information in an acceptable form:

(1) The identity of the applicant, *i.e.,* the party that seeks support, and the ownership information as set forth in § 1.2112(a);

(2) The identities of up to three individuals authorized to make or withdraw a bid on behalf of the applicant. No person may serve as an authorized bidder for more than one auction applicant;

(3) The identities of all real parties in interest to, and a brief description of, any agreements relating to the participation of the applicant in the competitive bidding;

(4) Certification that the applicant has provided in its application a brief description of, and identified each party to, any partnerships, joint ventures, consortia or other agreements, arrangements or understandings of any kind relating to the applicant's participation in the competitive bidding and the support being sought, including any agreements that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific areas on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls as defined in paragraph (d)(1) of this section or is controlled by the applicant, is a party;

(5) Certification that the applicant (or any party that controls as defined in paragraph (d)(1) of this section or is controlled by the applicant) has not entered and will not enter into any partnerships, joint ventures, consortia or other agreements, arrangements, or understandings of any kind relating to the support to be sought that address or communicate, directly or indirectly, bidding at auction (including specific

prices to be bid) or bidding strategies (including the specific areas on which to bid or not to bid for support), or post-auction market structure with any other applicant (or any party that controls or is controlled by another applicant);

(6) Certification that if the applicant has ownership or other interest disclosed pursuant to paragraph (b)(1) of this section with respect to more than one application in a given auction, it will implement internal controls that preclude any individual acting on behalf of the applicant as defined in § 1.21002(a) from possessing information about the bids or bidding strategies (including post-auction market structure), of more than one party submitting an application for the auction or communicating such information with respect to a party submitting an application for the auction to anyone possessing such information regarding another party submitting an application for the auction;

(7) Certification that the applicant has sole responsibility for investigating and evaluating all technical and marketplace factors that may have a bearing on the level of support it submits as a bid, and that if the applicant wins support, it will be able to build and operate facilities in accordance with the obligations applicable to the type of support it wins and the Commission's rules generally;

(8) Certification that the applicant and all applicable parties have complied with and will continue to comply with § 1.21002;

(9) Certification that the applicant is in compliance with all statutory and regulatory requirements for receiving the universal service support that the applicant seeks, or, if expressly allowed by the rules specific to a high-cost support mechanism, a certification that the applicant acknowledges that it must be in compliance with such requirements before being authorized to receive support;

(10) Certification that the applicant will be subject to a default payment or a forfeiture in the event of an auction default and that the applicant will make any payment that may be required pursuant to § 1.21004;

(11) Certification that the applicant is not delinquent on any debt owed to the Commission and that it is not delinquent on any non-tax debt owed to any Federal agency as of the deadline for submitting applications to participate in competitive bidding pursuant to this subpart, or that it will cure any such delinquency prior to the end of the application resubmission period established by public notice.

(12) Certification that the individual submitting the application is authorized to do so on behalf of the applicant; and

(13) Such additional information as may be required.

(c) *Limit on filing applications.* In any auction, no individual or entity may file more than one application to participate in competitive bidding or have a controlling interest (as defined in paragraph (d)(1) of this section) in more than one application to participate in competitive bidding. In the case of a consortium, each member of the consortium shall be considered to have a controlling interest in the consortium. In the event that applications for an auction are filed by applicants with overlapping controlling interests, pursuant to paragraph (f)(3) of this section, both applications will be deemed incomplete and only one such applicant may be deemed qualified to bid.

(d) *Definitions.* For purposes of the certifications required under paragraph (b) of this section and the limit on filing applications in paragraph (c) of this section:

(1) The term *controlling interest* includes individuals or entities with positive or negative *de jure* or *de facto* control of the applicant. *De jure* control includes holding 50 percent or more of the voting stock of a corporation or holding a general partnership interest in a partnership. Ownership interests that are held indirectly by any party through one or more intervening corporations may be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain meets or exceeds 50 percent or represents actual control, it may be treated as if it were a 100 percent interest. *De facto* control is determined on a case-by-case basis. Examples of *de facto* control include constituting or appointing 50 percent or more of the board of directors or management committee; having authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the support recipient; or playing an integral role in management decisions. In the case of a consortium, each member of the consortium shall be considered to have a controlling interest in the consortium.

(2) The term *consortium* means an entity formed to apply as a single applicant to bid at auction pursuant to an agreement by two or more separate and distinct legal entities.

(3) The term *joint venture* means a legally cognizable entity formed to apply as a single applicant to bid at auction pursuant to an agreement by two or more separate and distinct legal entities.

(e) *Financial Requirements for Participation.* As a prerequisite to participating in competitive bidding, an applicant may be required to post a bond or place funds on deposit with the Commission in an amount based on the default payment or forfeiture that may be required pursuant to § 1.21004. The details of and deadline for posting such a bond or making such a deposit will be announced by public notice. No interest will be paid on any funds placed on deposit.

(f) *Application Processing.* (1) Any timely submitted application will be reviewed by Commission staff for completeness and compliance with the Commission's rules. No untimely applications will be reviewed or considered.

(2) Any application to participate in competitive bidding that does not identify the applicant or does not include all of the certifications required pursuant to this section is unacceptable for filing and cannot be corrected subsequent to the applicable deadline for submitting applications. The application will be deemed incomplete and the applicant will not be found qualified to bid.

(3) If an individual or entity submits multiple applications in a single auction, or if entities that are commonly controlled by the same individual or same set of individuals submit more than one application in a single auction, then at most only one of such applications may be deemed complete, and the other such application(s) will be deemed incomplete, and such applicants will not be found qualified to bid.

(4) An applicant will not be permitted to participate in competitive bidding if the applicant has not provided any bond or deposit of funds required pursuant to paragraph (e) of this section, as of the applicable deadline.

(5) The Commission will provide applicants a limited opportunity to cure defects (except for failure to sign the application and to make all required certifications) during a resubmission period established by public notice and to resubmit a corrected application. During the resubmission period for curing defects, an application may be amended or modified to cure defects identified by the Commission or to make minor amendments or modifications. After the resubmission period has ended, an application may be

amended or modified to make minor changes or correct minor errors in the application. An applicant may not make major modifications to its application after the initial filing deadline. An applicant will not be permitted to participate in competitive bidding if Commission staff determines that the application requires major modifications to be made after that deadline. Major modifications include, but are not limited to, any changes in the ownership of the applicant that constitute an assignment or transfer of control, or any changes in the identity of the applicant, or any changes in the required certifications. Minor amendments include, but are not limited to, the correction of typographical errors and other minor defects not identified as major. Minor modifications may be subject to a deadline established by public notice. An application will be considered to be newly filed if it is amended by a major amendment and may not be resubmitted after applicable filing deadlines.

(6) An applicant that fails to cure the defects in their applications in a timely manner during the resubmission period as specified by public notice will have its application dismissed with no further opportunity for resubmission.

(7) An applicant that is found qualified to participate in competitive bidding shall be identified in a public notice.

(8) Applicants shall have a continuing obligation to make any amendments or modifications that are necessary to maintain the accuracy and completeness of information furnished in pending applications. Such amendments or modifications shall be made as promptly as possible, and in no case more than five business days after applicants become aware of the need to make any amendment or modification, or five business days after the reportable event occurs, whichever is later. An applicant's obligation to make such amendments or modifications to a pending application continues until they are made.

■ 4. Revise § 1.21002 to read as follows:

§ 1.21002 Prohibition of certain communications during the competitive bidding process.

(a) *Definitions.* For purposes of this section:

(1) The term ''applicant'' shall include all controlling interests in the entity submitting an application to participate in a given auction, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting the application, and all officers and directors of that entity. In the case of a consortium, each member of the consortium shall be considered to have a controlling interest in the consortium; and

(2) The term *bids* or *bidding strategies* shall include capital calls or requests for additional funds in support of bids or bidding strategies.

(b) *Certain communications prohibited.* After the deadline for submitting applications to participate, an applicant is prohibited from cooperating or collaborating with any other applicant with respect to its own, or one another's, or any other competing applicant's bids or bidding strategies, and is prohibited from communicating with any other applicant in any manner the substance of its own, or one another's, or any other competing applicant's bids or bidding strategies, until after the post-auction deadline for winning bidders to submit applications for support.

(1) *Example 1.* Company A is an applicant in area 1. Company B and Company C each own 10 percent of Company A. Company D is an applicant in area 1, area 2, and area 3. Company C is an applicant in area 3. Without violating the Commission's Rules, Company B can enter into a consortium arrangement with Company D or acquire an ownership interest in Company D if Company B certifies either:

(i) That it has communicated with and will communicate neither with Company A or anyone else concerning Company A's bids or bidding strategy, nor with Company C or anyone else concerning Company C's bids or bidding strategy, or

(ii) That it has not communicated with and will not communicate with Company D or anyone else concerning Company D's bids or bidding strategy.

(2) [Reserved]

(c) *Internal controls required.* Any party submitting an application for a given auction that has an ownership or other interest disclosed with respect to more than one application for an auction must implement internal controls that preclude any individual acting on behalf of the applicant as defined in paragraph (a)(1) of this section from possessing information about the bids or bidding strategies as defined in paragraph (a)(2) of this section of more than one party submitting an application for the auction or communicating such information with respect to a party submitting an application for the auction to anyone possessing such information regarding another party submitting an application for the auction. Implementation of such internal controls will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted.

(d) *Modification of application required.* An applicant must modify its application for an auction to reflect any changes in ownership or in membership of a consortium or a joint venture or agreements or understandings related to the support being sought.

(e) *Duty to report potentially prohibited communications.* An applicant that makes or receives communications that may be prohibited pursuant to paragraph (b) of this section shall report such communications to the Commission staff immediately, and in any case no later than 5 business days after the communication occurs. An applicant's obligation to make such a report continues until the report has been made.

(f) *Procedures for reporting potentially prohibited communications.* Any report required to be filed pursuant to this section shall be filed as directed in public notices detailing procedures for the bidding that was the subject of the reported communication. If no such public notice provides direction, the party making the report shall do so in writing to the Chief of the Auctions Division, Office of Economics and Analytics, by the most expeditious means available, including electronic transmission such as email.

■ 5. Amend § 1.21004 by:

■ a. Redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively;

■ b. Adding new paragraph (b); and

■ c. Revising newly redesignated paragraphs (c) and (d).

The addition and revisions read as follows:

§ 1.21004 Winning bidder's obligation to apply for support.

* * * * *

(b) *Dismissal for failure to prosecute.* The Commission may dismiss a winning bidder's application with prejudice for failure of the winning bidder to prosecute, failure of the winning bidder to respond substantially within the time period specified in official correspondence or requests for additional information, or failure of the winning bidder to comply with requirements for becoming authorized to receive support. A winning bidder whose application is dismissed for failure to prosecute pursuant to this paragraph has defaulted on its bid(s).

(c) *Liability for default payment or forfeiture in the event of auction default.* A winning bidder that defaults on its bid(s) is liable for either a default payment or a forfeiture, which will be calculated by a method that will be established as provided in an order or public notice prior to competitive bidding. If the default payment is determined as a percentage of the defaulted bid amount, the default payment will not exceed twenty percent of the amount of the defaulted bid amount.

(d) *Additional liabilities.* In addition to being liable for a default payment or a forfeiture pursuant to paragraph (c) of this section, a winning bidder that defaults on its winning bid(s) shall be subject to such measures as the Commission may provide, including but not limited to disqualification from future competitive bidding pursuant to this subpart.

PART 54—UNIVERSAL SERVICE

■ 6. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, and 1302, unless otherwise noted.

■ 7. Amend § 54.5 by:
■ a. Revising the definition of ''Administrator'';
■ b. Revising the definition of ''High-cost support'';
■ c. Adding, in alphabetical order, a definition for ''Mobile competitive eligible telecommunications carrier''; and
■ d. Revising the definition of ''Tribal lands''.

The revisions and addition read as follows:

§ 54.5 Terms and definitions.

* * * * *

Administrator. The term ''Administrator'' or ''USAC'' shall refer to the Universal Service Administrative Company that is an independent subsidiary of the National Exchange Carrier Association, Inc., and that has been appointed the permanent Administrator of the federal universal service support mechanisms.

* * * * *

High-cost support. ''High-cost support'' refers to those support mechanisms in existence as of October 1, 2011, specifically, high-cost loop support, safety net additive and safety valve provided pursuant to subpart F of part 36, local switching support pursuant to § 54.301, forward-looking support pursuant to § 54.309, interstate access support pursuant to §§ 54.800 through 54.809, and interstate common line support pursuant to §§ 54.901 through 54.904, support provided pursuant to §§ 51.915, 51.917, and 54.304, support provided to competitive eligible telecommunications carriers as set forth in § 54.307(e), Connect America Fund support provided pursuant to § 54.312, and Mobility Fund and 5G Fund support provided pursuant to subpart L of this part.

* * * * *

Mobile competitive eligible telecommunications carrier. A ''mobile competitive eligible telecommunications carrier'' is a carrier that meets the definition of a ''competitive eligible telecommunications carrier'' in this section and that provides a terrestrial-based service meeting the definition of ''commercial mobile radio service'' in § 51.5 of this chapter.

* * * * *

Tribal lands. For the purposes of high-cost support, ''Tribal lands'' include any federally recognized Indian tribe's reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) and Indian Allotments, see § 54.400(e), as well as Hawaiian Home Lands—areas held in trust for native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920, July 9, 1921, 42 Stat 108, *et seq.,* as amended, and any land designated as such by the Commission.

* * * * *

■ 8. Amend § 54.207 by adding new paragraph (f):

§ 54.207 Service areas.

* * * * *

(f) *Geographic flexibility provided for mobile competitive eligible telecommunications carriers receiving legacy high-cost support.* A mobile competitive eligible telecommunications carrier receiving legacy high-cost support pursuant to § 54.307(e)(5), (6), or (7) for a particular subsidized service area may use the support for the provision, maintenance, and upgrading of facilities and services within any of the designated service areas for which it or an affiliated mobile competitive eligible telecommunications carrier (*e.g.,* where several mobile competitive eligible telecommunications carriers share a common holding company) receives legacy high-cost support regardless of whether the service areas span more than one state or territory. This paragraph does not affect a mobile competitive eligible telecommunications carrier's obligations and requirements pursuant to §§ 54.7 and 54.322.

■ 9. Amend § 54.307 by:
■ a. Revising paragraph (e)(2);
■ b. Revising paragraph (e)(5);
■ c. Adding paragraph (e)(6);
■ d. Redesignating paragraphs (e)(7) and (e)(8) as paragraphs (e)(8) and (e)(9), respectively; and
■ e. Adding new paragraph (e)(7).

The revisions and addition read as follows:

§ 54.307 Support to a competitive eligible telecommunications carrier.

* * * * *

(e) * * *

(2) *Monthly support amounts.* Competitive eligible telecommunications carriers shall receive the following support amounts, except as provided in paragraphs (e)(3) through (7) of this section.

(i) From January 1, 2012, to June 30, 2012, each competitive eligible telecommunications carrier shall receive its monthly baseline support amount each month.

(ii) From July 1, 2012 to June 30, 2013, each competitive eligible telecommunications carrier shall receive 80 percent of its monthly baseline support amount each month.

(iii) Beginning July 1, 2013, each competitive eligible telecommunications carrier shall receive 60 percent of its monthly baseline support amount each month.

* * * * *

(5) *Eligibility for interim support before 5G Fund Phase I auction.* Beginning the first day of the month following the effective date of the Report and Order, FCC 20–150, a competitive eligible telecommunications carrier that receives support pursuant to paragraph (a) or (e)(2) of this section shall no longer receive such support and shall instead receive support as described in this paragraph.

(i) A competitive eligible telecommunications carrier that is not a mobile competitive eligible telecommunications carrier, as that term is defined in § 54.5, shall no longer receive monthly baseline support.

(ii) Until the first day of the month following the release of a public notice by the Office of Economics and Analytics and Wireline Competition Bureau announcing the final areas eligible for support in the 5G Fund Phase I auction:

(A) A mobile competitive eligible telecommunications carrier that receives support pursuant to paragraph (a) of this

section shall receive ''monthly baseline support'' in an amount equal to one-twelfth (1/12) of its total support received for the preceding 12-month period.

(B) A mobile competitive eligible telecommunications carrier that receives support pursuant to paragraph (e)(2) of this section shall receive support at the same level described in paragraph (e)(2)(iii) of this section.

(iii) Beginning the first day of the month following the release of a public notice by the Office of Economics and Analytics and Wireline Competition Bureau announcing the final areas eligible for support in the 5G Fund Phase I auction and until the first day of the month following release of a public notice announcing the close of the 5G Fund Phase I auction, a mobile competitive eligible telecommunications carrier that receives support pursuant to paragraph (e)(5)(ii) of this section for any such eligible area shall receive an adjusted, disaggregated amount of monthly support for that area, which shall be calculated by multiplying the monthly support level described in paragraph (e)(5)(ii) of this section by the areal percentage of the eligible portion of the competitive eligible telecommunications carrier's service area, weighted by applying the 5G Fund adjustment factor methodology and values adopted by the Office of Economics and Analytics and Wireline Competition Bureau and announced in a public notice.

(iv) Beginning the first day of the month following the release of a public notice by the Office of Economics and Analytics and Wireline Competition Bureau announcing the final areas eligible for support in the 5G Fund Phase I auction, a mobile competitive eligible telecommunications carrier that receives support pursuant paragraph (e)(5)(ii) of this section for any ineligible area shall receive an adjusted, disaggregated amount of monthly support for that area, which shall be calculated by multiplying the monthly support level described in paragraph (e)(5)(ii) of this section by the areal percentage of the ineligible portion of the competitive eligible telecommunications carrier's service area, weighted by applying the 5G Fund adjustment factor methodology and values adopted by the Office of Economics and Analytics and Wireline Competition Bureau and announced in a public notice, and reduced as follows:

(A) For the first 12 months, each mobile competitive eligible telecommunications carrier shall receive monthly support that is two-thirds (2/3) of the level described in paragraph (e)(5)(iv) of this section for the ineligible area.

(B) For 12 months starting the first day of the month following the period described in paragraph (e)(5)(iv)(A) of this section, each mobile competitive eligible telecommunications carrier shall receive monthly support that is one-third (1/3) of the level described in paragraphs (e)(5)(iv) of this section for the ineligible area.

(C) Following the period described in paragraph (e)(5)(iv)(B) of this section, no mobile competitive eligible telecommunications carrier shall receive monthly support for any ineligible area pursuant to this section.

(6) *Eligibility for support after 5G Fund Phase I auction.* (i) Notwithstanding the schedule described in paragraph (e)(5)(iii) of this section, a mobile competitive eligible telecommunications carrier that receives monthly support pursuant to paragraph (e)(5)(iii) of this section and is a winning bidder in the 5G Fund Phase I auction shall continue to receive support at the same level it was receiving support for such area at the time of the release of a public notice announcing the close of the 5G Fund Phase I auction until such time as the Office of Economics and Analytics and Wireline Competition Bureau determine whether or not to authorize the carrier to receive 5G Fund Phase I support.

(A) Upon the Office of Economics and Analytics and Wireline Competition Bureau's release of a public notice approving a mobile competitive eligible telecommunications carrier's application for support submitted pursuant to § 54.1014(b) and authorizing the carrier to receive 5G Fund Phase I support, the carrier shall no longer receive support at the level of monthly support described in paragraph (e)(5)(iii) of this section for such area. Thereafter, the carrier shall receive monthly support in the amount of its 5G Fund Phase I winning bid pursuant to § 54.1017, provided that the Administrator shall decrease the amount of the carrier's support to the extent necessary to account for any support the carrier received during the period between the close of the 5G Fund Phase I auction and the release of the public notice authorizing the carrier to receive 5G Fund Phase I support.

(B) A mobile competitive eligible telecommunications carrier that is a winning bidder in the 5G Fund Phase I auction but is not subsequently authorized to receive 5G Fund Phase I support shall no longer receive support at the level of monthly support described in paragraph (e)(5)(iii) of this section for such area following the determination not to authorize the carrier for 5G Fund Phase I support. Thereafter, the carrier shall receive monthly support as set forth in paragraph (e)(6)(iv) of this section for such area, provided that the Administrator shall decrease the amount of the carrier's support to the extent necessary to account for any support the carrier received during the period between the close of the 5G Fund Phase I auction and the Office of Economics and Analytics and Wireline Competition Bureau's authorization determination.

(ii) A mobile competitive eligible telecommunications carrier that does not receive monthly support pursuant to this section and is a winning bidder in the 5G Fund Phase I auction shall receive monthly support pursuant to § 54.1017.

(iii) A mobile eligible telecommunications carrier that receives monthly support pursuant to paragraph (e)(5)(iii) of this section for an area for which support is not won in the 5G Fund Phase I auction shall continue to receive support at the level of monthly support described in paragraph (e)(5)(iii) of this section provided that it is the carrier receiving the minimum level of sustainable support for the area, but for no more than 60 months from the first day of the month following the release of a public notice by the Office of Economics and Analytics and Wireline Competition Bureau announcing the close of the 5G Fund Phase I auction. The ''minimum level of sustainable support'' is the lowest monthly support received by a mobile competitive eligible telecommunications carrier for the area that has deployed the highest level of technology (*e.g.,* 5G) within the state encompassing the area.

(iv) All other mobile competitive eligible telecommunications carriers that receive monthly support pursuant to paragraph (e)(5)(iii) of this section for eligible areas shall instead receive the following monthly support amounts for such areas:

(A) For 12 months starting the first day of the month following release of a public notice announcing the close of the 5G Fund Phase I auction, each mobile competitive eligible telecommunications carrier shall receive monthly support that is two-thirds (2/3) of the level described in paragraph (e)(5)(iii) of this section for the area.

(B) For 12 months starting the month following the period described in paragraph (e)(6)(iv)(A) of this section, each mobile competitive eligible telecommunications carrier shall receive monthly support that is one-third (1/3) of

the level described in paragraph (e)(5)(iii) of this section for the area.

(C) Following the period described in paragraph (e)(6)(iv)(B) of this section, no mobile competitive eligible telecommunications carrier shall receive monthly support for the area pursuant to this section.

(7) *Eligibility for support after 5G Fund Phase II auction.* (i) Notwithstanding the schedule described in paragraphs (e)(6)(iii) or (iv) of this section, a mobile competitive eligible telecommunications carrier that receives monthly support pursuant to paragraphs (e)(6)(iii) or (iv) of this section, as applicable, and is a winning bidder in the 5G Fund Phase II auction shall receive support at the same level it was receiving support for such area at the time of the release of a public notice announcing the close of the 5G Fund Phase II auction until such time as the Office of Economics and Analytics and Wireline Competition Bureau determine whether or not to authorize the carrier to receive 5G Fund Phase II support.

(A) Upon the Office of Economics and Analytics and Wireline Competition Bureau's release of a public notice approving a mobile competitive eligible telecommunications carrier's application for support submitted pursuant to § 54.1014(b) and authorizing the carrier to receive 5G Fund Phase II support, the carrier shall no longer receive support at the level of monthly support pursuant to this section for such area. Thereafter, the carrier shall receive monthly support in the amount of its 5G Fund Phase II winning bid pursuant to § 54.1017, provided that the Administrator shall decrease the amount of the carrier's support to the extent necessary to account for any support the carrier received during the period between the close of the 5G Fund Phase II auction and the release of the public notice authorizing the carrier to receive 5G Fund Phase II support.

(B) A mobile competitive eligible telecommunications carrier that is a winning bidder in the 5G Fund Phase II auction but is not subsequently authorized to receive 5G Fund Phase II support shall no longer receive support at the level of monthly support pursuant to paragraph (e)(6)(iii) or (iv) of this section for such area, as applicable, following the determination not to authorize the carrier for 5G Fund Phase II support. Thereafter, the carrier shall receive monthly support as set forth in paragraphs (e)(7)(iv) or (v) of this section for such area, as applicable, provided that the Administrator shall decrease the amount of the carrier's support to the extent necessary to account for any support received during the period between the close of the 5G Fund Phase II auction and the Office of Economics and Analytics and Wireline Competition Bureau's authorization determination.

(ii) A mobile competitive eligible telecommunications carrier that does not receive monthly support pursuant to this section and is a winning bidder in the 5G Fund Phase II auction shall receive monthly support pursuant to § 54.1017.

(iii) A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to paragraph (e)(6)(iii) of this section for an area for which support is not won in the 5G Fund Phase II auction shall continue to receive support for that area as described in paragraph (e)(6)(iii) of this section.

(iv) A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to paragraph (e)(6)(iii) of this section for an area for which support is won in the 5G Fund Phase II auction and for which the carrier is not the winning bidder shall receive the following monthly support amounts for such areas:

(A) For 12 months starting the first day of the month following release of a public notice announcing the close of the 5G Fund Phase II auction, the mobile competitive eligible telecommunications carrier shall receive monthly support that is two-thirds (⅔) of the level described in paragraph (e)(6)(iii) of this section for the area.

(B) For 12 months starting the month following the period described in paragraph (e)(7)(iv)(A) of this section, the mobile competitive eligible telecommunications carrier shall receive monthly support that is one-third (⅓) of the level described in paragraph (e)(6)(iii) of this section for the area.

(C) Following the period described in paragraph (e)(7)(iv)(B) of this section, the mobile competitive eligible telecommunications carrier shall not receive monthly support for the area pursuant to this section.

(v) All other mobile competitive eligible telecommunications carriers that receive monthly support pursuant to paragraph (e)(6)(iv) of this section for an area shall continue to receive support for the area pursuant to that paragraph.

■ 10. Amend § 54.313 by:

■ a. Revising paragraph (k); and

■ b. Adding new paragraph (n).

The revisions and addition read as follows:

§ 54.313 Annual reporting requirements for high-cost recipients.

* * * * *

(k) This section does not apply to recipients that solely receive support from Phase I of the Mobility Fund.

* * * * *

(n) In addition to the information and certifications in paragraph (a) of this section, a mobile competitive eligible telecommunications carrier receiving legacy high-cost support pursuant to § 54.307(e)(5), (e)(6), or (e)(7) shall certify whether it used any support pursuant to § 54.207(f), and if so, whether it used such support in compliance with § 54.7.

■ 11. Amend § 54.315 by revising paragraph (c)(2)(iv)(B) to read as follows:

§ 54.315 Application process for Connect America Fund phase II support distributed through competitive bidding.

* * * * *

(c) * * *

(2) * * *

(iv) * * *

(B) Has a branch office:

(*1*) Located in the District of Columbia; or

(*2*) Located in New York City, New York, or such other branch office agreed to by the Commission, that will accept a letter of credit presentation from the Administrator via overnight courier, in addition to in-person presentations;

* * * * *

■ 12. Add § 54.322 to read as follows:

§ 54.322 Public interest obligations and performance requirements, reporting requirements, and non-compliance mechanisms for mobile legacy high-cost support recipients.

(a) *General.* A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5)(ii), (e)(5)(iii), (e)(6)(iii), or (e)(7)(iii) shall deploy voice and broadband data services that meet at least the 5G–NR (New Radio) technology standards developed by the 3rd Generation Partnership Project with Release 15, or any successor release that may be adopted by the Office of Economics and Analytics and the Wireline Competition Bureau after notice and comment.

(b) *Service milestones and deadlines.* A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5)(ii), (e)(5)(iii), (e)(6)(iii), or (e)(7)(iii) shall deploy 5G service that meets the performance requirements specified in paragraph (d) of this section to a percentage of the service areas for which the carrier receives monthly support and on a schedule as specified and adopted by the Office of Economics

and Analytics and Wireline Competition Bureau after notice and comment.

(c) *Support usage.* A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5)(ii), (e)(5)(iii), (e)(6)(iii) or (e)(7)(iii) shall use an increasing percentage of such support for the deployment, maintenance, and operation of mobile networks that provide 5G service as specified in paragraph (a) of this section and that meet the performance requirements specified in paragraph (d) of this section as follows:

(1) *Year one support usage.* The carrier shall use at least one-third (⅓) of the total monthly support received pursuant to § 54.307(e)(5)(ii), (e)(5)(iii), (e)(6)(iii), or (e)(7)(iii) in calendar year 2021 as specified in paragraph (c) of this section by December 31, 2021.

(2) *Year two support usage.* The carrier shall use at least two-thirds (⅔) of the total monthly support received pursuant to § 54.307(e)(5)(ii), (e)(5)(iii), (e)(6)(iii), or (e)(7)(iii) in calendar year 2022 as specified in paragraph (c) of this section by December 31, 2022.

(3) *Year three and subsequent year support usage.* The carrier shall use all monthly support received pursuant to § 54.307(e)(5)(ii), (e)(5)(iii), (e)(6)(iii), or (e)(7)(iii) as specified in paragraph (c) of this section in 2023 and thereafter.

(4) *Year one support usage flexibility.* If the carrier is unable to meet the support usage requirement in paragraph (c)(1) of this section, the carrier shall have the flexibility to instead proportionally increase the support usage requirement in paragraph (c)(2) of this section such that its combined usage of monthly support received pursuant to § 54.307(e)(5)(ii), (e)(5)(iii), (e)(6)(iii), or (e)(7)(iii) in calendar years 2021 and 2022 is equal to the total amount of such support that the carrier receives annually, provided that the carrier certifies to the Wireline Competition Bureau this amount and that it will make up for any shortfall in a filing due by March 31, 2021 or 30 days after Paperwork Reduction Act approval, whichever is later.

(d) *Performance requirements.* A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5)(ii), (e)(5)(iii), (e)(6)(iii), or (e)(7)(iii) shall meet the following minimum baseline performance requirements for data speeds, data latency, and data allowances in areas that it has deployed 5G service as specified in paragraph (a) of this section and for which it receives support for at least one plan that it offers:

(1) Median data transmission rates of 35 Mbps download and 3 Mbps upload, and with at least 90 percent of measurements recording data transmission rates of not less than 7 Mbps download and 1 Mbps upload;

(2) Transmission latency of 100 milliseconds or less round trip for successfully transmitted measurements (*i.e.,* ignoring lost or timed-out packets); with at least 90 percent of measurements recording latency of 100 milliseconds or less round trip, and

(3) At least one service plan offered must include a data allowance that is equivalent to the average United States subscriber data usage as specified and adopted by the Office of Economics and Analytics and Wireline Competition Bureau after notice and comment.

(e) *Collocation obligations.* A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5), (e)(6), or (e)(7) shall allow for reasonable collocation by other carriers of services that would meet the technological requirements specified in paragraph (a) of this section on all cell-site infrastructure constructed with universal service funds that it owns or manages in the area for which it receives such monthly support. In addition, during the time that the mobile competitive eligible telecommunications carrier receives such support, the carrier may not enter into facilities access arrangements that restrict any party to the arrangement from allowing others to collocate on the cell-site infrastructure.

(f) *Voice and data roaming obligations.* A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5), (e)(6), or (e)(7) shall comply with the Commission's voice and data roaming requirements that are currently in effect on networks that are built with universal service funds.

(g) *Reasonably comparable rates.* A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5), (e)(6), or (e)(7) shall offer its services in the areas for which it receives such monthly support at rates that are reasonably comparable to those rates offered in urban areas and must advertise the voice and broadband services it offers in its subsidized service areas. A mobile competitive eligible telecommunications carrier's rates shall be considered reasonably comparable to urban rates, based upon the most recently-available decennial U.S. Census Bureau data identifying areas as urban, if rates for services in rural areas fall within a reasonable range of urban rates for reasonably comparable voice and broadband services.

(1) If the carrier offers service in urban areas, it may demonstrate that it offers reasonably comparable rates if it offers the same rates, terms, and conditions (including usage allowances, if any, for a specific rate) in both urban and rural areas or if one of the carrier's stand-alone voice service plans and one service plan offering data are substantially similar to plans it offers in urban areas.

(2) If the carrier does not offer service in urban areas, it may demonstrate that it offers reasonably comparable rates by identifying a carrier that does offer service in urban areas and the specific rate plans to which its plans are reasonably comparable, along with submission of corroborating evidence that its rates are reasonably comparable, such as marketing materials from the identified carrier.

(h) *Initial report of current service offerings.* (1) A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5), (e)(6), or (e)(7) shall submit an initial report describing its current service offerings in its subsidized service areas and how the monthly support it is receiving is being used in such areas no later than three months after the effective date of the Report and Order, FCC 20–150, and Paperwork Reduction Act approval. This report shall include the following information:

(i) Information regarding the carrier's current service offerings in its subsidized service areas, including the highest level of technology deployed, a target date for when 5G broadband service meeting the performance requirements specified in paragraph (d) of this section will be deployed within the subsidized service area, and an estimate of the percentage of area covered by 5G deployment meeting the performance requirements specified in paragraph (d) of this section within the subsidized service area;

(ii) A brief narrative describing its current service offerings and providing an accounting of how monthly support has been used to provide mobile wireless services for the 12-month period prior to the deadline of this report;

(iii) Detailed cell-site and sector infrastructure information for infrastructure that the carrier uses to provide service in its subsidized service areas;

(iv) Certification that the carrier has filed relevant deployment data (either via FCC Form 477 or the Digital Opportunity Data Collection, as

appropriate) that reflect its current deployment covering its subsidized service areas;

(v) Certification that the carrier is in compliance with the public interest obligations as set forth in this section and all of the terms and conditions associated with the continued receipt of such monthly support disbursements; and

(vi) Additional information as required by the Office of Economics and Analytics and Wireline Competition Bureau after release of a public notice detailing the procedures to file this report.

(2) The party submitting the report must certify that it has been authorized to do so by the mobile competitive eligible telecommunications carrier that receives support.

(3) Each initial report of current service offerings shall be submitted solely via the Administrator's online portal.

(i) The Commission and the Administrator shall treat infrastructure data submitted as part of such reports as presumptively confidential.

(ii) The Administrator shall make such reports available to the Commission and to the relevant state, territory, and Tribal governmental entities, as applicable.

(4) A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5), (e)(6), or (e)(7) shall have a continuing obligation to maintain the accuracy and completeness of the information provided in its initial report. Any substantial change in the accuracy or completeness of such a report must be reported as an update to its submitted report within ten (10) business days after the reportable event occurs.

(5) The Commission shall retain the authority to look behind a mobile competitive eligible telecommunications carrier's initial report and to take action to address any violations.

(i) *Annual reports.* (1) A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5) (e)(6), or (e)(7) shall submit an annual report no later than July 1 in each year following the year in which its initial report of current service offerings as specified in paragraph (h) of this section is submitted. Each such report shall include the following information:

(i) Except for areas for which the carriers receives monthly support pursuant to § 54.307(e)(5)(iv), (e)(6)(iv) or (e)(7)(iv), updated information regarding the carrier's current service offerings in its subsidized service areas for the previous calendar year, including the highest level of technology deployed, a target date for when 5G broadband service meeting the performance requirements specified in paragraph (d) of this section will be deployed within the subsidized service area, and an estimate of the percentage of area covered by 5G deployment meeting the performance requirements specified in paragraph (d) of this section within the subsidized service area;

(ii) A brief narrative providing an accounting of the support the carrier has received and how monthly support has been used to provide mobile wireless services for the previous calendar year, with an indication of which of these expenditures were used to meet the requirements specified in paragraph (c) of this section within the subsidized service area;

(iii) Detailed cell-site and sector infrastructure information for infrastructure that the carrier uses to provide service in its subsidized service areas;

(iv) Certification that the carrier has filed relevant deployment data (either via FCC Form 477 or the Digital Opportunity Data Collection, as appropriate) that reflect its current deployment covering its subsidized service areas;

(v) Certification that the carrier is in compliance with the public interest obligations as set forth in this section and all of the terms and conditions associated with the continued receipt of monthly support; and

(vi) Additional information as required by the Office of Economics and Analytics and Wireline Competition Bureau after release of a public notice detailing the procedures to file these reports.

(2) A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5), (e)(6), or (e)(7) shall supplement the information provided to the Administrator in any annual report within ten (10) business days from the onset of any reduction in the percentage of areas for which the recipient receives support being served after the filing of an initial or annual certification report or in the event of any failure to comply with any of the requirements for continued receipt of such support.

(3) The party submitting the annual report must certify that it has been authorized to do so by mobile competitive eligible telecommunications carrier that receives support.

(4) Each annual report shall be submitted solely via the Administrator's online portal.

(i) The Commission and the Administrator shall treat infrastructure data submitted as part of such a report as presumptively confidential.

(ii) The Administrator shall make such reports available to the Commission and to the relevant state, territory, and Tribal governmental entities, as applicable.

(5) A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5), (e)(6), or (e)(7) shall have a continuing obligation to maintain the accuracy and completeness of the information provided in its annual reports. Any substantial change in the accuracy or completeness of any such report must be reported as an update to the submitted annual report within ten (10) business days after the reportable event occurs.

(6) The Commission shall retain the authority to look behind a mobile competitive eligible telecommunications carrier's annual reports and to take action to address any violations.

(j) *Service milestone reports.* (1) A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5)(ii), (e)(5)(iii), (e)(6)(iii), or (e)(7)(iii) shall submit a report after each of the service milestones described in paragraph (b) of this section by the deadlines established by the Office of Economics and Analytics and Wireline Competition Bureau demonstrating that it has deployed 5G service that meets the performance requirements specified in paragraph (d) of this section, which shall include information as required by the Office of Economics and Analytics and Wireline Competition Bureau in a public notice.

(2) All data submitted in or certified to in any service milestone report shall be subject to verification by the Administrator for compliance with the performance requirements specified in paragraph (d) of this section.

(k) *Non-compliance measures for failure to comply with performance requirements or public interest obligations.* (1) A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5) (e)(6), or (e)(7) that fails to comply with the public interest obligations set forth in paragraphs (e) through (j) of this section, fails to comply with the performance requirements set forth in paragraph (d) of this section at the prescribed level by the applicable service milestone

deadline established in paragraph (b) of this section, or that fails to use monthly support as set forth in paragraph (c) of this section must notify the Wireline Competition Bureau and the Administrator within 10 business days of its non-compliance.

(2) Upon notification by a carrier of its non-compliance pursuant to paragraph (k) of this section, or a determination by the Administrator or Wireline Competition Bureau of a carrier's non-compliance with any of the public interest obligations set forth in paragraphs (e) through (j) of this section or the performance requirements set forth in paragraph (d) of this section, the carrier will be deemed to be in default, and for monthly support received pursuant to § 54.307(e)(5), (e)(6), or (e)(7), will no longer be eligible to receive such support, will receive no further support disbursements, and may be subject to recovery of up to the amount of support received since the effective date of the Report and Order, FCC 20–150, that was not used for the deployment, maintenance, and operation of mobile networks that provide 5G service as specified in paragraph (a) of this section and that meet the performance requirements specified in paragraph (d) of this section. The carrier may also be subject to further action, including the Commission's existing enforcement procedures and penalties, potential revocation of ETC designation, and suspension or debarment pursuant to § 54.8.

(3) A mobile competitive eligible telecommunications carrier that voluntarily relinquishes receipt of monthly support pursuant to § 54.307(e)(5), (e)(6), or (e)(7) will no longer be required to comply with the public interest obligations specified in this section, except that the carrier may be deemed to be in default and subject to recovery of support as set forth in paragraph (k)(2) of this section.

■ 13. Amend § 54.804 by revising paragraph (c)(2)(iv)(B) to read as follows:

§ 54.804 Rural Digital Opportunity Fund application process.

* * * * *

(c) * * *

(2) * * *

(iv) * * *

(B) Has a branch office:

(*1*) Located in the District of Columbia; or

(*2*) Located in New York City, New York, or such other branch office agreed to by the Commission, that will accept a letter of credit presentation from the Administrator via overnight courier, in addition to in-person presentations;

* * * * *

■ 14. Amend subpart L by revising the heading and §§ 54.1011 through 54.1021 to read as follows:

Subpart L—Mobility Fund and 5G Fund

Sec.

* * * * *

54.1011 5G Fund.
54.1012 Geographic areas eligible for support.
54.1013 Applicant eligibility.
54.1014 Application process.
54.1015 Public interest obligations and performance requirements for 5G Fund support recipients.
54.1016 Letter of credit.
54.1017 5G Fund support disbursements.
54.1018 Annual reports.
54.1019 Interim service and final service milestone reports.
54.1020 Non-compliance measures for 5G Fund support recipients.
54.1021 Record retention for the 5G Fund.

§ 54.1011 5G Fund.

(a) The Commission will use competitive bidding, as provided in part 1, subpart AA, of this chapter, to determine the recipients of support available through the 5G Fund and the amount(s) of support that they may receive for specific geographic areas, subject to applicable post-auction procedures.

(b) 5G Fund support will be awarded in two phases using multi-round, descending clock auctions.

(c) Areas eligible for 5G Fund Phase I support will be those areas identified by the Office of Economics and Analytics and Wireline Competition Bureau in a public notice as showing a lack of 4G Long Term Evolution (LTE) and 5G coverage on an unsubsidized basis based on the mobile broadband coverage maps created by the Commission using coverage data submitted in the Digital Opportunity Data Collection pursuant to § 1.7004(c)(3).

(d) The Commission will incorporate an adjustment factor into the 5G Fund auction design that will assign a weight to each geographic area eligible in the 5G Fund Phase I auction using the adjustment factor values adopted by the Office of Economics and Analytics and Wireline Competition Bureau and announced in a public notice.

(e) The Commission will incorporate an adjustment factor into the methodology for disaggregation of high-cost legacy support pursuant to § 54.307(e)(5)(iii) and (e)(5)(iv) that will assign a weight to each geographic area using the adjustment factor values adopted by the Office of Economics and Analytics and Wireline Competition Bureau and announced in a public notice.

§ 54.1012 Geographic areas eligible for support.

(a) 5G Fund support will be made available for geographic areas identified as eligible by public notice.

(b) Coverage units for purposes of conducting competitive bidding and disbursing support based on square kilometers will be identified by public notice for each area eligible for support.

§ 54.1013 Applicant eligibility.

(a) An applicant for 5G Fund support shall be an eligible telecommunications carrier in an area in order to receive 5G Fund support for that area. The applicant may obtain its designation as an eligible telecommunications carrier after the close of a 5G Fund auction, provided that the applicant submits proof of its designation within 180 days after the release of the public notice identifying the applicant as a winning bidder. The eligible telecommunications carrier service area of a 5G Fund support recipient will not be required to conform to the service area of the rural telephone company serving the same area. An applicant for 5G Fund support shall not receive such support prior to the submission of proof of its designation as an eligible telecommunications carrier. After such submission, the eligible telecommunications carrier shall receive a balloon payment that will consist of the carrier's monthly 5G Fund support amount multiplied by the number of whole months between the first day of the month after the close of the auction and the issuance of the public notice authorizing the carrier to receive 5G Fund support.

(b) An applicant must have exclusive access to Commission licensed spectrum and sufficient bandwidth in an area that enables it to satisfy the performance requirements specified in § 54.1015 in order to receive 5G Fund support for that area. The applicant shall describe its access to spectrum as specified in § 54.1014(a)(3) and certify, in a form acceptable to the Commission, that it has such access and sufficient bandwidth (at a minimum, 10 megahertz x 10 megahertz using frequency division duplex (FDD) or 20 megahertz using time division duplex (TDD)) in each area in which it intends to bid for support at the time it applies to participate in competitive bidding, and that it will retain such access for at least ten (10) years after the date on which it is authorized to receive

support. A winning bidder that applies for 5G Fund support applicant shall describe its access to spectrum as specified in § 54.1014(b)(2)(v) at the time it applies for support and certify, in a form acceptable to the Commission, that it has such access and sufficient bandwidth (at a minimum, 10 megahertz x 10 megahertz using frequency division duplex (FDD) or 20 megahertz using time division duplex (TDD)) in each area in which it is applying for support, and that it will retain such access for at least ten (10) years after the date on which it is authorized to receive support.

(c) An applicant shall certify that it is financially and technically qualified to provide the services supported by the 5G Fund within the ten (10) year support term in each geographic area for which it seeks and is authorized to receive support.

§ 54.1014 Application process.

(a) *Application to participate in competitive bidding for 5G Fund support.* In addition to providing the information specified in § 1.21001(b) of this chapter and any other information required by the Commission, an applicant to participate in competitive bidding for 5G Fund support shall:

(1) Certify that the applicant is financially and technically capable of meeting the public interest obligations and performance requirements in § 54.1015 in each area for which it seeks support;

(2) Disclose its status as an eligible telecommunications carrier in any area for which it will seek support and associated study area code(s) or as an entity that will file an application to become an eligible telecommunications carrier in any such area after being identified as a winning bidder for such area in a 5G Fund auction, and certify that the disclosure is accurate;

(3) Describe the Commission licensed spectrum to which the applicant has exclusive access that the applicant plans to use to meet its public interest obligations and performance requirements in areas for which it will bid for support, including whether the applicant currently holds a license for or leases the spectrum, including any necessary renewal expectancy, and whether such spectrum access is contingent upon receiving support in a 5G Fund auction, the license applicable to the spectrum to be accessed, the type of service covered by the license, the particular frequency band(s), the call sign, and the total amount of bandwidth (in megahertz) to which the applicant has access under the license applicable to the spectrum to be accessed, and certify that the description is accurate, that the applicant has access to spectrum in each area for which it intends to bid for support, and that the applicant will retain such access for at least ten (10) years after the date on which it is authorized to receive 5G Fund support;

(4) Submit specified operational and financial information;

(i) Indicate whether the applicant has been providing mobile wireless voice and/or mobile wireless broadband service for at least three years prior to the short-form application deadline (or is a wholly-owned subsidiary of an entity that has been providing such service for at least three years). An applicant for a 5G Fund auction will be deemed to have started providing mobile wireless broadband service on the date it began commercially offering service to end users. If the applicant is applying as a consortium or joint venture, the applicant will be permitted to rely on the length of time a member of the consortium or joint venture has been providing mobile service prior to the short-form application deadline in responding to this question;

(ii) If the applicant has been providing mobile wireless voice and/or mobile wireless broadband service for at least three years prior to the short-form application deadline (or is a wholly-owned subsidiary of an entity that has been providing such service for at least three years), it must:

(A) Certify that the applicant has been providing mobile wireless voice and/or mobile wireless broadband service for at least three years prior to the short-form application deadline (or is a wholly-owned subsidiary of an entity that has been providing such service for at least three years),

(B) Specify the number of years it (or its parent company, if it is a wholly-owned subsidiary) has been providing such service,

(C) Certify that it (or its parent company, if it is a wholly-owned subsidiary) has submitted mobile wireless voice and/or mobile wireless broadband data as required on FCC Form 477 and/or in the Digital Opportunity Data Collection, as applicable, during that time period,

(D) Provide each of the FCC Registration Numbers (FRNs) that the applicant or its parent company (and in the case of a holding company applicant, its operating companies) has used to submit mobile wireless voice and/or mobile wireless broadband data on FCC Form 477 and/or in the Digital Opportunity Data Collection, as applicable, during that time period.

(iii) If the applicant has been providing mobile wireless voice and/or mobile wireless broadband service for fewer than three years prior to the application deadline (or is not a wholly-owned subsidiary of an entity that has been providing such service for at least three years), it must:

(A) submit information concerning its operational history and a preliminary project description as prescribed by the Commission or the Office of Economics and Analytics and the Wireline Competition Bureau in a public notice;

(B) submit a letter of interest from a qualified bank that meets the qualifications set forth in § 54.1016 stating that the bank would provide a letter of credit as described in section to the applicant if the applicant becomes a winning bidder for bids of a certain dollar magnitude, as well as the maximum dollar amount for which the bank would be willing to issue a letter of credit to the applicant; and

(C) submit a statement that the bank would be willing to issue a letter of credit that is substantially in the same form as the Commission's model letter of credit.

(5) Certify that it will be subject to a forfeiture pursuant to § 1.21004 in the event of an auction default; and

(6) Certify that the party submitting the application is authorized to do so on behalf of the applicant.

(b) *Application by winning bidders for 5G Fund support*—(1) *Deadline.* Unless otherwise provided by public notice, winning bidders for 5G Fund support shall file an application for 5G Fund support no later than ten (10) business days after the public notice identifying them as winning bidders.

(2) *Application contents.* An application for 5G Fund support must contain:

(i) Identification of the party seeking the support, including ownership information as set forth in § 1.2112(a) of this chapter;

(ii) Updated information regarding the agreements, arrangements, or understandings related to 5G Fund support disclosed in the application to participate in competitive bidding for 5G Fund support. A winning bidder may also be required to disclose in its application for 5G Fund support the specific terms, conditions, and parties involved in any agreement into which it has entered and the agreement itself;

(iii) Certification that the applicant is financially and technically capable of providing the required coverage and performance levels within the specified timeframe in the geographic areas in which it won support;

(iv) Proof of the applicant's status as an eligible telecommunications carrier, or a statement that the applicant will become an eligible telecommunications carrier in any area for which it seeks support within 180 days of the public notice identifying them as winning bidders, and certification that the proof is accurate;

(v) A description of the Commission licensed spectrum to which the applicant has exclusive access that the applicant plans to use to meet its public interest obligations and performance requirements in areas for which it is winning bidder for support, including whether the applicant currently holds a license for or leases the spectrum, along with any necessary renewal expectancy, the license applicable to the spectrum to be accessed, the type of service covered by the license, the particular frequency band(s), the call sign, and the total amount of bandwidth (in megahertz) to which the applicant has access under the license applicable to the spectrum to be accessed, and certification that the description is accurate, that the winning bidder has access to spectrum in each area for which it is applying for support, and that the applicant will retain such access for the entire ten (10) year 5G Fund support term;

(vi) A detailed project description that describes the network to be built, identifies the proposed technology, demonstrates that the project is technically feasible, discloses the complete project budget, and discusses each specific phase of the project (*e.g.,* network design, construction, deployment, and maintenance), as well as a complete project schedule, including timelines, milestones, and costs;

(vii) Certifications that the applicant has available funds for all project costs that exceed the amount of support to be received from 5G Fund and that the applicant will comply with all program requirements, including the public interest obligations and performance requirements set forth in § 54.1015;

(viii) Any guarantee of performance that the Commission may require by public notice or other proceedings, including but not limited to the letters of credit and opinion letter required in § 54.1016, or a written commitment from an acceptable bank, as defined in § 54.1016, to issue such a letter of credit;

(ix) Certification that the applicant will offer services in supported areas at rates that are reasonably comparable to the rates the applicant charges in urban areas;

(x) Certification that the party submitting the application is authorized to do so on behalf of the applicant; and

(xi) Such additional information as the Commission may require.

(3) *Application processing.* (i) No application will be considered unless it has been submitted in an acceptable form during the period specified by public notice. No applications submitted or demonstrations made at any other time shall be accepted or considered.

(ii) Any application that, as of the submission deadline, either does not identify the applicant seeking support as specified in the public notice announcing application procedures, or does not include required certifications, shall be denied.

(iii) An applicant may be afforded an opportunity to make minor modifications to amend its application or correct defects noted by the applicant, the Commission, the Administrator, or other parties. Minor modifications include correcting typographical errors in the application and supplying non-material information that was inadvertently omitted or was not available at the time the application was submitted.

(iv) Applications to which major modifications are made after the deadline for submitting applications shall be denied. Major modifications include, but are not limited to, any changes in the ownership of the applicant that constitute an assignment or change of control, or the identity of the applicant, or the certifications required in the application.

(v) After receipt and review of the applications, a public notice shall identify each winning bidder that may be authorized to receive 5G Fund support, after the winning bidder submits a Letter of Credit and an accompanying opinion letter from its outside legal counsel as required by § 54.1016, in a form acceptable to the Commission, and any final designation as an eligible telecommunications carrier that any applicant may still require. Each such winning bidder shall submit a Letter of Credit and an accompanying opinion letter from its outside legal counsel as required by § 54.1016, in a form acceptable to the Commission, and any required final designation as an eligible telecommunications carrier no later than ten (10) business days following the release of the public notice.

(vi) After receipt of all necessary information, a public notice will identify each winning bidder that is authorized to receive 5G Fund support.

§ 54.1015 Public interest obligations and performance requirements for 5G Fund support recipients.

(a) *General.* A 5G Fund support recipient shall deploy voice and data services that meet at least the 5G–NR (New Radio) technology standards developed by the 3rd Generation Partnership Project with Release 15, or any successor release that may be adopted by the Office of Economics and Analytics and the Wireline Competition Bureau after notice and comment.

(b) *Interim and final service milestones and deadlines.* A 5G Fund support recipient shall deploy 5G service as specified in paragraph (a) of this section as follows:

(1) *Year three interim service milestone deadline.* A support recipient shall deploy service that meets the 5G Fund performance requirements as specified in paragraph (c) of this section to at least 40 percent of the total square kilometers associated with the eligible areas for which it is authorized to receive 5G Fund support in a state no later than December 31 of the third full calendar year following authorization of support.

(2) *Year four interim service milestone deadline.* A support recipient shall deploy service that meets the 5G Fund performance requirements as specified in paragraph (c) of this section to at least 60 percent of the total square kilometers associated with the eligible areas for which it is authorized to receive 5G Fund support in a state no later than December 31 of the fourth full calendar year following authorization of support.

(3) *Year five interim service milestone deadline.* A recipient shall deploy service that meets the 5G Fund performance requirements as specified in paragraph (c) of this section to at least 80 percent of the total square kilometers associated with the eligible areas for which it is authorized to receive 5G Fund support in a state no later than December 31 of the fifth full calendar year following authorization of support.

(4) *Year six final service milestone deadline.* A support recipient shall deploy service that meets the 5G Fund performance requirements as specified in paragraph (c) of this section to at least 85 percent of the total square kilometers associated with the eligible areas for which it is authorized to receive 5G Fund support in a state no later than December 31 of the sixth full calendar year following funding authorization. In addition, a recipient shall deploy service meeting the 5G Fund performance requirements as specified in paragraph (c) of this section to at least 75 percent of the total square kilometers associated with every census tract or

census block group for which it was authorized to receive 5G Fund support no later than December 31 of the sixth full calendar year following authorization of support.

(5) *Optional year two interim service milestone deadline.* A support recipient may, at its option, deploy service that meets the 5G Fund performance requirements as specified in paragraph (c) of this section to at least 20 percent of the total square kilometers associated with the eligible areas for which it is authorized to receive 5G Fund support in a state no later than December 31 of the second full calendar year following funding authorization. Meeting this optional interim service milestone would permit the support recipient, after confirmation of the service deployment by the Administrator, to reduce its letter of credit so that it is valued at an amount equal to one year of support as described in § 54.1016(a)(1)(v).

(c) *Performance requirements.* A recipient authorized to receive 5G Fund support shall meet the following minimum baseline performance requirements for data speeds, data latency, and data allowances in areas where it receives support:

(1) Median of 35 Mbps download and 3 Mbps upload, and with at least 90 percent of measurements recording data transmission rates of not less than 7 Mbps download and 1 Mbps upload; and

(2) Transmission latency of 100 milliseconds or less round trip for successfully transmitted measurements (*i.e.,* ignoring lost or timed-out packets), with at least 90 percent of measurements recording latency of 100 milliseconds or less round trip.

(3) At least one service plan offered must include a data allowance that is equivalent to the average United States subscriber data usage as specified by public notice.

(d) *Collocation obligations.* During the 5G Fund support term, a recipient authorized to receive 5G Fund support shall allow for reasonable collocation by other carriers of services that would meet the technological requirements of the 5G Fund on all newly constructed cell-site infrastructure constructed with universal service funds that it owns or manages in the area(s) for which it receives 5G Fund support. In addition, during the 5G Fund support term, the recipient may not enter into facilities access arrangements that restrict any party to the arrangement from allowing others to collocate on the newly constructed cell-site infrastructure.

(e) *Voice and data roaming obligations.* A recipient authorized to receive 5G Fund support shall comply with the Commission's voice and data roaming requirements that are currently in effect on networks that are built with 5G Fund support.

(f) *Reasonably comparable rates.* A recipient authorized to receive 5G Fund support shall offer its services in the areas for which it is authorized to receive support at rates that are reasonably comparable to those rates offered in urban areas and must advertise the voice and broadband services it offers in its subsidized service areas. A 5G Fund support recipient's rates shall be considered reasonably comparable to urban rates, based upon the most recently available decennial U.S. Census Bureau data identifying areas as urban, if rates for services in rural areas fall within a reasonable range of urban rates for reasonably comparable voice and broadband services.

(1) If the recipient offers service in urban areas, it may demonstrate that it offers reasonably comparable rates if it offers the same rates, terms, and conditions (including usage allowances, if any, for a specific rate) in both urban and rural areas or if one of the carrier's rural stand-alone voice service plans and one rural service plan offering data are substantially similar to plans it offers in urban areas.

(2) If the recipient does not offer service in urban areas, it may demonstrate that it offers reasonably comparable rates by identifying a carrier that does offer service in urban areas and the specific rate plans to which its rural plans are reasonably comparable, along with submission of corroborating evidence that its rates are reasonably comparable, such as marketing materials from the identified carrier.

(g) *Liability for failure to comply with performance requirements and public interest obligations.* A support recipient that fails to comply with the performance requirements set forth in paragraph (c) of this section is subject to the non-compliance measures set forth in § 54.1020. A support recipient that fails to comply with the public interest obligations or any other terms and conditions associated with receiving 5G Fund support may be subject to action, including the Commission's existing enforcement procedures and penalties, reductions in support amounts, revocation of eligible telecommunications carrier designation, and suspension or debarment pursuant to § 54.8.

§ 54.1016 Letter of credit.

(a) Before being authorized to receive 5G Fund support, a winning bidder shall obtain an irrevocable standby letter of credit which shall be acceptable in all respects to the Commission.

(1) Each winning bidder that becomes authorized to receive 5G Fund support shall maintain the standby letter of credit in an amount equal to, at a minimum, one year of support, until the Administrator has verified that the support recipient serves at least 85 percent of the eligible square kilometers for which it is authorized to receive support in a state, and at least 75 percent of the eligible square kilometers in each eligible census tract, by the Year Six Final Service Milestone..

(i) For Year One of a support recipient's support term, it must obtain a letter of credit valued at an amount equal to one year of support.

(ii) For Year Two of a support recipient's support term, it must obtain a letter of credit valued at an amount equal to eighteen months of support.

(iii) For Year Three of a support recipient's support term, it must obtain a letter of credit valued at an amount equal to two years of support.

(iv) For Year Four of a support recipient's support term, and for each year thereafter unless the support recipient is allowed to reduce it pursuant to § 54.1015(b), it must obtain a letter of credit valued at an amount equal to three years of support.

(v) A support recipient may obtain a new letter of credit or renew its existing letter of credit so that it is valued at an amount equal to one year of support once it meets its optional or required service milestones as specified in § 54.1015(b). The recipient may obtain or renew this letter of credit upon verification by the Administrator that it has deployed service that meets the 5G Fund deadlines as specified in § 54.1015(b) and performance requirements as specified in § 54.1015(c). The recipient may maintain its letter of credit at this level for the remainder of its deployment term, so long as the Administrator verifies that the recipient successfully and timely meets its remaining required interim and final service milestones.

(vi) A support recipient that fails to meet its required interim service milestones must obtain a new letter of credit or renew its existing letter of credit valued at an amount equal to its existing letter of credit, plus an additional year of support, up to a maximum of three years of support.

(vii) A support recipient that fails to meet two or more required interim service milestones must maintain a letter of credit valued at an amount equal to three years of support and may

be subject to additional noncompliance penalties as set forth in § 54.1020.

(2) The bank issuing the letter of credit shall be acceptable to the Commission. A bank that is acceptable to the Commission is:

(i) Any United States bank:

(A) That is insured by the Federal Deposit Insurance Corporation, and

(B) That has a bank safety rating issued by Weiss of B − or better; or

(ii) CoBank, so long as it maintains assets that place it among the 100 largest United States Banks, determined on basis of total assets as of the calendar year immediately preceding the issuance of the letter of credit and it has a long-term unsecured credit rating issued by Standard & Poor's of BBB − or better (or an equivalent rating from another nationally recognized credit rating agency); or

(iii) The National Rural Utilities Cooperative Finance Corporation, so long as it maintains assets that place it among the 100 largest United States Banks, determined on basis of total assets as of the calendar year immediately preceding the issuance of the letter of credit and it has a long-term unsecured credit rating issued by Standard & Poor's of BBB − or better (or an equivalent rating from another nationally recognized credit rating agency); or

(iv) Any non-United States bank:

(A) That is among the 100 largest non-U.S. banks in the world, determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit (determined on a U.S. dollar equivalent basis as of such date);

(B) Has a branch office

(i) Located in the District of Columbia; or

(ii) Located in New York City, New York, or such other branch office agreed to by the Commission, that will accept a letter of credit presentation from the Administrator via overnight courier, in addition to in-person presentations; and

(C) Has a long-term unsecured credit rating issued by a widely recognized credit rating agency that is equivalent to a BBB − or better rating by Standard & Poor's; and

(D) Issues the letter of credit payable in United States dollars.

(b) Before being authorized to receive 5G Fund support, a winning bidder shall obtain an opinion letter from its outside legal counsel clearly stating, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under Title 11 of the United States Code, 11 U.S.C. 101 *et seq.* (the ''Bankruptcy Code''), that the bankruptcy court would not treat the letter of credit or proceeds of the letter of credit as property of the winning bidder's bankruptcy estate, or the bankruptcy estate of any other winning bidder-related entity requesting issuance of the letter of credit, under section 541 of the Bankruptcy Code.

(c) Authorization to receive 5G Fund support is conditioned upon full and timely performance of all of the performance requirements set forth in § 54.1015(c), and any additional terms and conditions upon which the support was granted.

(1) Failure by a 5G Fund support recipient to meet any of the service milestones set forth in § 54.1015(b) will trigger reporting obligations and the withholding of support as described in § 54.1020. Failure to come into full compliance during the relevant cure period as described in § 54.1020(b)(4)(ii) or § 54.1020(c) will trigger a recovery action by the Administrator set forth in § 54.1020(b)(4)(ii) or § 54.1020(c), as applicable. If the recipient authorized to receive 5G Fund support does not repay the requisite amount of support within six months, the Administrator will be entitled to draw upon the entire amount of the letter of credit and may disqualify the 5G Fund support recipient from the receipt of 5G Fund support or additional universal service support.

(2) The default will be evidenced by a letter issued by the Chief of the Wireline Competition Bureau, or its respective designees, which letter, describing the performance default and attached to a standby letter of credit draw certificate, shall be sufficient for a draw on the standby letter of credit for the entire amount of the standby letter of credit.

§ 54.1017 5G Fund support disbursements.

(a) A winning bidder of 5G Fund support will be advised by public notice whether it has been authorized to receive support.

(b) 5G Fund support will be disbursed on a monthly basis to a recipient for ten (10) years following the date on which it is authorized to receive support.

(c) If a 5G Fund support recipient fails to comply with the performance requirements of the 5G Fund, the Administrator shall reduce, pause, or freeze, the monthly payments to the recipient until the recipient cures the non-compliance, as provided in § 54.1020. As set forth in § 54.1015(g), if a support recipient fails to comply with the public interest obligations or any other terms and conditions associated with receiving 5G Fund support, it may be subject reductions or suspension of support amounts.

(d) A winning bidder of 5G Fund support may not use such support to fulfill any enforceable commitments with the Commission to deploy 5G service.

§ 54.1018 Annual reports.

(a) A 5G Fund support recipient authorized to receive 5G Fund support shall submit an annual report to the Administrator no later than July 1 of each year after the year in which it was authorized to receive support. Each support recipient shall certify in its annual report that it is in compliance with the public interest obligations, performance requirements, and all of the terms and conditions associated with the receipt of 5G Fund support in order to continue receiving 5G Fund support disbursements.

(b) All 5G Fund support recipients shall supplement the information provided in an annual report to the Administrator within 10 business days from the onset of any reduction in the percentage of the total eligible square kilometers being served in a state after the filing of an annual certification report or in the event of any failure to comply with any of the 5G Fund requirements.

(c) The party submitting the annual report must certify that it has been authorized to do so by the 5G Fund support recipient.

(d) Each annual report shall be submitted solely via the Administrator's online portal.

(1) The Commission and the Administrator shall treat infrastructure data submitted as part of such a report as presumptively confidential.

(2) The Administrator shall make such reports available to the Commission and to the relevant state, territory, and Tribal governmental entities, as applicable.

(e) A 5G Fund support recipient shall have a continuing obligation to maintain the accuracy and completeness of the information provided in its annual reports. Any substantial change in the accuracy or completeness of any annual report must be reported as an update to the submitted annual report within ten (10) business days after the reportable event occurs.

(f) The Commission shall retain the authority to look behind 5G Fund support recipients' annual reports and to take action to address any violations.

§ 54.1019 Interim service and final service milestone reports.

(a) A recipient authorized to receive 5G Fund support shall submit a report to the Administrator on or before March 1 after the third, fourth, fifth, and sixth

service milestone deadlines established in § 54.1015(b) demonstrating that it has deployed service meeting the 5G Fund performance requirements specified in § 54.1015(c), which shall include the following:

(1) Certifications to representative data submitted in the Digital Opportunity Data Collection or as part of FCC Form 477, as applicable, demonstrating mobile transmissions to and from the network that establish compliance with the 5G Fund coverage, speed, and latency requirements;

(2) On-the-ground measurement tests to substantiate 5G broadband coverage data:

(i) With at least three tests conducted per square kilometer, measured by overlaying a uniform grid of one square kilometer (1 km by 1 km) on the recipient's submitted in-vehicle 5G coverage maps within the area for which 5G Fund support was awarded;

(ii) For a subset of drive-testable grid cells, such that the minimum percentage of drive-testable grid cells tested equals the minimum percentage of coverage required for each service buildout milestone (*i.e.,* interim milestones of 40 percent, 60 percent, and 80 percent, and the final milestone of 85 percent), with previously reported testing being cumulative; and

(iii) Where a drive-testable grid cell is any grid cell that has more than the *de minimis* amount of total roads specified in a public notice, based upon the most recent roadway data from the U.S. Census Bureau available for this purpose, considering roads classified in the primary road (S1100), secondary road (S1200), local road (S1400), and service drive (S1640) categories.

(3) Detailed cell-site and sector infrastructure information; and

(4) Additional information as required by the Commission in a public notice.

(b) All data submitted and certified to in compliance with a recipient's public interest obligations in the milestone report shall be in compliance with standards set forth in the applicable public notice and shall be certified by a professional engineer.

(c) Each service milestone report shall be submitted solely via the Administrator's online portal.

(d) All data submitted in and certified to in any service milestone report shall be subject to verification by the Administrator for compliance with the 5G Fund performance requirements specified in § 54.1015(c).

§ 54.1020 Non-compliance measures for 5G Fund support recipients.

(a) *General.* A 5G Fund support recipient that has not deployed service that meets the 5G Fund performance requirements specified in § 54.1015(c) to at least 20 percent of the total square kilometers associated with the eligible areas for which it is authorized to receive support in a state by the Year Three Interim Service Milestone deadline must notify the Commission and the Administrator within ten (10) business days after the Year Three Interim Service Milestone deadline that it failed to meet this milestone. Upon such notification, the support recipient will be deemed to be in default. The Wireline Competition Bureau will issue a letter evidencing the default and the support recipient will be subject to full support recovery. The provisions of paragraph (b) of this section will not be applicable to such a support recipient.

(b) *Interim service milestones.* A 5G Fund support recipient must notify the Commission, the Administrator, and the relevant state, U.S. Territory, or Tribal government, if applicable, within ten (10) business days after the applicable interim service milestone deadline if it has failed to meet an interim milestone. Upon notification that a support recipient has defaulted on an interim service milestone, the Wireline Competition Bureau will issue a letter evidencing the default. For purposes of determining whether a default has occurred, the support recipient must be offering service meeting the requisite performance requirements specified in § 54.1015(c). The issuance of this letter shall initiate reporting obligations and withholding of a percentage of the 5G Fund support recipient's total monthly 5G Fund support, if applicable, starting the month after issuance of the letter:

(1) *Tier 1.* If a support recipient has a compliance gap of at least five percent but less than 15 percent of the total square kilometers associated with the eligible areas in a state for which it is to have deployed service that meets the 5G Fund performance requirements specified in § 54.1015(c) by the interim service milestone, the Wireline Competition Bureau will issue a letter to that effect. Starting three months after the issuance of this letter, a support recipient will be required to file a report with the Administrator every three months that identifies the eligible square kilometers to which the support recipient has newly deployed facilities capable of delivering service that meets the requisite 5G Fund performance requirements in the previous quarter. The support recipient must continue to file quarterly reports until it has reported, and the Administrator has verified, that it has reduced the compliance gap to less than five percent of the total square kilometers associated with the eligible areas for which it is authorized to receive support in a state by that interim service milestone and the Wireline Competition Bureau issues a letter to that effect. A support recipient that files a quarterly report late, but within seven days after the due date established by the letter issued by the Wireline Competition Bureau for filing the report, will have its 5G Fund support reduced by an amount equivalent to seven days of support. If a support recipient does not file a report within seven days after the report's due date, it will have its 5G Fund support reduced on a pro-rata daily basis equivalent to the period of non-compliance, plus the minimum seven-day reduction, until such time as the quarterly report is filed.

(2) *Tier 2.* If a support recipient has a compliance gap of at least 15 percent but less than 25 percent of the total square kilometers associated with the eligible areas in a state for which it is to have deployed service that meets the 5G Fund performance requirements specified in § 54.1015(c) by the interim service milestone, the Administrator will withhold 15 percent of the support recipient's monthly support for that state and the support recipient will be required to file quarterly reports with the Administrator. Once the support recipient has reported, and the Administrator has verified, that it has reduced the compliance gap to less than 15 percent of the required eligible square kilometers for that interim service milestone for that state, the Wireline Competition Bureau will issue a letter to that effect, the Administrator will stop withholding support, and the support recipient will receive all of the support that had been withheld. The support recipient will then move to Tier 1 status.

(3) *Tier 3.* If a support recipient has a compliance gap of at least 25 percent but less than 50 percent of the total square kilometers associated with the eligible areas in a state for which it is to have deployed service that meets the 5G Fund performance requirements specified in § 54.1015(c) by the interim service milestone, the Administrator will withhold 25 percent of the support recipient's monthly support for that state and the support recipient will be required to file quarterly reports with the Administrator. Once the support recipient has reported, and the Administrator has verified, that it has reduced the compliance gap to less than 25 percent of the required eligible square kilometers for that interim service milestone for that state, the Wireline Competition Bureau will issue a letter to that effect, and the support

recipient will move to Tier 2 or Tier 1 status, as applicable.

(4) *Tier 4.* If a support recipient has a compliance gap of 50 percent or more of the total square kilometers associated with the eligible areas in a state for which it is to have deployed service that meets the 5G Fund performance requirements specified in § 54.1015(c) by the interim service milestone:

(i) The Administrator will withhold 50 percent of the support recipient's monthly support for that state and the support recipient will then be required to file quarterly reports with the Administrator. As with the other tiers, as the support recipient reports, and the Administrator verifies, that it has lessened the extent of its non-compliance, and the Wireline Competition Bureau issues a letter to that effect, it will move through the tiers until it reaches Tier 1 (or no longer is out of compliance with the applicable interim service milestone).

(ii) If after having 50 percent of its support withheld for six months, the support recipient has not reported that it is eligible for Tier 3 status (or one of the lower tiers), the Administrator will withhold 100 percent of the support recipient's forthcoming monthly support for that state and will commence a recovery action for a percentage of support that is equal to the support recipient's compliance gap plus 10 percent of the support recipient's support in that state that has been disbursed to that date.

(5) If at any point prior to the Year Six Final Service Milestone the support recipient reports, and the Administrator verifies, that it is eligible for Tier 1 status or that it is no longer out of compliance with the 5G Fund performance requirements specified in § 54.1015(c), it will have its support fully restored and the Administrator will repay any funds that were recovered or withheld.

(c) *Year six final service milestone.* A 5G Fund support recipient must notify the Commission, the Administrator, and the relevant state, U.S. Territory, or Tribal government, if applicable, within 10 business days if it has failed to meet the Year Six Final Milestone. Upon notification that the support recipient has not met the Year Six Final Service Milestone, the support recipient will have twelve months from the date of the Year Six Final Milestone deadline to come into full compliance with this milestone. If the support recipient does not report that it has come into full compliance with the Year Six Final Milestone within twelve months, as verified by the Administrator, the Wireline Competition Bureau will issue a letter to this effect. Recipients of 5G Fund support shall be subject to the following non-compliance measures related to the recovery of support after this grace period:

(1) If a support recipient has deployed service that meets the 5G Fund performance requirements specified in § 54.1015(c) to at least 80 percent of the total eligible square kilometers in a state, but less than the required 85 percent of the total eligible square kilometers in that state, the Administrator will recover an amount of support that is equal to 1.25 times the average amount of support per square kilometer that the support recipient has received in the state times the number of square kilometers unserved up to the 85 percent requirement;

(2) If a support recipient has deployed service that meets the 5G Fund performance requirements specified in § 54.1015(c) to at least 75 percent, but less than 80 percent, of the total eligible square kilometers in that state, the Administrator will recover an amount of support that is equal to 1.5 times the average amount of support per square kilometer that the support recipient has received in the state times the number of square kilometers unserved up to the 85 percent requirement, plus 5 percent of the support recipient's total 5G Fund support for the 10 year support term for that state;

(3) If a support recipient has deployed service that meets the 5G Fund performance requirements specified in § 54.1015(c) to less than 75 percent of the total eligible square kilometers in a state, the Administrator will recover an amount of support that is equal to 1.75 times the average amount of support per square kilometer that the support recipient has received in the state times the number of square kilometers unserved up to the 85 percent requirement, plus 10 percent of the support recipient's total 5G Fund support for the 10 year support term for that state.

(d) *Additional evidence required at year six final service milestone deadline.* At the Year Six Final Service Milestone deadline, a 5G Fund support recipient is also required to provide evidence, which is subject to verification by the Administrator, that it has provided service that meets the 5G Fund performance requirements specified in § 54.1015(c) to at least 75 percent of the total square kilometers for each census tract or census tract group in which it was authorized to receive support. If after the grace period permitted in paragraph (c) of this section the Administrator has not verified based on the evidence provided that the support recipient has provided service that meets the 5G Fund performance requirements specified in § 54.1015(c) to at least 75 percent of the total square kilometers for each census tract or census tract group in which it was authorized to receive support, the Administrator will recover an amount of support that is equal to 1.5 times the average amount of support per square kilometer that the support recipient had received in the eligible area times the number of square kilometers unserved within that eligible area, up to the 75 percent requirement.

(e) *Compliance reviews.* If the Administrator determines subsequent to the Year Six Final Service Milestone that a support recipient does not have sufficient evidence to demonstrate that it continues to offer service that meets the 5G Fund performance requirements specified in § 54.1015(c) to all of the eligible square kilometers in the state as required by the Year Six Final Service Milestone, the Administrator shall immediately recover a percentage of support from the support recipient as specified in paragraphs (c)(1) through(c)(3) and (d) of this section.

§ 54.1021 Record retention for the 5G Fund.

A recipient authorized to receive 5G Fund support and its agents are required to retain any documentation prepared for, or in connection with, the award of the 5G Fund support for a period of not less than ten (10) years after the date on which the recipient receives its final disbursement of 5G Fund support.

■ 15. Amend § 54.1508 by revising paragraph (c)(4)(ii) to read as follows:

§ 54.1508 Letter of credit for stage 2 fixed support recipients.

* * * * *

(c) * * *

(4) * * *

(ii) Has a branch office:

(A) Located in the District of Columbia, or

(B) Located in New York City, New York, or such other branch office agreed to by the Commission, that will accept a letter of credit presentation from the Administrator via overnight courier, in addition to in-person presentations;

* * * * *

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Part VI

The President

Notice of November 24, 2020—Continuation of the National Emergency With Respect to the Situation in Nicaragua

Federal Register
Vol. 85, No. 228
Wednesday, November 25, 2020

Presidential Documents

Title 3—

The President

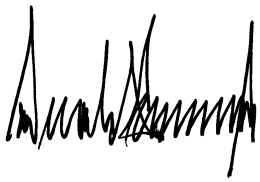
Notice of November 24, 2020

Continuation of the National Emergency With Respect to the Situation in Nicaragua

On November 27, 2018, by Executive Order 13851, I declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the situation in Nicaragua.

The situation in Nicaragua, including the violent response by the Government of Nicaragua to the protests that began on April 18, 2018, and the Ortega regime's systematic dismantling and undermining of democratic institutions and the rule of law, its use of indiscriminate violence and repressive tactics against civilians, as well as its corruption leading to the destabilization of Nicaragua's economy, continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on November 27, 2018, must continue in effect beyond November 27, 2020. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13851 with respect to the situation in Nicaragua.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
November 24, 2020.

[FR Doc. 2020–26320
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Vol. 85, No. 228

Wednesday, November 25, 2020

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69119–69464 2
69465–70026 3
70027–70414 4
70415–70954 5
70955–71222 6
71223–71528 9
71529–71814 10
71815–72550 12
72551–72898 13
72899–73184 16
73185–73398 17
73399–73598 18
73599–74254 19
74255–74594 20
74595–74846 23
74847–75220 24
75221–75832 25

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

376 72899
415 72912
416 72912
1800 71815

3 CFR

Proclamations:
10107 70027
10108 70415
10109 70417
10110 70419
10111 70421
10112 70423
10113 70425
10114 70427
10115 70429
10116 72547
10117 72549
10118 73183
10119 73399
10120 75221

Executive Orders:
13958 70951
13959 73185

Administrative Orders:
Memorandums:
Memorandum of October 31, 2020 70039
Memorandum of October 26, 2020 71213
Memorandum of November 7, 2020 74255
Memorandum of November 9, 2020 72889
Notices:
Notice of October 30, 2020 69463
Notice of November 12, 2020 72893
Notice of November 12, 2020 72895
Notice of November 12, 2020 72897
Notice of November 24, 2020 75831
Presidential Determinations:
No. 2020–12 of September 28, 2020 71209
No. 2021–02 of September 27, 2020 71219

5 CFR

1600 72913
1605 72913

Proposed Rules:
831 70502
842 70502

6 CFR

Proposed Rules:
5 74616

7 CFR

205 70431
210 74847
215 74847
220 74847
226 74847
284 70043
930 73599
966 72914
1400 73601
1780 72912
3430 72912

Proposed Rules:
210 75241
215 75241
220 75241
226 75241
1280 71274
3555 73241

8 CFR

Ch. I 75223
1001 69465
1003 69465
1292 69465

Proposed Rules:
106 74196
214 69236
215 .....73644, 74162
217 73644
231 73644
235 .....73644, 74162
241 74196
274a 74196

10 CFR

Ch. I 75230
2 70435
72 .....71223, 74595

Proposed Rules:
2 70507
53 71002
72 71274
430 70508

12 CFR

261a 73603
303 72551
324 74257
327 71227
347 72551
611 73401
615 .....70955, 73401
621 73401
704 71817
Ch. X 69482
1003 69119
1070 75194

1091 75194
Proposed Rules:
4 70512
55 75261
225 71580
238 71580
252 71580
262 70512
302 70512
791 70512
Ch. X 71003
1074 70512
1253 71276

13 CFR

121 72916
124 69120
125 ....69120, 70050
129 69120
Proposed Rules:
121 72584

14 CFR

39 ....69126, 69129, 69131, 69134, 69138, 69140, 69142, 69144, 69485, 69488, 69492, 69493, 69496, 70051, 70439, 70442, 70955, 71229, 71232, 71235, 71238, 71240, 71244, 71529, 71532, 72555, 72558, 73401, 73404, 73407, 73604, 73607, 73610, 73613, 73615, 74560, 74595, 74598, 74601
71 ....69147, 69148, 71534, 71535, 72917, 72918, 74259, 74852, 74854, 74855, 74857
91 74260
97 ....69149, 69151, 72560, 72562, 74858, 74860
1221 71827
1241 73410
1274 72919
Proposed Rules:
21 ....74271, 74275, 74280, 74285, 74289, 74294, 74618, 74622, 74922, 74926
27 69265
33 73644
39 ....69267, 69269, 69272, 69276, 69519, 69522, 70087, 70523, 70526, 71286, 71580, 71583, 72608, 73430, 73432, 74299, 74627, 74931
71 ....69279, 69281, 70089, 70092, 70093, 70096, 70532, 70534, 71289, 71290, 71292, 71293, 71586, 72610, 72612, 72613, 73436, 73644, 74302, 75267

15 CFR

Ch. VII 73191
734 73411
758 73411
762 73411
764 73411
766 73411
Proposed Rules:
774 71012
922 74630

17 CFR

4 71772
23 ....69498, 71246
30 ....74861, 74864, 74867, 74869, 74872
41 75112
43 ....75422, 75601
45 ....75503, 75601
46 75503
49 ....75503, 75601
232 69499
240 ....70240, 70898
242 75112
249 70898
270 73924
274 73924
Proposed Rules:
23 70536
200 70716
230 70716
239 70716
240 ....70536, 70716
270 70716
274 70716

19 CFR

Ch.I 74603, 74604
Proposed Rules:
4 73644
122 73644

20 CFR

404 73138
408 73138
411 73138
416 73138
422 73138
655 70445

21 CFR

1 72899
5 72899
12 72899
14 72899
25 72899
81 72899
133 72899
172 72899
178 72899
184 72899
201 72899
310 72899
369 72899
501 72899
582 72899
1301 69153
1306 69153
1308 75231
Proposed Rules:
6 ....70096, 73007
73 74304
112 71294
1300 69282
1301 69282

22 CFR

41 74875
313 73418
Proposed Rules:
54 73244
96 74492

23 CFR

635 72919
Proposed Rules:
625 74934

24 CFR

11 71537
3282 71831
3284 71831
Proposed Rules:
201 74630
203 74630
206 74630
888 71856
982 71856
983 71856
985 71856
3282 71856
3284 71856

25 CFR

248 73192

26 CFR

1 ....69500, 70958, 71734, 71998, 72472, 72564, 72934, 74010
25 74010
26 74010
54 ....71142, 72158
301 ....71998, 74010
602 74010
Proposed Rules:
1 ....71587, 72078
54 71016
301 74940
Ch. I 73252

27 CFR

9 73617
Proposed Rules:
9 ....71722, 71726

28 CFR

0 69465
Proposed Rules:
523 75268
541 75268

29 CFR

1695 69167
1912 73421
2201 72564
2509 72846
2510 72934
2550 72846
2590 ....71142, 72158
4022 72565

30 CFR

733 75150
736 75150
842 75150
938 71251
948 70972
Proposed Rules:
18 73656
74 73656

31 CFR

33 71142
Proposed Rules:
50 71588

32 CFR

199 73193
253 72566
2402 70054

33 CFR

100 ....71543, 74261
165 ....69172, 71545, 73423, 74606
Proposed Rules:
117 73667
165 ....69299, 69301, 74304

34 CFR

75 70975
76 70975
106 70975
606 70975
607 70975
608 70975
609 70975
668 72567

36 CFR

1 ....69175, 72956
4 69175
13 72956
220 73620
242 74796
Proposed Rules:
7 71017
222 69303

37 CFR

2 73197
6 69501
7 73197
202 71834
381 74883
386 74884
Proposed Rules:
42 73437
210 70544

38 CFR

5 72569
17 71838
Proposed Rules:
1 72615
17 71020
70 70551

39 CFR

111 74608
3040 70477

40 CFR

9 69189
51 74890
52 ....69504, 70483, 71264, 71547, 71846, 72961, 72963, 73218, 73229, 73632, 73634, 73636, 73640, 74263, 74884, 74890
60 70487
62 ....72967, 74888
63 ....69508, 70487, 73854, 75235
81 71264
122 69189
123 69189
127 69189
180 ....69512, 70062, 70494, 70497, 70976, 70997, 72571, 72968
257 72506
271 74265
403 69189
503 69189
711 75235
Proposed Rules:
52 ....69307, 70554, 71022, 71023, 71295, 75273

63 71490
81 71023
139 73438
271 70558
300 74306
721 ....73007, 73439

41 CFR

60-1 71553
60-2 71553
60-300 71553
60-741 71553

42 CFR

23 72899
51c 72899
52i 72899
56 72899
57 72899
63 72899
124 72899
409 70298
410 ....70298, 71142
411 ....71142, 72899
412 72899
413 71398
414 ....70298, 71142
417 71142
422 72899
423 72899
424 70298
426 72899
433 71142
438 72754
440 72899
441 72899
447 72899
457 72754
482 72899
484 70298
485 72899
510 71142
1004 72899
1008 72899
Proposed Rules:
1 ....70096, 73007
100 71046
404 ....70096, 73007
414 70358
600 69525

43 CFR

8340 69206

44 CFR

59 73233
64 73233

45 CFR

3 72899
63 72899
75 72899
147 ....71142, 72158
155 71142
158 72158
170 70064
171 70064
182 71142
305 72899
307 72899
1324 72899
1325 72899
1326 72899
1328 72899
Proposed Rules:
6 ....70096, 73007
1635 70564

46 CFR

502 72574
503 72574
520 72574
530 72574
535 72574
540 72574
550 72574
555 72574
560 72574

47 CFR

1 75770
2 69515
9 70500
54 75770
64 ....73233, 73360
76 ....71848, 73425
90 69515
97 69515
Proposed Rules:
1 71593
5 71296
25 71296
52 73253
73 ....69311, 70569, 74955
97 71296

48 CFR

30 72971
204 74610
209 74610
212 74611
229 74611
252 ....74610, 74611
302 72899
326 72899
Proposed Rules:
212 74636
223 74639
326 71596
352 71596
9904 70572

49 CFR

107 75680
171 75680
172 75680
173 75680
178 75680
179 75680
180 75680
273 72971
299 69700
395 74909
572 69898
Proposed Rules:
Ch. III 75280
13 74640
192 70124
195 70124
571 69388

50 CFR

17 69778
27 69223
92 73233
100 74796
216 69515
218 72312
622 ....70085, 73238, 73642
635 71270
648 ....71575, 72579, 74266, 74612, 74919
660 ....73002, 74613
665 ....71577, 73003, 74614
679 ....69517, 71272, 72580, 74266, 74615, 75238, 75239
680 72581
Proposed Rules:
17 ....69540, 71859, 73012, 73164, 74050
216 71297
622 73013
648 ....70573, 71873, 72616, 73253
660 73446
665 71300

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List November 3, 2020

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