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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133-AF15

Temporary Regulatory Relief in Response to COVID-19—Extension

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule and temporary final rule; extension.

SUMMARY: The NCUA Board (Board) is extending the effective date of its temporary final rule, which modified certain regulatory requirements to help ensure that federally insured credit unions (FICUs) remain operational and can properly conduct appropriate liquidity management to address economic conditions caused by the COVID-19 pandemic. Specifically, the temporary final rule issued by the Board in April 2020 temporarily raised the maximum aggregate amount of loan participations that a FICU may purchase from a single originating lender to the greater of \$5,000,000 or 200 percent of the FICU's net worth. The rule also temporarily suspended limitations on the eligible obligations that a Federal credit union (FCU) may purchase and hold. In addition, given physical distancing practices necessitated by COVID-19, the rule also tolled the required timeframes for the occupancy or disposition of properties not being used for FCU business or that have been abandoned. Unless extended, each of these temporary modifications will expire on December 31, 2020. Due to the continued impact of COVID-19, the Board has decided it is necessary to extend the effective period of these temporary modifications until December 31, 2021.

DATES: This rule is effective December 22, 2020. The expiration date of the temporary final rule published on April 21, 2020 (85 FR 22010), is extended through the close of December 31, 2021.

FOR FURTHER INFORMATION CONTACT:

Policy and Analysis: Victoria Nahrwold, Office of Examination and Insurance, at (703) 548-2633; *Legal:* Thomas Zells and Ariel Pereira, Staff Attorneys, Office of General Counsel, at (703) 518-6540; or by mail at: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314.

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- I. Background
- II. Legal Authority
- III. Section-by-Section Analysis
- IV. Regulatory Procedures

I. Background

A. COVID-19 Pandemic

The COVID-19 pandemic has created uncertainty for FICUs and their members. The Board continues to work with Federal and state regulatory agencies, in addition to FICUs, to assist FICUs in managing their operations and to facilitate continued assistance to credit union members and communities impacted by the novel coronavirus. In April 2020, as part of these ongoing efforts, the Board temporarily modified certain regulatory requirements to help ensure that FICUs remain operational and liquid during the COVID-19 pandemic.¹ The Board concluded that the amendments would provide FICUs necessary additional flexibility in a manner consistent with the NCUA's responsibility to maintain the safety and soundness of the credit union system. The temporary amendments were to remain in place through the end of calendar year 2020 unless the Board took action to extend their effectiveness.

The economic environment is a key determinant of credit union performance. After several years of solid growth, the economy entered a recession at the start of 2020.² Given the potential depth of the recession, forecasters do not expect the economy to return to its pre-recession, late 2019 peak before the end of 2021. A sustained, high level of unemployment could reduce loan demand, particularly for non-mortgage consumer loans, and affect credit quality. System-wide delinquency rates, which remained low through the second quarter, could begin to rise as the forbearance programs put in place during the spring come to an

end.³ The economic impact of the COVID-19 pandemic may result in additional stress on credit union balance sheets, potentially requiring robust liquidity management over the course of 2021. While recovery in economic activity and labor markets is widely expected to continue, there is a high risk of a worse-than-expected outcome. This will depend on the path of COVID-19 infections. As COVID-19 cases rise, another wave of temporary business closures and other measures that hinder economic activity may become necessary. As a result, the recovery could falter, leading to more job losses and higher unemployment. Weaker-than-expected economic conditions or another downturn would keep interest rates low or cause them to decline, particularly at the long end of the yield curve, and pose more significant challenges for the credit union system. The NCUA, like credit unions, needs to plan and prepare for a range of economic outcomes that could affect credit union performance. This includes ensuring a regulatory environment that provides FICUs with the flexibility necessary to cope with and address the range of potential COVID-19 impacts.

Due to the continuing impact of the COVID-19 pandemic on FICUs and their members, the Board has determined that it is necessary to extend the effectiveness of these temporary provisions. The economic impact of the COVID-19 pandemic remains uncertain and is forecasted to extend through 2021. As such, the temporary amendments will remain in place through the end of calendar year 2021 unless the Board finds conditions warrant additional action to further extend their effectiveness.

B. The Temporary Amendments

In general, two of the temporary amendments expanded the authority of FICUs to purchase loans and participations in loans, thereby enhancing FICUs' ability to meet liquidity needs. Specifically, the Board temporarily raised the maximum aggregate amount of loan participations that a FICU may purchase from a single originating lender to the greater of \$5,000,000 or 200 percent of the credit

¹ 85 FR 22010 (Apr. 21, 2020).

² See <https://www.nber.org/news/business-cycle-dating-committee-announcement-june-8-2020>.

³ See Title IV of the *Coronavirus Aid, Relief, and Economic Security Act*, Public Law 116-136, 134 Stat 281 (March 27, 2020).

union's net worth. The Board also temporarily suspended certain limitations on the types of eligible obligations that a FICU may purchase and hold. The third regulatory amendment tolled the required timeframes for the occupancy or disposition of properties not being used for FCU business or that have been abandoned to address the impact of the physical distancing practices necessitated by the COVID-19 pandemic.

Section III of this preamble discusses the temporary regulatory amendments in greater detail and the rationale for the extension of their temporary effect.

II. Legal Authority

The Board is issuing this temporary final rule pursuant to its authority under the Act.⁴ The Act grants the Board a broad mandate to issue regulations governing both Federal credit unions and, more generally, all FICUs. For example, section 120 of the Act is a general grant of regulatory authority and authorizes the Board to prescribe rules and regulations for the administration of the Act.⁵ Section 209 of the Act is a plenary grant of regulatory authority to issue rules and regulations necessary or appropriate for the Board to carry out its role as share insurer for all FICUs.⁶ Other provisions of the Act confer specific rulemaking authority to address prescribed issues or circumstances.⁷ Accordingly, the Act grants the Board broad rulemaking authority to ensure that the credit union industry and the NCUSIF remain safe and sound.

III. Section-by-Section Analysis

A. Aggregate Limit on Loan Participation Purchases (Section 701.22(b)(5)(ii))

Section 107(5)(E) of the FCU Act authorizes an FCU to engage in participation lending with other credit unions, credit union organizations, or financial organizations in accordance with written policies of the FCU's board of directors.⁸ The NCUA has implemented this statutory provision in § 701.22 of its regulations, which applies to all FICUs. The statute contains no limitation on the amount of participations that an FCU may

purchase from any single originating lender.

The regulation limits the aggregate amount of loan participations that a FICU may purchase from any one originating lender to the greater of \$5,000,000 or 100 percent of the FICU's net worth.⁹ As explained in the preamble to the final rule that established the limitation, the purpose of the provision is to mitigate the exposure of FICUs to concentration risk.¹⁰ The preamble explained that, in prescribing concentration limits on loan participations, the Board's goal was "to strike an appropriate balance between mitigating risk and fostering the [credit union] industry's growth and stability."¹¹

Under the temporary final rule issued in April 2020, the aggregate limit below which a waiver from the appropriate NCUA Regional Director is not required was temporarily raised to the greater of \$5,000,000 or 200 percent of a FICU's net worth. The increase was intended to help safeguard the stability of FICUs during the COVID-19 pandemic, without undue additional risk to the safety and soundness of the credit union system. The temporary increase was set to expire at the close of December 31, 2020.

Due to the ongoing COVID-19 pandemic and its continued impact on FICUs, the Board believes it necessary to extend the effective period of this temporary amendment until the close of December 31, 2021. As noted in the April 2020 temporary final rule, the Board continues to believe that a cap is an important protection against FICU insolvency. However, the Board also continues to believe that, as currently formulated in § 701.22(b)(5)(ii), the limitation may be overly prescriptive during this time. Additional regulatory flexibility continues to be especially warranted to deal with the economic impact of the COVID-19 pandemic, which may result in additional stress on credit union balance sheets, potentially requiring robust liquidity management.

When the Board issued the temporary increase in April, it emphasized its belief that this amendment would help safeguard the stability of FICUs during the COVID-19 pandemic, without undue additional risk to the safety and soundness of the credit union system. The Board maintains this belief and expects that the impact of the COVID-19 pandemic will warrant an increased cap until the close of December 31, 2021. The Board also continues to

believe that the temporary increase is needed to strike the balance the Board sought in originally promulgating the rule in 2013; the Board encourages FICUs to engage in appropriate due diligence in this context. As such, the Board feels it necessary to extend this relief until the close of December 31, 2021 to continue to allow FICUs the flexibility to conduct robust liquidity management to cope with the atypical economic conditions caused by the COVID-19 pandemic. The Board believes that a one-year extension appropriately balances the unpredictable length of the economic impact of the COVID-19 pandemic with safety and soundness considerations.

In the April 2020 temporary final rule, the Board noted that, subsequent to the temporary rule's expiration at the close of December 31, 2020, a FICU must return into compliance with the current limitation (that is, the greater of \$5,000,000 or 100 percent of its net worth) by either ceasing to purchase loan participations from the originating lender or requesting a waiver as provided in the regulation. With this extension of the expiration, a FICU now must return into compliance with the current limitation or obtain a waiver at the close of December 31, 2021.

B. Purchase, Sale, and Pledge of Eligible Obligations (Section 701.23(b))

Section 107(13) of the FCU Act authorizes an FCU, "in accordance with rules and regulations prescribed by the Board," to purchase, sell, or pledge all or part of an eligible obligation to one of its own members.¹² The NCUA has implemented this authority in its regulations at § 701.23(b)(1)(i) and (b)(2)(i), which provide that an FCU may purchase an eligible obligation from any source, provided the FCU is empowered to grant the loan or the loan is refinanced within 60 days following its purchase so that it is a loan the FCU is empowered to grant.

The purpose of the refinancing requirement is to help ensure that loans purchased by an FCU comply with the statutory and regulatory requirements applicable to loans made by the FCU. Although the Board's longstanding policy has been that all eligible obligations of an FCU, whether made or purchased, comply with the requirements and goals of the FCU Act, the explicit statutory language of the FCU Act does not necessarily compel this. As explained in the April 2020 temporary final rule, the Board believes that, given the impact of the COVID-19 pandemic, the balance weighs in favor

⁴ 12 U.S.C. 1751 *et seq.*

⁵ 12 U.S.C. 1766(a).

⁶ 12 U.S.C. 1789.

⁷ An example of a provision of the Act that provides the Board with specific rulemaking authority is section 207 (12 U.S.C. 1787), which is a specific grant of authority over share insurance coverage, conservatorships, and liquidations.

⁸ 12 U.S.C. 1757(5)(e).

⁹ 12 CFR 701.22(b)(5)(ii).

¹⁰ 78 FR 37946 (June 25, 2013).

¹¹ *Id.* at 37951.

¹² 12 U.S.C. 1757(13).

of adopting a closer reading of the text of the statute and suspending the refinancing requirement for a temporary period to promote the extension of credit and flow of liquidity in the credit union system generally.

As noted, the FCU Act and § 701.23 generally do not authorize an FCU to purchase a loan unless the person liable on the loan is a member of that credit union. The Board's publicly articulated interpretation since the 1979 rulemaking that implemented section 107(13) is that Congress did not intend section 107(13) to be an express prohibition on purchases of obligations made to non-members provided they are authorized by other sections of the FCU Act.¹³

The Board's regulations in § 701.23 generally require that purchased eligible obligations be obligations of a purchasing FCU's members. However, § 701.23(b)(2) provides certain limited exceptions to the general requirements for well-capitalized FCUs that have composite CAMEL ratings of "1" or "2."¹⁴ The regulations authorize these FCUs to purchase the eligible obligations of any FICU or of any liquidating credit union without regard to whether they are obligations of the purchasing FCU's members. As the Board has previously noted, these types of purchases could be construed as being made under section 107(14) of the FCU Act (which does not impose a membership requirement), as opposed to under section 107(13).¹⁵ Section 107(14) authorizes FCUs to "purchase all or part of the assets of another credit union and to assume the liabilities of the selling credit union and those of its members." This statutory interpretation is consistent with the general principle that the more specific provision or authority applies in favor of the more general provision.

In the April 2020 temporary final rule, the Board explained that—while it continues to believe that this exception should generally be limited to FCUs with CAMEL 1 or 2 composite ratings—it also recognizes the urgent need to support the extension of credit and facilitate downstream loan purchases as a tool to manage liquidity. The Board, therefore, temporarily amended its

regulations to authorize FCUs with CAMEL composite ratings of 1, 2, or 3 to purchase eligible obligations of FICUs and liquidating credit unions irrespective of whether the obligation belongs to the purchasing FCU's members. This change did not alter the requirement for a purchasing FCU to be well-capitalized under § 701.22(b)(2).¹⁶

This temporary amendment was set to expire at the close of December 31, 2020. Due to the ongoing and unforeseeable impact of the COVID-19 pandemic, the Board believes it appropriate to extend these temporary provisions until the close of December 31, 2021. The Board recognizes that the need to support the extension of credit and facilitate the downstream loan purchases as a tool to manage liquidity remains, and likely will remain for the foreseeable future. The Board believes that a one-year extension appropriately balances the unpredictable length of the economic impact of the COVID-19 pandemic with safety and soundness considerations.

As noted in the April 2020 temporary final rule, the Board reiterates that this change allows FCUs to continue to hold obligations purchased pursuant to this temporary final rule subsequent to the rule's expiration. The standard requirements applicable to the purchase of obligations under § 701.23 will resume after the expiration of the temporary provisions at the close of December 31, 2021, unless extended, and will apply to all future purchases, including to purchases of obligations previously acquired under the provisions of this temporary final rule. The Board also reiterates that the restrictions temporarily relieved in § 701.23 do not apply to state-chartered, federally insured credit unions. Any such restrictions applicable to state-chartered credit unions would be based on state laws or regulations. This temporary final rule does not modify the current authority of FCUs under § 701.23 to purchase the obligations of a liquidating credit union without regard to whether the obligations belong to the purchasing FCU's members.

C. FCU Occupancy and Disposal of Acquired Premises (Section 701.36(c))

Section 107(4) of the FCU Act authorizes an FCU to purchase, hold, and dispose of property necessary or incidental to its operations.¹⁷ The Board has implemented and interpreted this provision of the FCU Act in its

regulation at 12 CFR 701.36. In general, an FCU may only invest in property that it intends to use to transact credit union business or in property that supports its internal operations or serves its members. Among other provisions, § 701.36: (1) Limits FCU investments in fixed assets; and (2) establishes occupancy, planning, and disposal requirements for acquired and abandoned premises.

The regulation provides that if an FCU acquires premises, including unimproved land or unimproved real property, it must partially occupy them "no later than six years after the date of acquisition," subject to the NCUA granting a waiver.¹⁸ Further, an FCU must make diligent efforts to dispose of abandoned premises and any other real property it does not intend to use in transacting business. Additionally, the FCU must advertise for sale premises that have been abandoned for four years.¹⁹ The specific terms of these requirements do not stem directly from the FCU Act, but instead reflect the Board's judgment in implementing the general statutory provision.

In the April temporary final rule, the Board—noting the impact of the physical distancing measures adopted by many states and localities related to COVID-19²⁰ on FCU's ability to comply with the occupancy and disposition requirements in § 701.36—adopted provisions to temporarily toll the regulatory mandated timeframes in the rule. The Board emphasized that these health-related restrictions on the mobility of individuals made the changes in occupancy and dispositions required by § 701.36 extremely difficult. The Board explained that this temporary change appropriately reflected these unique circumstances while maintaining consistency with the statutory provision as interpreted and implemented by the Board.

The temporary final rule provided that any days that fall within the period commencing on April 21, 2020 and concluding at the close of December 31, 2020 shall not be counted for purposes of determining an FCU's compliance with the regulatory time periods. This temporary deferral has provided FCUs additional flexibility to comply with the prescribed time periods, while still complying with the statutory and regulatory goals of ensuring that

¹³ 44 FR 27068, 27069 (May 9, 1979).

¹⁴ Section 701.23 also contains exceptions to the membership requirement for certain purchases of student loans and real estate loans that an FCU purchases to complete a pool for sale. The Board established this exception in the 1979 final rule discussed above. 44 FR 27068 (May 9, 1979).

¹⁵ Section 107(14) is codified in 12 U.S.C. 1757(14). For the Board's prior statements on this matter, please refer to 66 FR 58656, 58660 (Nov. 23, 2001); 51 FR 15055, 15059 (Mar. 15, 2001), and 76 FR 81421, 81426 (Dec. 28, 2011).

¹⁶ Generally, credit unions with a CAMEL composite rating lower than 3 are considered to be in "troubled condition" under the NCUA's regulations. 12 CFR 700.2.

¹⁷ 12 U.S.C. 1757(4).

¹⁸ 12 CFR 701.36(c)(1).

¹⁹ 12 CFR 701.36(c)(2).

²⁰ See <https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html>. ("[A] vast majority of Americans — nine in 10 United States residents — are now or will soon be under instructions to stay at home.")

properties acquired or held by FCUs are used for credit union business.

Due to the ongoing nature of the COVID-19 pandemic and its continued impact on FICUs, the Board has decided it is necessary to extend the effectiveness of this temporary amendment until the close of December 31, 2021. Physical distancing practices continue to be a key component of preventing the spread of COVID-19 and many states, localities, and businesses have adopted related requirements or policies²¹ that continue to make the changes in occupancy and dispositions required by § 701.36 extremely difficult.

The Board continues to believe this temporary change appropriately reflects the unique circumstances necessitated by the COVID-19 pandemic while maintaining consistency with the statutory provision as interpreted and implemented by the Board. The Board feels that a one-year extension appropriately balances the unpredictable length of the impact of the COVID-19 pandemic with safety and soundness considerations.

Example One: An FCU closed on the purchase of an office building 30 days before April 21, 2020 (that is, the temporary final rule is published on the 31st day following acquisition). Under the temporary regulatory amendment, January 1, 2022 would be deemed the 31st day following acquisition for purposes of calculating the six-year deadline for partial occupancy.

Example Two: An FCU has an abandoned parcel of land that, under § 701.36(c)(2), it is required to advertise for sale no later than November 9, 2020 (i.e., that fourth year anniversary of the date the parcel was abandoned). Under this temporary final rule, the FCU would have an additional amount of time to meet this requirement equal to the number of days between the publication date and January 1, 2022.

IV. Regulatory Procedures

A. Administrative Procedure Act

The Board is issuing the extension of the temporary final rule without prior notice and the opportunity for public comment and the delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).²²

²¹ See <https://www.nytimes.com/interactive/2020/us/states-reopen-map-coronavirus.html>. (“As coronavirus cases continue to surge and hospitals in some areas stretch to capacity, many states are once again imposing limits on businesses and everyday life. Some governors are closing sectors they had reopened after spring lockdowns. Others, wary of an ailing economy, are letting businesses remain largely open but setting stricter capacity limits or mandating the wearing of masks in public.”)

²² 5 U.S.C. 551 *et seq.*

Pursuant to the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an “agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”²³

The Board believes that the public interest is best served by implementing the extension of the previously issued temporary final rule immediately upon publication in the **Federal Register**. The Board notes that the COVID-19 crisis is unprecedented. It is a rapidly changing situation and difficult to anticipate how the disruptions caused by the crisis will manifest themselves within the financial system and how individual credit unions may be impacted. Because of the widespread impact of a pandemic and the temporary nature of both the relief contemplated by the temporary final rule and this extension of such relief, the Board believes it is has good cause to determine that ordinary notice and public procedure are impracticable and that moving expeditiously to extend the temporary final rule is in the best of interests of the public and the FICUs that serve that public. The extension of these temporary regulatory changes are proactive steps that are designed help FICUs cope with the economic impact of the COVID-19 pandemic, which may result in additional stress on credit union balance sheets, potentially requiring robust liquidity management over the course of 2021. The changes are undertaken with expedience to ensure the maximum intended effects remain in place.

The Board values public input in its rulemakings and believes that providing the opportunity for comment enhances its regulations. Accordingly, the Board often solicits comments on its rules even when not required under the APA, such as for the rules it issues on an interim-final basis. The Board, however, notes that the provisions extended in this rule are temporary in nature, and designed specifically to help credit unions affected by the COVID-19 pandemic. The extension of the amendments made by the initial temporary final rule will automatically expire at the close of December 31, 2021, and are limited in number and scope. For these reasons, the Board finds that there is good cause consistent with the public interest to issue the rule without advance notice and comment.

The APA also requires a 30-day delayed effective date, except for: (1)

Substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause.²⁴ Because the rules relieve currently codified limitations and restrictions, the extension of the temporary final rule is exempt from the APA’s delayed effective date requirement. As an alternative basis to make the rule effective without the 30-day delayed effective date, the Board finds there is good cause to do so for the same reasons set forth above regarding advance notice and opportunity for comment.

B. Congressional Review Act

For purposes of the Congressional Review Act,²⁵ the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a “major” rule. If the OMB deems a rule to be a “major rule,” the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.

The Congressional Review Act defines a “major rule” as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (A) an annual effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.²⁶

For the same reasons set forth above, the Board is adopting the extension of the temporary final rule without the delayed effective date generally prescribed under the Congressional Review Act. The delayed effective date required by the Congressional Review Act does not apply to any rule for which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.²⁷ In light of current market uncertainty, the Board believes that delaying the effective date of the extension of the

²⁴ 5 U.S.C. 553(d).

²⁵ 5 U.S.C. 801–808.

²⁶ 5 U.S.C. 804(2).

²⁷ 5 U.S.C. 808.

²³ 5 U.S.C. 553(b)(3).

temporary final rule would be contrary to the public interest for the same reasons discussed above.

As required by the Congressional Review Act, the Board will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a valid OMB control number.

In accordance with the PRA, the information collection requirements included in this temporary final rule extension have been submitted to OMB for approval under control numbers 3133-0141, 3133-0127 and 3133-0040.

D. Executive Order 13132, on Federalism

Executive Order 13132²⁸ encourages independent regulatory agencies to consider the impact of their actions on state and local interests. The NCUA, an independent regulatory agency, as defined in 44 U.S.C. 3502(5), voluntarily complies with the Executive order to adhere to fundamental federalism principles. The extension of the temporary final rule will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. The Board has therefore determined that this rule does not constitute a policy that has federalism implications for purposes of the Executive order.

E. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that the extension of the temporary final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.²⁹

F. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule or a final rule pursuant to the APA or another law, the

agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. For purposes of the RFA, the Board considers credit unions with assets less than \$100 million to be small entities.

As discussed previously, consistent with the APA, the Board has determined for good cause that general notice and opportunity for public comment is unnecessary, and therefore the Board is not issuing a notice of proposed rulemaking. Rules that are exempt from notice and comment procedures are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Accordingly, the Board has concluded that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply.

List of Subjects in 12 CFR Part 701

Aged, Civil rights, Credit, Credit unions, Fair housing, Individuals with disabilities, Insurance, Mortgages, Reporting and recordkeeping requirements.

By the NCUA Board, this 17th day of December 2020.

Melane Conyers-Ausbrooks,
Secretary of the Board.

For the reasons discussed in the preamble, the Board amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF CREDIT UNIONS

■ 1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1785, 1786, 1787, 1788, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

§ 701.22 [Amended]

■ 2. In § 701.22(e), remove the date “December 31, 2020” and add in its place the date “December 31, 2021”.

§ 701.23 [Amended]

■ 3. In § 701.23(i) introductory text, remove the date “December 31, 2020” and add in its place the date “December 31, 2021”.

§ 701.36 [Amended]

■ 4. In § 701.36(c)(3), remove the date “December 31, 2020” and add in its place the date “December 31, 2021”.

[FR Doc. 2020–28279 Filed 12–21–20; 8:45 am]

BILLING CODE 7535–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1003

Home Mortgage Disclosure (Regulation C) Adjustment to Asset-Size Exemption Threshold

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is amending the official commentary that interprets the requirements of the Bureau's Regulation C (Home Mortgage Disclosure) to reflect the asset-size exemption threshold for banks, savings associations, and credit unions based on the annual percentage change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). Based on the 1.3 percent increase in the average of the CPI-W for the 12-month period ending in November 2020, the exemption threshold is adjusted to \$48 million from \$47 million. Therefore, banks, savings associations, and credit unions with assets of \$48 million or less as of December 31, 2020, are exempt from collecting data in 2021.

DATES: This rule is effective on January 1, 2021.

FOR FURTHER INFORMATION CONTACT: Willie Williams, Paralegal Specialist; Rachel Ross, Attorney-Advisor; Office of Regulations, at (202) 435–7700. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION: The Bureau is amending Regulation C, which implements the HMDA asset thresholds, to establish the asset-sized exemption threshold for depository financial institution for 2021. The asset threshold will be \$48 million for 2021.

I. Background

The Home Mortgage Disclosure Act of 1975 (HMDA)¹ requires most mortgage lenders located in metropolitan areas to collect data about their housing related lending activity. Annually, lenders must

²⁸ Executive Order 13132 on Federalism, was signed by former President Clinton on August 4, 1999, and subsequently published in the **Federal Register** on August 10, 1999 (64 FR 43255).

²⁹ Public Law 105–277, 112 Stat. 2681 (1998).

¹ 12 U.S.C. 2801–2810.

report their data to the appropriate Federal agencies and make the data available to the public. The Bureau's Regulation C² implements HMDA.

Prior to 1997, HMDA exempted certain depository institutions as defined in HMDA (*i.e.*, banks, savings associations, and credit unions) with assets totaling \$10 million or less as of the preceding year-end. In 1996, HMDA was amended to expand the asset-size exemption for these depository institutions.³ The amendment increased the dollar amount of the asset-size exemption threshold by requiring a one-time adjustment of the \$10 million figure based on the percentage by which the CPI-W for 1996 exceeded the CPI-W for 1975, and it provided for annual adjustments thereafter based on the annual percentage increase in the CPI-W, rounded to the nearest multiple of \$1 million.

The definition of "financial institution" in § 1003.2(g) provides that the Bureau will adjust the asset threshold based on the year-to-year change in the average of the CPI-W, not seasonally adjusted, for each 12-month period ending in November, rounded to the nearest \$1 million. For 2020, the threshold was \$47 million. During the 12-month period ending in November 2020, the average of the CPI-W increased by 1.3 percent. As a result, the exemption threshold is increased to \$48 million for 2021. Thus, banks, savings associations, and credit unions with assets of \$48 million or less as of December 31, 2020, are exempt from collecting data in 2021. An institution's exemption from collecting data in 2021 does not affect its responsibility to report data it was required to collect in 2020.

II. Procedural Requirements

A. Administrative Procedure Act

Under the Administrative Procedure Act (APA), notice and opportunity for public comment are not required if the Bureau finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.⁴ Pursuant to this final rule, comment 2(g)-2 in Regulation C, supplement I, is amended to update the exemption threshold. The amendment in this final rule is technical and non-discretionary, and it merely applies the formula established by Regulation C for determining any adjustments to the exemption threshold. For these reasons, the Bureau has determined that publishing a notice of proposed

rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendment is adopted in final form.

Section 553(d) of the APA generally requires publication of a final rule not less than 30 days before its effective date, except (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule.⁵ At a minimum, the Bureau believes the amendments fall under the third exception to section 553(d). The Bureau finds that there is good cause to make the amendments effective on January 1, 2021. The amendment in this final rule is technical and non-discretionary, and it applies the method previously established in the agency's regulations for determining adjustments to the threshold.

B. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.⁶

C. Paperwork Reduction Act

The Bureau has determined that this final rule does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.⁷

D. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Bureau will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to the rule taking effect. The Office of Information and Regulatory Affairs (OIRA) has designated this rule as not a "major rule" as defined by 5 U.S.C. 804(2).

III. Signing Authority

The Acting Associate Director for Research, Markets and Regulations, Dan S. Sokolov, having reviewed and approved this document, is delegating the authority to electronically sign this document to Grace Feola, a Bureau

Federal Register Liaison, for purposes of publication in the **Federal Register**.

List of Subjects in 12 CFR Part 1003

Banks, banking, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons set forth above, the Bureau amends Regulation C, 12 CFR part 1003, as set forth below:

PART 1003—HOME MORTGAGE DISCLOSURE (REGULATION C)

■ 1. The authority citation for part 1003 continues to read as follows:

Authority: 12 U.S.C. 2803, 2804, 2805, 5512, 5581.

■ 2. In supplement I to part 1003, under *Section 1003.2—Definitions, 2(g) Financial Institution* is revised to read as follows:

Supplement I to Part 1003—Official Interpretations

* * * * *

Section 1003.2—Definitions

* * * * *

2(g) Financial Institution

1. *Preceding calendar year and preceding December 31.* The definition of financial institution refers both to the preceding calendar year and the preceding December 31. These terms refer to the calendar year and the December 31 preceding the current calendar year. For example, in 2021, the preceding calendar year is 2020, and the preceding December 31 is December 31, 2020. Accordingly, in 2021, Financial Institution A satisfies the asset-size threshold described in § 1003.2(g)(1)(i) if its assets exceeded the threshold specified in comment 2(g)-2 on December 31, 2020. Likewise, in 2021, Financial Institution A does not meet the loan-volume test described in § 1003.2(g)(1)(v)(A) if it originated fewer than 100 closed-end mortgage loans during either 2019 or 2020.

2. *Adjustment of exemption threshold for banks, savings associations, and credit unions.* For data collection in 2021, the asset-size exemption threshold is \$48 million. Banks, savings associations, and credit unions with assets at or below \$48 million as of December 31, 2020, are exempt from collecting data for 2021.

3. *Merger or acquisition—coverage of surviving or newly formed institution.* After a merger or acquisition, the surviving or newly formed institution is a financial institution under § 1003.2(g)

² 12 CFR part 1003.

³ 12 U.S.C. 2808(b).

⁴ 5 U.S.C. 553(b)(B).

⁵ 5 U.S.C. 553(d).

⁶ 5 U.S.C. 603(a), 604(a).

⁷ 44 U.S.C. 3501-3521.

if it, considering the combined assets, location, and lending activity of the surviving or newly formed institution and the merged or acquired institutions or acquired branches, satisfies the criteria included in § 1003.2(g). For example, A and B merge. The surviving or newly formed institution meets the loan threshold described in § 1003.2(g)(1)(v)(B) if the surviving or newly formed institution, A, and B originated a combined total of at least 500 open-end lines of credit in each of the two preceding calendar years. Likewise, the surviving or newly formed institution meets the asset-size threshold in § 1003.2(g)(1)(i) if its assets and the combined assets of A and B on December 31 of the preceding calendar year exceeded the threshold described in § 1003.2(g)(1)(i). Comment 2(g)-4 discusses a financial institution's responsibilities during the calendar year of a merger.

4. *Merger or acquisition—coverage for calendar year of merger or acquisition.* The scenarios described below illustrate a financial institution's responsibilities for the calendar year of a merger or acquisition. For purposes of these illustrations, a "covered institution" means a financial institution, as defined in § 1003.2(g), that is not exempt from reporting under § 1003.3(a), and "an institution that is not covered" means either an institution that is not a financial institution, as defined in § 1003.2(g), or an institution that is exempt from reporting under § 1003.3(a).

i. Two institutions that are not covered merge. The surviving or newly formed institution meets all of the requirements necessary to be a covered institution. No data collection is required for the calendar year of the merger (even though the merger creates an institution that meets all of the requirements necessary to be a covered institution). When a branch office of an institution that is not covered is acquired by another institution that is not covered, and the acquisition results in a covered institution, no data collection is required for the calendar year of the acquisition.

ii. A covered institution and an institution that is not covered merge. The covered institution is the surviving institution, or a new covered institution is formed. For the calendar year of the merger, data collection is required for covered loans and applications handled in the offices of the merged institution that was previously covered and is optional for covered loans and applications handled in offices of the merged institution that was previously not covered. When a covered institution

acquires a branch office of an institution that is not covered, data collection is optional for covered loans and applications handled by the acquired branch office for the calendar year of the acquisition.

iii. A covered institution and an institution that is not covered merge. The institution that is not covered is the surviving institution, or a new institution that is not covered is formed. For the calendar year of the merger, data collection is required for covered loans and applications handled in offices of the previously covered institution that took place prior to the merger. After the merger date, data collection is optional for covered loans and applications handled in the offices of the institution that was previously covered. When an institution remains not covered after acquiring a branch office of a covered institution, data collection is required for transactions of the acquired branch office that take place prior to the acquisition. Data collection by the acquired branch office is optional for transactions taking place in the remainder of the calendar year after the acquisition.

iv. Two covered institutions merge. The surviving or newly formed institution is a covered institution. Data collection is required for the entire calendar year of the merger. The surviving or newly formed institution files either a consolidated submission or separate submissions for that calendar year. When a covered institution acquires a branch office of a covered institution, data collection is required for the entire calendar year of the merger. Data for the acquired branch office may be submitted by either institution.

5. *Originations.* Whether an institution is a financial institution depends in part on whether the institution originated at least 100 closed-end mortgage loans in each of the two preceding calendar years or at least 500 open-end lines of credit in each of the two preceding calendar years. Comments 4(a)-2 through -4 discuss whether activities with respect to a particular closed-end *mortgage loan* or *open-end line of credit* constitute an *origination* for purposes of § 1003.2(g).

6. *Branches of foreign banks—treated as banks.* A Federal branch or a State-licensed or insured branch of a foreign bank that meets the definition of a "bank" under section 3(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)) is a bank for the purposes of § 1003.2(g).

7. *Branches and offices of foreign banks and other entities—treated as nondepository financial institutions.* A

Federal agency, State-licensed agency, State-licensed uninsured branch of a foreign bank, commercial lending company owned or controlled by a foreign bank, or entity operating under section 25 or 25A of the Federal Reserve Act, 12 U.S.C. 601 and 611 (Edge Act and agreement corporations) may not meet the definition of "bank" under the Federal Deposit Insurance Act and may thereby fail to satisfy the definition of a depository financial institution under § 1003.2(g)(1). An entity is nonetheless a financial institution if it meets the definition of nondepository financial institution under § 1003.2(g)(2).

* * * * *

Dated: December 17, 2020.

Grace Feola,

Federal Register Liaison, Bureau of Consumer Financial Protection.

[FR Doc. 2020-28230 Filed 12-21-20; 8:45 am]

BILLING CODE 4810-AM-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

Truth in Lending Act (Regulation Z) Adjustment to Asset-Size Exemption Threshold

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is amending the official commentary that interprets the requirements of the Bureau's Regulation Z (Truth in Lending) to reflect a change in the asset-size threshold for certain creditors to qualify for an exemption to the requirement to establish an escrow account for a higher-priced mortgage loan. This amendment is based on the annual percentage change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). Based on the 1.3 percent increase in the average of the CPI-W for the 12-month period ending in November 2020, the exemption threshold is adjusted to \$2.230 billion from \$2.202 billion. Therefore, creditors with assets of less than \$2.230 billion (including assets of certain affiliates) as of December 31, 2020, are exempt, if other requirements of Regulation Z also are met, from establishing escrow accounts for higher-priced mortgage loans in 2021.

DATES: This rule is effective on January 1, 2021.

FOR FURTHER INFORMATION CONTACT: Willie Williams, Paralegal Specialist; Rachel Ross, Attorney-Advisor, Office of Regulations, at (202) 435-7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 129D of the Truth in Lending Act (TILA) contains a general requirement that an escrow account be established by a creditor to pay for property taxes and insurance premiums for certain first-lien higher-priced mortgage loan transactions. TILA section 129D also generally permits an exemption from the higher-priced mortgage loan escrow requirement for a creditor that meets certain requirements, including any asset-size threshold the Bureau may establish.

In the 2013 Escrows Final Rule,¹ the Bureau established such an asset-size threshold of \$2 billion, which would adjust automatically each year, based on the year-to-year change in the average of the CPI-W for each 12-month period ending in November, with rounding to the nearest million dollars.² In 2015, the Bureau revised the asset-size threshold for small creditors and how it applies. The Bureau included in the calculation of the asset-size threshold the assets of the creditor's affiliates that regularly extended covered transactions secured by first liens during the applicable period and added a grace period to allow an otherwise eligible creditor that exceeded the asset limit in the preceding calendar year (but not in the calendar year before the preceding year) to continue to operate as a small creditor with respect to transactions with applications received before April 1 of the current calendar year.³ For 2020, the threshold was \$2.202 billion.

During the 12-month period ending in November 2020, the average of the CPI-W increased by 1.3 percent. As a result, the exemption threshold is increased to \$2.230 billion for 2021. Thus, if the creditor's assets together with the assets of its affiliates that regularly extended first-lien covered transactions during

calendar year 2020 are less than \$2.230 billion on December 31, 2020, and it meets the other requirements of § 1026.35(b)(2)(iii), it will be exempt from the escrow-accounts requirement for higher-priced mortgage loans in 2021 and will also be exempt from the escrow-accounts requirement for higher-priced mortgage loans for purposes of any loan consummated in 2022 with applications received before April 1, 2022. The adjustment to the escrows asset-size exemption threshold will also increase the threshold for small-creditor portfolio and balloon-payment qualified mortgages under Regulation Z. The requirements for small-creditor portfolio qualified mortgages at § 1026.43(e)(5)(i)(D) reference the asset threshold in § 1026.35(b)(2)(iii)(C). Likewise, the requirements for balloon-payment qualified mortgages at § 1026.43(f)(1)(vi) reference the asset threshold in § 1026.35(b)(2)(iii)(C). Under § 1026.32(d)(1)(ii)(C), balloon-payment qualified mortgages that satisfy all applicable criteria in § 1026.43(f)(1)(i) through (vi) and (f)(2), including being made by creditors that have (together with certain affiliates) total assets below the threshold in § 1026.35(b)(2)(iii)(C), are also excepted from the prohibition on balloon payments for high-cost mortgages.

II. Procedural Requirements

A. Administrative Procedure Act

Under the Administrative Procedure Act (APA), notice and opportunity for public comment are not required if the Bureau finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). Pursuant to this final rule, comment 35(b)(2)(iii)-1 in Regulation Z is amended to update the exemption threshold. The amendment in this final rule is technical and merely applies the formula previously established in Regulation Z for determining any adjustments to the exemption threshold. For these reasons, the Bureau has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendment is adopted in final form.

Section 553(d) of the APA generally requires publication of a final rule not less than 30 days before its effective date, except (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule. 5 U.S.C. 553(d). At a minimum,

the Bureau believes the amendments fall under the third exception to section 553(d). The Bureau finds that there is good cause to make the amendments effective on January 1, 2020. The amendment in this final rule is technical and non-discretionary, and it applies the method previously established in the agency's regulations for automatic adjustments to the threshold.

B. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.⁴

C. Paperwork Reduction Act

The Bureau has determined that this final rule does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.⁵

D. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Bureau will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to the rule taking effect. The Office of Information and Regulatory Affairs (OIRA) has designated this rule as not a "major rule" as defined by 5 U.S.C. 804(2).

III. Signing Authority

The Acting Associate Director for Research, Markets and Regulations, Dan S. Sokolov, having reviewed and approved this document, is delegating the authority to electronically sign this document to Grace Feola, a Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

List of Subjects in 12 CFR Part 1026

Advertising, Banks, banking, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

Authority and Issuance

For the reasons set forth above, the Bureau amends Regulation Z, 12 CFR part 1026, as set forth below:

⁴ 5 U.S.C. 603(a), 604(a).

⁵ 44 U.S.C. 3501-3521.

¹ 78 FR 4726 (Jan. 22, 2013).

² See 12 CFR 1026.35(b)(2)(iii)(C).

³ See 80 FR 59943, 59951 (Oct. 2, 2015). The Bureau also issued an interim final rule in March 2016 to revise certain provisions in Regulation Z to effectuate the Helping Expand Lending Practices in Rural Communities Act's amendments to TILA (Pub. L. 114-94, section 89003, 129 Stat. 1312, 1800-01 (2015)). The rule broadened the cohort of creditors that may be eligible under TILA for the special provisions allowing origination of balloon-payment qualified mortgages and balloon-payment high-cost mortgages, as well as for the escrow exemption. See 81 FR 16074 (Mar. 25, 2016).

**PART 1026—TRUTH IN LENDING
(REGULATION Z)**

■ 1. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *ET SEQ.*

■ 2. In supplement I to part 1026, under *Section 1026.35—Requirements for Higher-Priced Mortgage Loans, 35(b)(2) Exemptions, Paragraph 35(b)(2)(iii)* is revised to read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

* * * * *

Section 1026.35—Requirements for Higher-Priced Mortgage Loans

* * * * *

35(b)(2) Exemptions

* * * * *

Paragraph 35(b)(2)(iii)

1. *Requirements for exemption.* Under § 1026.35(b)(2)(iii), except as provided in § 1026.35(b)(2)(v), a creditor need not establish an escrow account for taxes and insurance for a higher-priced mortgage loan, provided the following four conditions are satisfied when the higher-priced mortgage loan is consummated:

i. During the preceding calendar year, or during either of the two preceding calendar years if the application for the loan was received before April 1 of the current calendar year, a creditor extended a first-lien covered transaction, as defined in § 1026.43(b)(1), secured by a property located in an area that is either “rural” or “underserved,” as set forth in § 1026.35(b)(2)(iv).

A. In general, whether the rural-or-underserved test is satisfied depends on the creditor’s activity during the preceding calendar year. However, if the application for the loan in question was received before April 1 of the current calendar year, the creditor may instead meet the rural-or-underserved test based on its activity during the next-to-last calendar year. This provides creditors with a grace period if their activity meets the rural-or-underserved test (in § 1026.35(b)(2)(iii)(A)) in one calendar year but fails to meet it in the next calendar year.

B. A creditor meets the rural-or-underserved test for any higher-priced mortgage loan consummated during a

calendar year if it extended a first-lien covered transaction in the preceding calendar year secured by a property located in a rural-or-underserved area. If the creditor does not meet the rural-or-underserved test in the preceding calendar year, the creditor meets this condition for a higher-priced mortgage loan consummated during the current calendar year only if the application for the loan was received before April 1 of the current calendar year and the creditor extended a first-lien covered transaction during the next-to-last calendar year that is secured by a property located in a rural or underserved area. The following examples are illustrative:

1. Assume that a creditor extended during 2016 a first-lien covered transaction that is secured by a property located in a rural or underserved area. Because the creditor extended a first-lien covered transaction during 2016 that is secured by a property located in a rural or underserved area, the creditor can meet this condition for exemption for any higher-priced mortgage loan consummated during 2017.

2. Assume that a creditor did not extend during 2016 a first-lien covered transaction secured by a property that is located in a rural or underserved area. Assume further that the same creditor extended during 2015 a first-lien covered transaction that is located in a rural or underserved area. Assume further that the creditor consummates a higher-priced mortgage loan in 2017 for which the application was received in November 2017. Because the creditor did not extend during 2016 a first-lien covered transaction secured by a property that is located in a rural or underserved area, and the application was received on or after April 1, 2017, the creditor does not meet this condition for exemption. However, assume instead that the creditor consummates a higher-priced mortgage loan in 2017 based on an application received in February 2017. The creditor meets this condition for exemption for this loan because the application was received before April 1, 2017, and the creditor extended during 2015 a first-lien covered transaction that is located in a rural or underserved area.

ii. The creditor and its affiliates together extended no more than 2,000 covered transactions, as defined in § 1026.43(b)(1), secured by first liens, that were sold, assigned, or otherwise transferred by the creditor or its affiliates to another person, or that were subject at the time of consummation to a commitment to be acquired by another person, during the preceding calendar year or during either of the two

preceding calendar years if the application for the loan was received before April 1 of the current calendar year. For purposes of § 1026.35(b)(2)(iii)(B), a transfer of a first-lien covered transaction to “another person” includes a transfer by a creditor to its affiliate.

A. In general, whether this condition is satisfied depends on the creditor’s activity during the preceding calendar year. However, if the application for the loan in question is received before April 1 of the current calendar year, the creditor may instead meet this condition based on activity during the next-to-last calendar year. This provides creditors with a grace period if their activity falls at or below the threshold in one calendar year but exceeds it in the next calendar year.

B. For example, assume that in 2015 a creditor and its affiliates together extended 1,500 loans that were sold, assigned, or otherwise transferred by the creditor or its affiliates to another person, or that were subject at the time of consummation to a commitment to be acquired by another person, and 2,500 such loans in 2016. Because the 2016 transaction activity exceeds the threshold but the 2015 transaction activity does not, the creditor satisfies this condition for exemption for a higher-priced mortgage loan consummated during 2017 if the creditor received the application for the loan before April 1, 2017, but does not satisfy this condition for a higher-priced mortgage loan consummated during 2017 if the application for the loan was received on or after April 1, 2017.

C. For purposes of § 1026.35(b)(2)(iii)(B), extensions of first-lien covered transactions, during the applicable time period, by all of a creditor’s affiliates, as “affiliate” is defined in § 1026.32(b)(5), are counted toward the threshold in this section. Under the Bank Holding Company Act, a company has control over a bank or another company if it directly or indirectly or acting through one or more persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the bank or company; it controls in any manner the election of a majority of the directors or trustees of the bank or company; or the Federal Reserve Board determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company. 12 U.S.C. 1841(a)(2).

iii. As of the end of the preceding calendar year, or as of the end of either of the two preceding calendar years if the application for the loan was

received before April 1 of the current calendar year, the creditor and its affiliates that regularly extended covered transactions secured by first liens, together, had total assets that are less than the applicable annual asset threshold.

A. For purposes of § 1026.35(b)(2)(iii)(C), in addition to the creditor's assets, only the assets of a creditor's "affiliate" (as defined by § 1026.32(b)(5)) that regularly extended covered transactions (as defined by § 1026.43(b)(1)) secured by first liens, are counted toward the applicable annual asset threshold. See comment 35(b)(2)(iii)-1.ii.C for discussion of definition of "affiliate."

B. Only the assets of a creditor's affiliate that regularly extended first-lien covered transactions during the applicable period are included in calculating the creditor's assets. The meaning of "regularly extended" is based on the number of times a person extends consumer credit for purposes of the definition of "creditor" in § 1026.2(a)(17). Because covered transactions are "transactions secured by a dwelling," consistent with § 1026.2(a)(17)(v), an affiliate regularly extended covered transactions if it extended more than five covered transactions in a calendar year. Also consistent with § 1026.2(a)(17)(v), because a covered transaction may be a high-cost mortgage subject to § 1026.32, an affiliate regularly extends covered transactions if, in any 12-month period, it extends more than one covered transaction that is subject to the requirements of § 1026.32 or one or more such transactions through a mortgage broker. Thus, if a creditor's affiliate regularly extended first-lien covered transactions during the preceding calendar year, the creditor's assets as of the end of the preceding calendar year, for purposes of the asset limit, take into account the assets of that affiliate. If the creditor, together with its affiliates that regularly extended first-lien covered transactions, exceeded the asset limit in the preceding calendar year—to be eligible to operate as a small creditor for transactions with applications received before April 1 of the current calendar year—the assets of the creditor's affiliates that regularly extended covered transactions in the year before the preceding calendar year are included in calculating the creditor's assets.

C. If multiple creditors share ownership of a company that regularly extended first-lien covered transactions, the assets of the company count toward the asset limit for a co-owner creditor if the company is an "affiliate," as defined

in § 1026.32(b)(5), of the co-owner creditor. Assuming the company is not an affiliate of the co-owner creditor by virtue of any other aspect of the definition (such as by the company and co-owner creditor being under common control), the company's assets are included toward the asset limit of the co-owner creditor only if the company is controlled by the co-owner creditor, "as set forth in the Bank Holding Company Act." If the co-owner creditor and the company are affiliates (by virtue of any aspect of the definition), the co-owner creditor counts all of the company's assets toward the asset limit, regardless of the co-owner creditor's ownership share. Further, because the co-owner and the company are mutual affiliates the company also would count all of the co-owner's assets towards its own asset limit. See comment 35(b)(2)(iii)-1.ii.C for discussion of the definition of "affiliate."

D. A creditor satisfies the criterion in § 1026.35(b)(2)(iii)(C) for purposes of any higher-priced mortgage loan consummated during 2016, for example, if the creditor (together with its affiliates that regularly extended first-lien covered transactions) had total assets of less than the applicable asset threshold on December 31, 2015. A creditor that (together with its affiliates that regularly extended first-lien covered transactions) did not meet the applicable asset threshold on December 31, 2015 satisfies this criterion for a higher-priced mortgage loan consummated during 2016 if the application for the loan was received before April 1, 2016 and the creditor (together with its affiliates that regularly extended first-lien covered transactions) had total assets of less than the applicable asset threshold on December 31, 2014.

E. Under § 1026.35(b)(2)(iii)(C), the \$2,000,000,000 asset threshold adjusts automatically each year based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million dollars. The Bureau will publish notice of the asset threshold each year by amending this comment. For calendar year 2021, the asset threshold is \$2,230,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2019 has total assets of less than \$2,230,000,000 on December 31, 2020, satisfies this criterion for purposes of any loan consummated in 2021 and for purposes of any loan consummated in 2022 for which the

application was received before April 1, 2022. For historical purposes:

1. For calendar year 2013, the asset threshold was \$2,000,000,000. Creditors that had total assets of less than \$2,000,000,000 on December 31, 2012, satisfied this criterion for purposes of the exemption during 2013.

2. For calendar year 2014, the asset threshold was \$2,028,000,000. Creditors that had total assets of less than \$2,028,000,000 on December 31, 2013, satisfied this criterion for purposes of the exemption during 2014.

3. For calendar year 2015, the asset threshold was \$2,060,000,000. Creditors that had total assets of less than \$2,060,000,000 on December 31, 2014, satisfied this criterion for purposes of any loan consummated in 2015 and, if the creditor's assets together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2014 were less than that amount, for purposes of any loan consummated in 2016 for which the application was received before April 1, 2016.

4. For calendar year 2016, the asset threshold was \$2,052,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2015 had total assets of less than \$2,052,000,000 on December 31, 2015, satisfied this criterion for purposes of any loan consummated in 2016 and for purposes of any loan consummated in 2017 for which the application was received before April 1, 2017.

5. For calendar year 2017, the asset threshold was \$2,069,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2016 had total assets of less than \$2,069,000,000 on December 31, 2016, satisfied this criterion for purposes of any loan consummated in 2017 and for purposes of any loan consummated in 2018 for which the application was received before April 1, 2018.

6. For calendar year 2018, the asset threshold was \$2,112,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2017 had total assets of less than \$2,112,000,000 on December 31, 2017, satisfied this criterion for purposes of any loan consummated in 2018 and for purposes of any loan consummated in 2019 for which the application was received before April 1, 2019.

7. For calendar year 2019, the asset threshold was \$2,167,000,000. A

creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2018 had total assets of less than \$2,167,000,000 on December 31, 2018, satisfied this criterion for purposes of any loan consummated in 2019 and for purposes of any loan consummated in 2020 for which the application was received before April 1, 2020.

8. For calendar year 2020, the asset threshold was \$2,202,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2019 had total assets of less than \$2,202,000,000 on December 31, 2019, satisfied this criterion for purposes of any loan consummated in 2020 and for purposes of any loan consummated in 2010 for which the application was received before April 1, 2021.

iv. The creditor and its affiliates do not maintain an escrow account for any mortgage transaction being serviced by the creditor or its affiliate at the time the transaction is consummated, except as provided in § 1026.35(b)(2)(iii)(D)(1) and (2). Thus, the exemption applies, provided the other conditions of § 1026.35(b)(2)(iii) are satisfied, even if the creditor previously maintained escrow accounts for mortgage loans, provided it no longer maintains any such accounts except as provided in § 1026.35(b)(2)(iii)(D)(1) and (2). Once a creditor or its affiliate begins escrowing for loans currently serviced other than those addressed in § 1026.35(b)(2)(iii)(D)(1) and (2), however, the creditor and its affiliate become ineligible for the exemption in § 1026.35(b)(2)(iii) on higher-priced mortgage loans they make while such escrowing continues. Thus, as long as a creditor (or its affiliate) services and maintains escrow accounts for any mortgage loans, other than as provided in § 1026.35(b)(2)(iii)(D)(1) and (2), the creditor will not be eligible for the exemption for any higher-priced mortgage loan it may make. For purposes of § 1026.35(b)(2)(iii), a creditor or its affiliate “maintains” an escrow account only if it services a mortgage loan for which an escrow account has been established at least through the due date of the second periodic payment under the terms of the legal obligation.

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Dated: December 17, 2020.

Grace Feola,

Federal Register Liaison, Bureau of Consumer Financial Protection.

[FR Doc. 2020–28231 Filed 12–21–20; 8:45 am]

BILLING CODE 4810-AM-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 27

[Docket No. FAA–2020–1102; Notice No. 27–052–SC]

Special Conditions: Garmin International, Inc., Bell Textron Canada Limited Model 505 Helicopter, Visual Flight Rules Autopilot and Stability Augmentation System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments; correction.

SUMMARY: The FAA is correcting special conditions, which published in the *Federal Register* on December 11, 2020. The special conditions issued for the Bell Textron Canada Limited Model 505 helicopter did not include an effective date. This correction adds an effective date for the special conditions.

DATES: The effective date for the special conditions published December 11, 2020, at 85 FR 79826, is December 22, 2020. Comments will continue to be received until January 11, 2021.

ADDRESSES: Send comments identified by Docket No. FAA–2020–1102 using any of the following methods:

- *Federal eRegulations Portal:* Go to <http://www.regulations.gov/> and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments it receives, without change, to [http://](http://www.regulations.gov/)

www.regulations.gov/, including any personal information the commenter provides. Using the search function of the docket website, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT’s complete Privacy Act Statement can be found in the *Federal Register* published on April 11, 2000 (65 FR 19477–19478).

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 these special conditions contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to these special conditions, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of these special conditions. Submissions containing CBI should be sent to Andy Shaw, Continued Operational Safety Section, AIR–682, Rotorcraft Standards Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5384. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Docket: Background documents or comments received may be read at <http://www.regulations.gov/> at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Andy Shaw, Continued Operational Safety Section, AIR–682, Rotorcraft Standards Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5384; email Andy.Shaw@faa.gov.

SUPPLEMENTARY INFORMATION: On December 11, 2020, the FAA issued Special Conditions No. 27–052–SC,

under Docket No. FAA–2020–1102. Those special conditions were published in the **Federal Register** on December 11, 2020 (85 FR 79826). Those special conditions pertain to the Bell Textron Canada Limited Model 505 helicopter, as modified by Garmin International, Inc., with the installation of an autopilot and stability augmentation system. The effective date was inadvertently omitted from the final special conditions. This correction includes the effective date for those special conditions. There are no substantive changes to the document.

Issued in Fort Worth, Texas.

Jorge Castillo,

Manager, Rotorcraft Standards Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2020–28325 Filed 12–18–20; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 201215–0347]

RIN 0694–A137

Addition of Entities to the Entity List, Revision of Entry on the Entity List, and Removal of Entities From the Entity List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) by adding seventy-seven entities, under a total of seventy-eight entries, to the Entity List. These seventy-seven entities have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. These entities will be listed on the Entity List under the destinations of the People's Republic of China (China), Bulgaria, France, Germany, Hong Kong, Italy, Malta, Pakistan, Russia, and the United Arab Emirates (U.A.E.). This rule also revises one existing entry on the Entity list under the destination of China and one under the destination of Pakistan. Finally, this rule removes a total of four entities under the destinations of Israel and the U.A.E. The removals are made in connection with requests for removal that BIS received pursuant to the EAR and a review of information provided in those requests.

DATES: This rule is effective December 18, 2020.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Fax: (202) 482–3911, Email: ERC@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Entity List (supplement No. 4 to part 744 of the Export Administration Regulations (EAR)) identifies entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States. The EAR (15 CFR parts 730–774) impose additional license requirements on, and limit the availability of most license exceptions for, exports, reexports, and transfers (in-country) to listed entities. The license review policy for each listed entity is identified in the “License review policy” column on the Entity List, and the impact on the availability of license exceptions is described in the relevant **Federal Register** notice adding entities to the Entity List. BIS places entities on the Entity List pursuant to part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

ERC Entity List Decisions

Additions to the Entity List

Under § 744.11(b) (Criteria for revising the Entity List) of the EAR, entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities that are contrary to the national security or foreign policy interests of the United States, and those acting on behalf of such entities, may be added to the Entity List. Paragraphs (b)(1) through (5) of § 744.11 provide an

illustrative list of activities that could be considered contrary to the national security or foreign policy interests of the United States.

This rule implements the decision of the ERC to add seventy-seven entities, under a total of seventy-eight entries, to the Entity List; one of these entities is being added under two entries. These seventy-seven entities will be listed on the Entity List under the following destinations, as applicable, China, Bulgaria, France, Germany, Hong Kong, Italy, Malta, Pakistan, Russia, and the U.A.E. The ERC made the decision to add each of the seventy-seven entities described below under the standard set forth in § 744.11(b) of the EAR.

The ERC determined that the seventy-seven subject entities are engaging in or enabling activities contrary to U.S. national security and foreign policy interests, as follows:

Semiconductor Manufacturing International Corporation Incorporated (SMIC) is added to the Entity List as a result of China's military-civil fusion (MCF) doctrine and evidence of activities between SMIC and entities of concern in the Chinese military industrial complex. The Entity List designation limits SMIC's ability to acquire certain U.S. technology by requiring exporters, reexporters, and in-country transferors of such technology to apply for a license to sell to the company. Items uniquely required to produce semiconductors at advanced technology nodes 10 nanometers or below will be subject to a presumption of denial to prevent such key enabling technology from supporting China's military modernization efforts. This rule adds SMIC and the following ten entities related to SMIC: Semiconductor Manufacturing International (Beijing) Corporation; Semiconductor Manufacturing International (Tianjin) Corporation; Semiconductor Manufacturing International (Shenzhen) Corporation; SMIC Semiconductor Manufacturing (Shanghai) Co., Ltd.; SMIC Holdings Limited; Semiconductor Manufacturing South China Corporation; SMIC Northern Integrated Circuit Manufacturing (Beijing) Co., Ltd.; SMIC Hong Kong International Company Limited; SJ Semiconductor; and Ningbo Semiconductor International Corporation (NSI).

The ERC determined to add the entities AGCU Scientech; China National Scientific Instruments and Materials (CNSIM); DJI; and Kuang-Chi Group for activities contrary to U.S. foreign policy interests. Specifically, these four entities have enabled wide-scale human rights abuses within China through abusive genetic collection and

analysis or high-technology surveillance, and/or facilitated the export of items by China that aid repressive regimes around the world, contrary to U.S. foreign policy interests.

The ERC determined that China Communications Construction Company Ltd. has enabled China to reclaim and militarize disputed outposts in the South China Sea, which has been detrimental to U.S. national security. In particular, this entity has engaged in reclaiming land at Mischief Reef, which pursuant to a July 12, 2016, ruling by the Hague-based Permanent Court of Arbitration, was determined to be part of the Philippine exclusive economic zone and continental shelf. In addition, the ERC determined that Chongqing Chuandong Shipbuilding Industry Co., Ltd.; CSSC Huangpu Wenchong Shipbuilding Co., Ltd.; Guangxin Shipbuilding and Heavy Industry Co., Ltd.; and Guangzhou Taicheng Shipbuilding Industry Co., Ltd. are involved in China's efforts to assert its unlawful maritime claims in the South China Sea, as well as efforts to intimidate and coerce other coastal states from accessing and developing offshore marine resources. As a result, those entities are added to the Entity List as well.

The ERC determined to add China State Shipbuilding Corporation, Ltd. (CSSC) 7th Research Academy, CSSC 12th Research Institute, CSSC 701st Research Institute, CSSC 702nd Research Institute, CSSC 703rd Research Institute, CSSC 704th Research Institute, CSSC 705th Research Institute, CSSC 707th Research Institute, CSSC 709th Research Institute, CSSC 710th Research Institute, CSSC 711th Research Institute, CSSC 712th Research Institute, CSSC 713th Research Institute, CSSC 714th Research Institute, CSSC 715th Research Institute, CSSC 716th Research Institute, CSSC 717th Research Institute, CSSC 718th Research Institute, CSSC 719th Research Institute, CSSC 723rd Research Institute, CSSC 724th Research Institute, CSSC 725th Research Institute, CSSC 726th Research Institute, CSSC 750th Test Center, and CSSC 760th Research Institute to the Entity List for acquiring and attempting to acquire U.S.-origin items in support of programs for the People's Liberation Army. These activities are contrary to national security and foreign policy interests under Section 744.11(b) of the EAR.

The ERC determined to add Beijing Institute of Technology; Nanjing University of Science and Technology; Nanjing University of Aeronautics and Astronautics; Nanjing Asset Management Co., Ltd.; and Jiangsu Hengxiang Science and Education

Equipment Co., Ltd. to the Entity List for acquiring and attempting to acquire U.S.-origin items in support of programs for the People's Liberation Army. This activity is contrary to national security and foreign policy interests under section 744.11(b) of the EAR.

The ERC determined to add the entity Tongfang Technology Ltd. (NucTech) to the Entity List for its involvement in activities that are contrary to the national security interests of the United States. Specifically, the ERC determined NucTech's lower performing equipment impair U.S. efforts to counter illicit international trafficking in nuclear and other radioactive materials. Lower performing equipment means less stringent cargo screening, raising the risk of proliferation.

The ERC determined that Beijing University of Posts and Telecommunications directly participates in the research and development, and production, of advanced weapons and advanced weapons systems in support of People's Liberation Army modernization, which poses a direct threat to U.S. national security. These entities enabled the People's Republic of China to advance military modernization goals, in part, through the import of technology and equipment that is used in developing advanced weapons programs in China.

The ERC determined to add ROFS Microsystems; Tianjin Micro Nano Manufacturing; Tianjin University; and the individuals Chong Zhou; Huisui Zhang; Jinping Chen; Wei Pang; and Zhao Gang because there is reasonable cause to believe that these individuals, in coordination with Tianjin University through its College of Precision Instruments and Optoelectronic Engineering Tianjin Micro Nano Manufacturing, and ROFS Microsystems, systematically coordinated and committed more than a dozen instances of theft of trade secrets from U.S. corporations. On April 1, 2015, those five individuals were indicted on thirty counts including conspiracy to commit economic espionage, conspiracy to commit theft of trade secrets, economic espionage, aiding and abetting and theft of trade secrets. The indictment stated that individuals associated with ROFS and others developed a scheme by which the sources and origins of the trade secrets stolen from Avago and Skyworks would be disguised and the technology contained within those trade secrets be used by entities in the PRC to develop products for civilian and military use. Pursuant to § 744.11(b) of the EAR, the ERC determined that the conduct of these entities raise sufficient concern

that necessitates prior review of exports, re-exports or transfers (in-country) of items subject to the EAR involving these persons and companies.

The ERC determined to add the entities Zigma Aviation Services; MRS GmbH; France Tech Services; Maintenance Services International GmbH; and Satori Corporation to the Entity List on the basis of actions and activities they have engaged in that are contrary to the national security and foreign policy interests of the United States. Specifically, these companies provided aircraft parts, without the necessary licenses, to one entity—Mahan Air—that is listed as a Specially Designated National per the U.S. Department of Treasury's Office of Foreign Assets Control.

The ERC determined to add OOO Sovtest Comp; Cosmos Complect; Multi Technology Integration Group EOOD (MTIG) and four associated individuals Dimitar Milanov Dimitrov; Ilias Kharesovich Sabirov; Mariana Marinova Gargova; and Milan Dimitrov; to the Entity List on the basis of their attempts to procure and re-export U.S.-origin items, for activities contrary to the national security and foreign policy interests of the United States. The ERC determined that there is reasonable cause to believe, based on specific and articulable facts, that OOO Sovtest Comp and Cosmos Complect used MTIG as a front company to acquire both radiation-hardened parts and other sensitive electronic components and re-export those U.S.-origin components to Russia without required licenses. The ERC determined these entities are engaging in conduct that poses a risk of violating the EAR such that, pursuant to § 744.11(b)(5) of the EAR prior review of exports and re-exports involving these parties, and the possible imposition of license conditions or license denial, enhances BIS's ability to prevent violations of the EAR.

The ERC determined to add the entities Link Lines (Pvt.) Limited and Geo Research to the Entity List on the basis of their participation in the procurement and attempted procurement of items, to include U.S.-origin items, for entities on the Entity List without obtaining the necessary licenses.

The ERC determined to add Sparx Air Ltd., Sky Float Aviation FZE, and Feroz Ahmed Akbar to the Entity List for engaging in conduct contrary to the national security and foreign policy interests of the United States. Specifically, the ERC determined that there is reasonable cause to believe, based on specific and articulable facts, that these entities were involved in a

scheme to falsify information in order to obtain and divert U.S.-origin items without authorization. The ERC thereby determined these entities to be unreliable recipients of U.S.-origin items.

Pursuant to § 744.11(b), the ERC determined that the conduct of the above-described seventy-seven entities raises sufficient concerns that prior review, via the imposition of a license requirement, of exports, reexports, or transfers (in-country) of all items subject to the EAR involving these entities, and the possible issuance of license denials or the possible imposition of license conditions on shipments to these entities, will enhance BIS's ability to prevent violations of the EAR or otherwise protect U.S. national security or foreign policy interests.

For the seventy-seven entities added to the Entity List in this final rule, BIS imposes a license requirement that applies to all items subject to the EAR. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to the persons being added to the Entity List in this rule.

For two of the seventy-seven entities—Geo Research and Link Lines (Pvt) Limited—BIS imposes the license review policy set forth in § 744.2(d) (restrictions on certain nuclear end-uses) of the EAR. For four of the seventy-seven entities—AGCU Scientech, China National Scientific Instruments and Materials (CNSIM), DJI and Kuang-Chi Group—BIS imposes a license review policy of case by case review for items necessary to detect, identify and treat infectious disease and a presumption of denial for all other items subject to the EAR. For eleven of the seventy-seven entities—SMIC and ten related entities—BIS imposes a license review policy of Presumption of Denial for items uniquely required for production of semiconductors at advanced technology nodes (10 nanometers and below, including extreme ultraviolet technology) and case by case for all other items. For the other sixty entities added to the Entity List by this rule, BIS imposes a license review policy of a presumption of denial.

The acronym "a.k.a." (also known as) is used in entries on the Entity List to identify aliases, thereby assisting exporters, reexporters, and transferors in identifying entities on the Entity List.

For the reasons described above, this final rule adds the following seventy-seven entities, under a total of seventy-eight entries, to the Entity List:

Bulgaria

- Dimitar Milanov Dimitrov;

- Mariana Marinova Gargova;
- Milan Dimitrov; *and*
- Multi Technology Integration Group EOOD (MTIG).

China

- AGCU Scientech;
- Beijing Institute of Technology;
- Beijing University of Posts and Telecommunications (BUPT);
- China Communications Construction Company Ltd.;
- China National Scientific Instruments and Materials (CNSIM);
- China State Shipbuilding Corporation, Limited (CSSC) 7th Research Academy;
- China State Shipbuilding Corporation, Limited (CSSC) 12th Research Institute;
- China State Shipbuilding Corporation, Limited (CSSC) 701st Research Institute;
- China State Shipbuilding Corporation, Limited (CSSC) 702nd Research Institute;
- China State Shipbuilding Corporation, Limited (CSSC) 703rd Research Institute;
- China State Shipbuilding Corporation, Limited (CSSC) 704th Research Institute;
- China State Shipbuilding Corporation, Limited (CSSC) 705th Research Institute;
- China State Shipbuilding Corporation, Limited (CSSC) 707th Research Institute;
- China State Shipbuilding Corporation, Limited (CSSC) 709th Research Institute;
- China State Shipbuilding Corporation, Limited (CSSC) 710th Research Institute;
- China State Shipbuilding Corporation, Limited (CSSC) 711th Research Institute;
- China State Shipbuilding Corporation, Limited (CSSC) 712th Research Institute;
- China State Shipbuilding Corporation, Limited (CSSC) 713th Research Institute;
- China State Shipbuilding Corporation, Limited (CSSC) 714th Research Institute;
- China State Shipbuilding Corporation, Limited (CSSC) 715th Research Institute;
- China State Shipbuilding Corporation, Limited (CSSC) 716th Research Institute;
- China State Shipbuilding Corporation, Limited (CSSC) 717th Research Institute;
- China State Shipbuilding Corporation, Limited (CSSC) 718th Research Institute;

- China State Shipbuilding Corporation, Limited (CSSC) 719th Research Institute;
- China State Shipbuilding Corporation, Limited (CSSC) 723rd Research Institute;
- China State Shipbuilding Corporation, Limited (CSSC) 724th Research Institute;
- China State Shipbuilding Corporation, Limited (CSSC) 725th Research Institute;
- China State Shipbuilding Corporation, Limited (CSSC) 726th Research Institute;
- China State Shipbuilding Corporation, Limited (CSSC) 750th Test Center;
- China State Shipbuilding Corporation, Limited (CSSC) 760th Research Institute;
- Chongqing Chuandong Shipbuilding Industry Co., Ltd.;
- Chong Zhou;
- CSSC Huangpu Wenchong Shipbuilding Co., Ltd.;
- DJI;
- Guangxin Shipbuilding and Heavy Industry Co., Ltd.;
- Guangzhou Taicheng Shipbuilding Industry Co., Ltd.;
- Huisui Zhang;
- Jiangsu Hengxiang Science and Education Equipment Co., Ltd.;
- Jinping Chen;
- Kuang-Chi Group;
- Nanjing Asset Management Co., Ltd.;
- Nanjing University of Aeronautics and Astronautics;
- Nanjing University of Science and Technology;
- Ningbo Semiconductor International Corporation (NSI);
- ROFS Microsystems;
- Semiconductor Manufacturing International (Beijing) Corporation;
- Semiconductor Manufacturing International Corporation (SMIC);
- Semiconductor Manufacturing International (Shenzhen) Corporation;
- Semiconductor Manufacturing International (Tianjin) Corporation;
- Semiconductor Manufacturing South China Corporation;
- SJ Semiconductor;
- SMIC Holdings Limited;
- SMIC Northern Integrated Circuit Manufacturing (Beijing) Co., Ltd.;
- SMIC Semiconductor Manufacturing (Shanghai) Co., Ltd.
- Tianjin Micro Nano Manufacturing (MNMNT);
- Tianjin University;
- Tongfang NucTech Technology Ltd.
- Wei Pang; *and*
- Zhao Gang.

France

- France Tech Services; *and*

- Satori Corporation.

Germany

- Maintenance Services International (MSI) GmbH; *and*
- MRS GmbH.

Hong Kong

- SMIC Hong Kong International Company Limited.

Italy

- Zigma Aviation.

Malta

- Feroz Ahmed Akbar; *and*
- Sparx Air Ltd.

Pakistan

- Geo Research, *and*
- Link Lines (Pvt.) Limited.

Russia

- Cosmos Complect;
- Ilias Kharesovich Sabirov; *and*
- OOO Sovtest Comp.

United Arab Emirates

- Satori Corporation; *and*
- Sky Float Aviation FZE.

Revisions to the Entity List

This final rule revises two existing entries, one under the destination China and one under the destination of Pakistan, as follows:

This rule implements a revision to one existing entry for “China Shipbuilding Group 722nd Research Institute,” first added to the Entity List under the destination of China on August 27, 2020 (85 FR 52901). BIS is revising the existing entry under China by revising the name and one alias. The ERC decided to modify the existing entry for China Shipbuilding Group 722nd Research Institute under China to reflect its correct organizational structure. The modification incorporates nomenclature into the existing Entity List entry that standardizes this entry with the 25 CSSC research institutes described above being added in this final rule.

This rule implements a revision to one existing entry for “Oriental Engineers,” first added to the Entity List under the destination of Pakistan on May 26, 2017 (82 FR 24245). BIS is revising the existing entry under Pakistan by adding four aliases and six addresses. The ERC determined to modify the existing entry for Oriental Engineers under Pakistan to account for additional aliases and addresses.

Removals From the Entity List

This rule implements a decision of the ERC to remove “Ben Gurion University,” one entity located in Israel,

from the Entity List on the basis of a removal request. The entry for Ben Gurion University was added to the Entity List on February 3, 1997 (62 FR 4910). This rule also implements a decision of the ERC to remove “Dow Technology” “Hassan Dow” and “Modest Marketing LLC”, three entities located in the U.A.E., from the Entity List on the basis of removal requests. The entries for “Dow Technology” and “Hassan Dow” were added to the Entity List on February 23, 2016 (81 FR 8829). The entry for Modest Marketing LLC was added to the Entity List on January 26, 2018 (83 FR 3580). The ERC decided to remove these four entries based on information BIS received pursuant to § 744.16 of the EAR and the review the ERC conducted in accordance with procedures described in supplement No. 5 to part 744.

This final rule implements the decision to remove the following four entities, consisting of one entity located in Israel and three in the U.A.E., from the Entity List:

Israel

- Ben Gurion University.

United Arab Emirates

- Dow Technology;
- Hassan Dow; *and*
- Modest Marketing LLC.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export or reexport, on December 22, 2020, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR).

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS’s principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 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 rule has been determined to be not significant for purposes of Executive Order 12866. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains the following collections of information subject to the requirements of the PRA. These collections have been approved by OMB under control numbers 0694–0088 (Simplified Network Application Processing System) and 0694–0096 (Five Year Records Retention Period). The approved information collection under OMB control number 0694–0088 includes license applications, among other things, and carries a burden estimate of 29.6 minutes per manual or electronic submission for a total burden estimate of 31,833 hours. The approved information collection under OMB control number 0694–0096 includes recordkeeping requirements and carries a burden estimate of less than 1 minute per response for a total burden estimate of 248 hours. Specifically, BIS expects the burden hours associated with these collections would increase, slightly, by 76 hours and 5 minutes (*i.e.*, 150 applications × 30.6 minutes per response) for a total estimated cost increase of \$2,280 (*i.e.*, 76 hours and 5 minutes × \$30 per hour). The \$30 per hour cost estimate for OMB control number 0694–0088 is consistent with the salary data for export compliance specialists currently available through glassdoor.com (glassdoor.com estimates that an export compliance specialist makes \$55,280 annually, which computes to roughly \$26.58 per hour). This increase is not expected to exceed the existing estimates currently associated with OMB control numbers 0694–0088 and 0694–0096. Any comments regarding the collection of information associated with this rule,

including suggestions for reducing the burden, may be sent to <https://www.reginfo.gov/public/do/PRAMain>.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to § 1762 of the Export Control Reform Act of 2018, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 18, 2020, 85 FR 59641 (September 22, 2020); Notice of November 12, 2020, 85 FR 72897 (November 13, 2020).

■ 2. Supplement No. 4 to part 744 is amended:

■ a. Under BULGARIA, by adding in alphabetical order entries for “Dimitar Milanov Dimitrov,” “Milan Dimitrov,” “Mariana Marinova Gargova,” and “Multi Technology Integration Group EOOD (MTIG)”;

■ b. Under CHINA, PEOPLE’S REPUBLIC OF:

■ i. By adding in alphabetical order entries for “AGCU Scientech,” “Beijing Institute of Technology,” “Beijing University of Posts and Telecommunications (BUPT),” “China Communications Construction Company Ltd.,” “China National

Scientific Instruments and Materials (CNSIM),” “China State Shipbuilding Corporation, Limited (CSSC) 7th Research Academy,” “China State Shipbuilding Corporation, Limited (CSSC) 12th Research Institute,” “China State Shipbuilding Corporation, Limited (CSSC) 701st Research Institute,” “China State Shipbuilding Corporation, Limited (CSSC) 702nd Research Institute,” “China State Shipbuilding Corporation, Limited (CSSC) 703rd Research Institute,” “China State Shipbuilding Corporation, Limited (CSSC) 704th Research Institute,” “China State Shipbuilding Corporation, Limited (CSSC) 705th Research Institute,” “China State Shipbuilding Corporation, Limited (CSSC) 707th Research Institute,” “China State Shipbuilding Corporation, Limited (CSSC) 709th Research Institute,” “China State Shipbuilding Corporation, Limited (CSSC) 710th Research Institute,” “China State Shipbuilding Corporation, Limited (CSSC) 711th Research Institute,” “China State Shipbuilding Corporation, Limited (CSSC) 712th Research Institute,” “China State Shipbuilding Corporation, Limited (CSSC) 713th Research Institute,” “China State Shipbuilding Corporation, Limited (CSSC) 714th Research Institute,” “China State Shipbuilding Corporation, Limited (CSSC) 715th Research Institute,” “China State Shipbuilding Corporation, Limited (CSSC) 716th Research Institute,” “China State Shipbuilding Corporation, Limited (CSSC) 717th Research Institute,” “China State Shipbuilding Corporation, Limited (CSSC) 718th Research Institute,” “China State Shipbuilding Corporation, Limited (CSSC) 719th Research Institute,” “China State Shipbuilding Corporation, Ltd. (CSSC) 722nd Research Institute,” “China State Shipbuilding Corporation, Limited (CSSC) 723rd Research Institute,” “China State Shipbuilding Corporation, Limited (CSSC) 724th Research Institute,” “China State Shipbuilding Corporation, Limited (CSSC) 725th Research Institute,” “China State Shipbuilding Corporation, Limited (CSSC) 726th Research Institute,” “China State Shipbuilding Corporation, Limited (CSSC) 750th Test Center,” “China State Shipbuilding Corporation, Limited (CSSC) 760th Research Institute,” “Chongqing Chuandong Shipbuilding Industry Co Ltd.,” “Chong Zhou,” “CSSC Huangpu Wenchong Shipbuilding Co., Ltd.,” “DJI,” “Guangxin Shipbuilding and Heavy Industry Co., Ltd.,” “Guangzhou Taicheng Shipbuilding Industry Co.,

Ltd.,” “Huisui Zhang,” “Jiangsu Hengxiang Science and Education Equipment Co., Ltd.,” “Jinping Chen,” “Kuang-Chi Group,” “Nanjing Asset Management Co., Ltd.,” “Nanjing University of Aeronautics and Astronautics,” “Nanjing University of Science and Technology,” “Ningbo Semiconductor International Corporation (NSI),” “ROFS Microsystems,” “Semiconductor Manufacturing International (Beijing) Corporation,” “Semiconductor Manufacturing International Corporation (SMIC),” “Semiconductor Manufacturing International (Shenzhen) Corporation,” “Semiconductor Manufacturing International (Tianjin) Corporation,” “Semiconductor Manufacturing South China Corporation,” “SJ Semiconductor,” “SMIC Holdings Limited,” “SMIC Hong Kong International Company Limited,” “SMIC Northern Integrated Circuit Manufacturing (Beijing) Co., Ltd.,” “SMIC Semiconductor Manufacturing (Shanghai) Co., Ltd.,” “Tianjin Micro Nano Manufacturing (MNMT),” “Tianjin University,” “Tongfang NucTech Technology, Ltd.” “Wei Pang,” “Zhao Gang,”; and

■ ii. By removing the entry for “China Shipbuilding Group 722nd Research Institute”;

■ c. Under FRANCE, by adding in alphabetical order entries for “France Tech Services” and “Satori Corporation”;

■ d. Under GERMANY, by adding in alphabetical order entries for “Maintenance Services International (MSI) GmbH” and “MRS GmbH”;

■ e. Under HONG KONG, by adding in alphabetical order an entry for “SMIC Hong Kong International Company Limited”;

■ f. Under ISRAEL, by removing the entry for “Ben Gurion University, Israel”;

■ g. Under ITALY, by adding in alphabetical order an entry for “Zigma Aviation”;

■ h. Adding in alphabetical order an entry for MALTA, consisting of the entities “Feroz Ahmed Akbar” and “Sparx Air Ltd.”;

■ i. Under PAKISTAN:

■ i. By adding in alphabetical order the entries for “Geo Research” and “Link Lines (Pvt.) Limited”; and

■ ii. By revising the entry for “Oriental Engineers”;

■ j. Under RUSSIA, by adding in alphabetical order entries for “Cosmos Complect,” “Ilias Kharesovich Sabirov,” and “OOO Sovtest Comp”;

■ k. Under UNITED ARAB EMIRATES:

■ i. By removing the entries for “Dow Technology,” “Hassan Dow,” and “Modest Marketing LLC”; and

■ ii. By adding in alphabetical order entries for “Satori Corporation” and “Sky Float Aviation FZE”;
The additions and revisions read as follows:

Supplement No. 4 to Part 744—Entity List

* * * * *

| Country | Entity | License requirement | License review policy | Federal Register citation |
|-----------------------------|---|--|---|---|
| BULGARIA | Dimitar Milanov Dimitrov, G.K. Dianabad, BL.57, ET.11, AP.74. Sofia, Bulgaria. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | Mariana Marinova Gargova, G.K. Dianabad, BL. 32, VH. V, AP. 53, 1172 Sofia, Bulgaria; and UL.132, NO.14, ET.2, AP.11, Sofia, Bulgaria. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | Milan Dimitrov, UL.132, NO.14, ET.2, AP.11, Sofia, Bulgaria. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | Multi Technology Integration Group EOOD (MTIG), G.K. Dianabad, BL. 32, VH. V, AP. 53, 1172 Sofia, Bulgaria; and UL 132 No 14 AP 11, Sofia, Bulgaria. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| CHINA, PEOPLE'S REPUBLIC OF | AGCU Sciencetech, a.k.a. the following two aliases: —AGCU ScienTech Incorporation; and —Wuxi Zhongde Meilian Biotechnology Co., Ltd. No. 18–1, Wenhui Road, Huishan Economic Development Zone, Wuxi City, 214000 China. | All items subject to the EAR. (See § 744.11 of the EAR). | Case-by-case review for items necessary to detect, identify and treat infectious disease; Presumption of denial for all other items subject to the EAR. | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | Beijing Institute of Technology, No. 5 South Zhongguancun Street, Haidian District, Beijing, China. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | Beijing University of Posts and Telecommunications (BUPT), No. 10 Xitucheng Rd, Haidian District Beijing 100876, China. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | China Communications Construction Company Ltd., No. 85 Deshengmenwai St. Xicheng District, Beijing 100088, China. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | China National Scientific Instruments and Materials (CNSIM), a.k.a. the following four aliases: —CSIMC; —China National Scientific Instruments and Materials Corporation; —China Scientific Equipment Co., Ltd.; and —Sinopharm Equipment. Building 1, No. 19, Taiyanggong Road, Chaoyang District, Beijing, 100028, China; and 20 Chichunlu Road, Beijing, China; and 12 Caixiangdong Road, Beijing, China. | All items subject to the EAR. (See § 744.11 of the EAR). | Case-by-case review for items necessary to detect, identify and treat infectious disease; Presumption of denial for all other items subject to the EAR. | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |

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| | China State Shipbuilding Corporation, Limited (CSSC) 7th Research Academy, a.k.a., the following two aliases: —China Shipbuilding Industry Group Co., Ltd. (CSIC) 7th Research Academy; <i>and</i> —China Ship Research and Development Academy. No. 2 Shuangquan Baojia, Chaoyang District, Beijing, China. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | China State Shipbuilding Corporation, Limited (CSSC) 12th Research Institute, a.k.a., the following two aliases: —China Shipbuilding Industry Group Co., Ltd. (CSIC) 12th Research Institute; <i>and</i> —Thermal Processing Technology Research Institute, a.k.a., Hot Working Technology Research Institute. Xicheng District, Xiping, Shaanxi Province; <i>and</i> Mailbox No. 44, Xingping, Shaanxi Province, China. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | China State Shipbuilding Corporation, Limited (CSSC) 701st Research Institute, a.k.a., the following two aliases: —China Shipbuilding Industry Group Co., Ltd. (CSIC) 701st Research Institute; <i>and</i> —China Ship Design and Research Center. No. 268 Ziyang Road, Wuchang District, Wuhan, China. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | China State Shipbuilding Corporation, Limited (CSSC) 702nd Research Institute, a.k.a., the following two aliases: —China Shipbuilding Industry Group Co., Ltd. (CSIC) 702nd Research Institute; <i>and</i> —China Ship Scientific Research Center (CSSRC). No. 222 Shanshui East Road, Binhu District, Wuxi, Jiangsu Province, China. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | China State Shipbuilding Corporation, Limited (CSSC) 703rd Research Institute, a.k.a., the following two aliases: —China Shipbuilding Industry Group Co., Ltd. (CSIC) 703rd Research Institute; <i>and</i> —Harbin Marine Boiler and Turbine Research Institute. No. 35 Honghu Road, Daoli District, Harbin; <i>and</i> No. 108 Hongqi Avenue, Xiangfang District, Harbin, China. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | China State Shipbuilding Corporation, Limited (CSSC) 704th Research Institute, a.k.a., the following two aliases: —China Shipbuilding Industry Group Co., Ltd. (CSIC) 704th Research Institute; <i>and</i> —Shanghai Marine Equipment Research Institute (SMERI). No. 10 Hengshan Road, Xuhui District, Shanghai, China; <i>and</i> No. 160 Xinpan Road, Shanghai, China. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |

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| | China State Shipbuilding Corporation, Limited (CSSC) 705th Research Institute, a.k.a., the following two aliases: —China Shipbuilding Industry Group Co., Ltd. (CSIC) 705th Research Institute; <i>and</i> —Xi'an Precision Machinery Research Institute. No. 18, Gaoxin 1st Road, High-tech Development Zone, Xi'an, China. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | China State Shipbuilding Corporation, Limited (CSSC) 707th Research Institute, a.k.a., the following two aliases: —China Shipbuilding Industry Group Co., Ltd. (CSIC) 707th Research Institute; <i>and</i> —Tianjin Navigational Instrument Research Institute. No. 268, Dingzigu 1st Road, Hongqiao District, Tianjin, China. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | China State Shipbuilding Corporation, Limited (CSSC) 709th Research Institute, a.k.a., the following two aliases: —China Shipbuilding Industry Group Co., Ltd. (CSIC) 709th Research Institute; <i>and</i> —Wuhan Digital Engineering Institute. No. 718, Luoyu Road, Hongshan District, Wuhan, China. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | China State Shipbuilding Corporation, Limited (CSSC) 710th Research Institute, a.k.a., the following two aliases: —China Shipbuilding Industry Group Co., Ltd. (CSIC) 710th Research Institute; <i>and</i> —Yichang Testing Technology Research Institute a.k.a. Yichang Institute of Testing Technology. No. 58 Shengli 3rd Road, Yichang, Hubei Province, China. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | China State Shipbuilding Corporation, Limited (CSSC) 711th Research Institute, a.k.a., the following two aliases: —China Shipbuilding Industry Group Co., Ltd. (CSIC) 711th Research Institute; <i>and</i> —Shanghai Marine Diesel Engine Research Institute. No. 3111 Huaning Road, Minhang District, Shanghai, China. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | China State Shipbuilding Corporation, Limited (CSSC) 712th Research Institute, a.k.a., the following two aliases: —China Shipbuilding Industry Group Co., Ltd. (CSIC) 712th Research Institute; <i>and</i> —Wuhan Marine Electric Propulsion Equipment Research Institute. Nanhu Garden City, Hongshan District, Wuhan City, Hubei Province; <i>and</i> Nanhu Steam School Courtyard, Wuchang District, Wuhan, China. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | China State Shipbuilding Corporation, Limited (CSSC) 713th Research Institute, a.k.a., the following two aliases: | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |

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| | <p>—China Shipbuilding Industry Group Co., Ltd. (CSIC) 713th Research Institute; <i>and</i></p> <p>—Zhengzhou Institute of Mechanical and Electrical Engineering. No. 126 Jingguang Middle Road, Zhengzhou, Henan Province, China.</p> <p>China State Shipbuilding Corporation, Limited (CSSC) 714th Research Institute, a.k.a., the following two aliases:</p> <p>—China Shipbuilding Industry Group Co., Ltd. (CSIC) 714th Research Institute; <i>and</i></p> <p>—Ship Information Research Center. No. 2, Shuangquan Baojia, Chaoyang District, Beijing, China.</p> | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | <p>China State Shipbuilding Corporation, Limited (CSSC) 715th Research Institute, a.k.a., the following two aliases:</p> <p>—China Shipbuilding Industry Group Co., Ltd. (CSIC) 715th Research Institute; <i>and</i></p> <p>—Hangzhou Institute of Applied Acoustics. No. 715, Pingfeng Street, Xihu District, Hangzhou, China.</p> | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | <p>China State Shipbuilding Corporation, Limited (CSSC) 716th Research Institute, a.k.a., the following two aliases:</p> <p>—China Shipbuilding Industry Group Co., Ltd. (CSIC) 716th Research Institute; <i>and</i></p> <p>—Jiangsu Institute of Automation. No. 18, Shenghu Road, Lianyungang, Jiangsu Province, China.</p> | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | <p>China State Shipbuilding Corporation, Limited (CSSC) 717th Research Institute, a.k.a., the following three aliases:</p> <p>—China Shipbuilding Industry Group Co., Ltd. (CSIC) 717th Research Institute;</p> <p>—Huazhong Institute of Optoelectronics Technology; <i>and</i></p> <p>—Huazhong Photoelectric Technology Research Institute. No. 981, Xiongchu Street, Hongshan District, Wuhan, China.</p> | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | <p>China State Shipbuilding Corporation, Limited (CSSC) 718th Research Institute, a.k.a., the following two aliases:</p> <p>—China Shipbuilding Industry Group Co., Ltd. (CSIC) 718th Research Institute; <i>and</i></p> <p>—Handan Purification Equipment Research Institute. No. 17 Zhanhan Road, Handan, Hebei Province, China.</p> | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | <p>China State Shipbuilding Corporation, Limited (CSSC) 719th Research Institute, a.k.a., the following two aliases:</p> <p>—China Shipbuilding Industry Group Co., Ltd. (CSIC) 719th Research Institute; <i>and</i></p> <p>—Wuhan Second Ship Design Research Institute.</p> | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |

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| | No. 19, Yangqiaohu Avenue, Zanglong Island Development Zone, Jiangxia District, Wuhan, Hubei Province; <i>and</i> No. 450 Zhongshan Road, Wuchang District, Wuhan, China. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR 52901; 08/27/2020. 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | China State Shipbuilding Corporation, Limited. (CSSC) 722nd Research Institute, a.k.a., the following two aliases: —China Shipbuilding Industry Group Co., Limited. (CSIC) 722 Institute; <i>and</i> —Wuhan Ship Communication Research Institute. | | | |
| | No. 312 Luoyu Road, Hongshan District, Wuhan, China. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | China State Shipbuilding Corporation, Limited (CSSC) 723rd Research Institute, a.k.a., the following two aliases: —China Shipbuilding Industry Group Co., Ltd. (CSIC) 723rd Research Institute; <i>and</i> —Yangzhou Marine Electronic Instrument Research Institute. | | | |
| | No. 26, Nanhexia, Guangling District, Yangzhou, Jiangsu Province, China. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | China State Shipbuilding Corporation, Limited (CSSC) 724th Research Institute, a.k.a., the following two aliases: —China Shipbuilding Industry Group Co., Ltd. (CSIC) 724th Research Institute; <i>and</i> —Nanjing Ship Radar Research Institute. | | | |
| | No. 30, Changqing Street, Jiangning District, Nanjing, Jiangsu Province, China; <i>and</i> | | | |
| | No. 346 Zhongshan North Road, Nanjing, Jiangsu Province, China. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | China State Shipbuilding Corporation, Limited (CSSC) 725th Research Institute, a.k.a., the following two aliases: —China Shipbuilding Industry Group Co., Ltd. (CSIC) 725th Research Institute; <i>and</i> —Luoyang Institute of Ship Materials. | | | |
| | No.169, Binhe South Road, Luolong District, Luoyang, Henan Province, China. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | China State Shipbuilding Corporation, Limited (CSSC) 726th Research Institute, a.k.a., the following two aliases: —China Shipbuilding Industry Group Co., Ltd. (CSIC) 726th Research Institute; <i>and</i> —Shanghai Ship Electronic Equipment Research Institute. | | | |
| | No. 5200 Jindu Road, Minhang District, Shanghai, China. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | China State Shipbuilding Corporation, Limited (CSSC) 750th Research Institute, a.k.a., the following two aliases: —China Shipbuilding Industry Group Co., Ltd. (CSIC) 750th Test Center; <i>and</i> —Kunming Marine Equipment Research and Test Center. | | | |

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| | No. 3, Renmin East Road, Panlong District, Kunming, Yunnan Province, China. | | | |
| | China State Shipbuilding Corporation, Limited (CSSC) 760th Research Institute, a.k.a., the following three aliases: —China Shipbuilding Industry Group Co., Ltd. (CSIC) 760th Research Institute; —Dalian Institute of Measurement and Control Technology; <i>and</i> —Dalian Scientific Test and Control Institute. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | No. 16 Binhai Street, Zhongshan District, Dalian, Liaoning Province, China. | | | |
| | Chongqing Chuandong Shipbuilding Industry Co Ltd., Shuanghekou, Lidu Town, Fuling District, Chongqing, China 408102. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | Chong Zhou, Room 602, Building No. 4, Jimen East, Haidian District, Beijing 100081. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | CSSC Huangpu Wenchong Shipbuilding Co., Ltd., No. 188 Changzhou Road, Huangpu District, Guangzhou, China. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | DJI, a.k.a., the following four aliases: —Shenzhen DJI Innovation Technology Co., Ltd.; —SZ DJI Technology Co., Ltd.; —Shenzhen DJI Sciences and Technologies Ltd.; <i>and</i> —Da-Jiang Innovations. 14 Floor, West Wing, Skyworth Semiconductor Design Building, No. 18 Gaoxin South 4th Ave, Nanshan District, Shenzhen, China 518057. | All items subject to the EAR. (See § 744.11 of the EAR). | Case-by-case review for items necessary to detect, identify and treat infectious disease; Presumption of denial for all other items subject to the EAR. | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | Guangxin Shipbuilding and Heavy Industry Co., Ltd., Comprehensive Office, No. 32 Cuizhu Road, Cuiheng New District, Zhongshan City, Guangdong Province, China 528437. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | Guangzhou Taicheng Shipbuilding Industry Co., Ltd., Dongdao Village, Dongyong Town, Nansha District, Guangzhou. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | Huisui Zhang, Room 204, Building 25, FuRen Ming Yuan, ShengGu Bei Li, ChaoYang District, Beijing, China 100029. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | Jiangsu Hengxiang Science and Education Equipment Co., Ltd., a.k.a., the following one alias: —Jiangsu Southern Airlines Hengxiang Co., Ltd. Ground Floor, Building 67, No. 29 Yudao Street, Nanjing, Jiangsu. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |

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| | Jinping Chen, No. 92 Weijin Road, Tianjin, China 300072; and 3rd Floor, Room 316, A2 Building, Tianjin University Science Park, No. 80, 4th Avenue, Tianjin Economic Development Area (TEDA), Tianjin, China. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | Kuang-Chi Group; a.k.a. the following two aliases: —Shenzhen Guangqi Group; and —Guangqi Science Co., Ltd. Software Building, No. 9, Gaoxinzhong Road, Nanshan District, Shenzhen 518057 China. | All items subject to the EAR. (See § 744.11 of the EAR). | Case-by-case review for items necessary to detect, identify and treat infectious disease; Presumption of denial for all other items subject to the EAR. | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | Nanjing Asset Management Co., Ltd., No. 29 Yudao Street, Nanjing, Jiangsu. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | Nanjing University of Aeronautics and Astronautics, No. 29 Yudao Street, Nanjing, Jiangsu; and No. 29 Jiangjun Avenue, Jiangning District, Nanjing, Jiangsu; and No. 29 Binhe East Road, Liyang, Jiangsu. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | Nanjing University of Science and Technology, No. 200 Xiaolingwei Street, Xuanwu District, Nanjing, Jiangsu; and No. 89 Wenlan Road, Qixia District, Nanjing, Jiangsu. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | Ningbo Semiconductor International Corporation (NSI), No. 331–335 Anju Road, Xiaogang Street, Beilun District, Ningbo, Zhejiang; and 1MC07, Jiuzhou Center, No. 95, Lane 85, Cailun Road, Pudong New Area, Shanghai. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial for items uniquely required for production of semi-conductors at advanced technology nodes (10 nanometers and below, including extreme ultra-violet technology); Case by case for all other items. | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | ROFS Microsystems, No. 92 Weijin Road, Tianjin, China 300072; and 3rd Floor, Room 316, A2 Building, Tianjin University Science Park, No. 80, 4th Avenue, Tianjin Economic Development Area (TEDA), Tianjin, China. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | Semiconductor Manufacturing International (Beijing) Corporation, a.k.a., the following one alias: —SMIC Beijing. No. 18 Wen Chang Road, Beijing Economic-Technological Development Area, Beijing 100176. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial for items uniquely required for production of semi-conductors at advanced technology nodes (10 nanometers and below, including extreme ultra-violet technology); Case by case for all other items. | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | Semiconductor Manufacturing International Corporation (SMIC), a.k.a., the following three aliases: —Semiconductor Manufacturing International (Shanghai) Corporation; —SMIC Shanghai; and —Semiconductor Mfg International Corp. No. 18 Zhang Jiang Road, Pudong New Area, Shanghai 201203. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial for items uniquely required for production of semi-conductors at advanced technology nodes (10 nanometers and below, including extreme ultra-violet technology); Case by case for all other items. | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |

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| | Semiconductor Manufacturing International (Shenzhen) Corporation, a.k.a., the following one alias: —SMIC Shenzhen. No. 18 Gaoxin Road, Export Processing Zone, Pingshan New Area, Shenzhen 518118; <i>and</i> 1st Lanzhu Avenue, Pingshan Town, Longgang District, Shenzhen, Guangdong, 518118; <i>and</i> Qier Road, Export Processing Zone, Pingshan New Area, Shenzhen. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial for items uniquely required for production of semiconductors at advanced technology nodes (10 nanometers and below, including extreme ultraviolet technology); Case by case for all other items. | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | Semiconductor Manufacturing International (Tianjin) Corporation, a.k.a., the following one alias: —SMIC Tianjin. No. 19 Xing Hua Avenue, Xiqing Economic Development Area, Tianjin 300385. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial for items uniquely required for production of semiconductors at advanced technology nodes (10 nanometers and below, including extreme ultraviolet technology); Case by case for all other items. | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | Semiconductor Manufacturing South China Corporation, a.k.a., the following four aliases: —SMSC; —SMIC Southern Integrated Circuit Manufacturing Co., Ltd.; —SMIC South; <i>and</i> —SMIC Southern. 5th Floor, Building 3, No.18 Zhang Jiang Road, China (Shanghai) Pilot Free Trade Zone. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial for items uniquely required for production of semiconductors at advanced technology nodes (10 nanometers and below, including extreme ultraviolet technology); Case by case for all other items. | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | * SJ Semiconductor, a.k.a., the following two aliases: —SJ Semiconductor (Jiangyin) Corp.; <i>and</i> —SJ Jiangyin. 6 Dongsheng West Road, Building A8-4, Jiangyin City, Jiangsu Province 214437. | * All items subject to the EAR. (See § 744.11 of the EAR). | * Presumption of denial for items uniquely required for production of semiconductors at advanced technology nodes (10 nanometers and below, including extreme ultraviolet technology); Case by case for all other items. | * 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | SMIC Holdings Limited, Building 1, No. 1059 Dangui Road, China (Shanghai) Pilot Free Trade Zone, Shanghai. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial for items uniquely required for production of semiconductors at advanced technology nodes (10 nanometers and below, including extreme ultraviolet technology); Case by case for all other items. | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | SMIC Northern Integrated Circuit Manufacturing (Beijing) Co., Ltd., a.k.a., the following two aliases: —Semiconductor Manufacturing North China (Beijing) Corporation; <i>and</i> —SMIC North. Building 9, No. 18 Wenchang Avenue, Beijing Economic and Technological Development Zone, Beijing. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial for items uniquely required for production of semiconductors at advanced technology nodes (10 nanometers and below, including extreme ultraviolet technology); Case by case for all other items. | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |

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| | SMIC Semiconductor Manufacturing (Shanghai) Co., Ltd., a.k.a., the following one alias: —Suzhou Design Center. Room 602, Building 1, No.158 Suya Road, Suzhou Industrial Park. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial for items uniquely required for production of semiconductors at advanced technology nodes (10 nanometers and below, including extreme ultra-violet technology); Case by case for all other items. | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
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| | Tianjin Micro Nano Manufacturing (MNMT), 3rd Floor, Room 316, A2 Building, Tianjin University Science Park, No. 80, 4th Avenue, Tianjin Economic Development Area (TEDA), Tianjin, China. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | Tianjin University, No. 92 Weijin Road, Tianjin, China 300072. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
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| | Tongfang NucTech Technology Ltd., a.k.a. the following alias: —NucTech. Second Floor, Building A, Tongfang Skyscraper, Shuangqing Road, Haidian District, Beijing, China | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
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| | Wei Pang, No. 92 Weijin Road, Tianjin, China 300072; and 3rd Floor, Room 316, A2 Building, Tianjin University Science Park, No. 80, 4th Avenue, Tianjin Economic Development Area (TEDA), Tianjin, China. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
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| | Zhao Gang, No. 92 Weijin Road, Tianjin, China 300072; and 3rd Floor, Room 316, A2 Building, Tianjin University Science Park, No. 80, 4th Avenue, Tianjin Economic Development Area (TEDA), Tianjin, China. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
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| FRANCE | * * * | * | * * * | * |
| | France Tech Services, a.k.a., the following one alias: —France Technology Services. 73 Rue Jean Jaures 92800 Puteaux, France. | For all items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
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| | Satori Corporation, a.k.a., the following one alias: —Satori SAS. Zone Musie 4–6 rue de Rome BP 151, Aeroport du Bourget 93352 Le Bourget Cedex, France, and 57 Avenue Jean Monnet Greenpark, 31770, Colomiers, France, and Aeroport Du Bourget Batiment No. 66, BP 151, Le Bourget, France (See alternate address under U.A.E.). | For all items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
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| Country | Entity | License requirement | License review policy | Federal Register citation |
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| | Maintenance Services International (MSI) GmbH, a.k.a., the following two aliases: —MSI Aircraft Maintenance Services International GmbH & Co. KG; <i>and</i> —MSI International GmbH and Company. Pommernstrasse 8 65428, Ruesselsheim, Germany; <i>and</i> Kobaltstrasse 2–4 FZS1 BH02, Russelsheim, Germany; <i>and</i> Parlerstrasse 18, Stuttgart, Germany. | For all items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | MRS GmbH, a.k.a., the following one alias: —MRS International. Wiener Strasse 23 A Regensburg, Germany 93065; <i>and</i> Gewerhofstrasse 11 Essen, Germany 45145. | For all items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | | | | |
| HONG KONG ... | SMIC Hong Kong International Company Limited, a.k.a., the following one alias: —SMIC Hong Kong. Suite 3003, 30th Floor, No. 9 Queen's Road Central Hong Kong. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial for items uniquely required for production of semi-conductors at advanced technology nodes (10 nanometers and below, including extreme ultra-violet technology); Case by case for all other items. | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | | | | |
| ITALY | Zigma Aviation, a.k.a., the following one alias: —Zigma Aviation Services. Viasalettuol, No. 12 Venezia Mestre, Italy. | For all items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
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| MALTA | Feroz Ahmed Akbar, 116/8 San Juan St., Georges Road, St. Julians, STJ 3203, Malta. Sparx Air Ltd., 116/8 San Juan St Georges Road, ST. Julians, STJ 3203, Malta. | For all items subject to the EAR. (See § 744.11 of the EAR). For all items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
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| PAKISTAN | Geo Research, 136–B Faisal Town, Lahore, Pakistan; <i>and</i> 102–G Block Model Town, Lahore, Pakistan. Link Lines (Pvt.) Limited, a.k.a., the following one alias: —Link Lines. | For all items subject to the EAR. (See § 744.11 of the EAR). For all items subject to the EAR. (See § 744.11 of the EAR). | See § 744.2(d) of the EAR See § 744.2(d) of the EAR | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |

| Country | Entity | License requirement | License review policy | Federal Register citation |
|----------------------|--|--|-----------------------------|--|
| | 1st Floor, Flat B, 11 Main Gulberg, Ghaus-Ul-Azam Road, Lahore, Pakistan; <i>and</i> VIP Square Plaza, 1st Floor, Office No. 3, 1–8 Markaz, Islamabad, Pakistan; <i>and</i> 1st Floor, 3-Sultana Arcade, Gulberg III, Lahore, Pakistan; <i>and</i> 17-Chaman Chambers, Nishter Road, Lahore, Pakistan. | | | |
| | * * * | * | * | * |
| | Oriental Engineers, a.k.a., the following four aliases: —Oriental Engineers Pvt. Ltd.; —Oriental Engineers Services; —Advance Technologies; <i>and</i> —Advanced Technologies. —11–B Main Gulberg, Lahore, Pakistan; <i>and</i> 1st Floor, Flat B, 11 Main Gulberg, Ghaus-Ul-Azam Road, Lahore, Pakistan; <i>and</i> 14 Nishter Road, Lahore, Pakistan; <i>and</i> LG–7 Eden Heights 3–A and 6–A, Main Jail Road, Gulberg, Lahore, Pakistan; <i>and</i> VIP Square Plaza, 1st Floor, Office No. 3, 1–8 Markez, Islamabad, Pakistan; <i>and</i> 199–E, Officers Colony, Cavalry Ground, Lahore, Cantt, Pakistan; <i>and</i> Office 7, Lower Ground Floor, Eden Heights, Plaza, Jail Road, Gulberg, Lahore 54600, Pakistan. | For all items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 82 FR 24245, 5/26/17. 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
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| RUSSIA | * * * | * | * | * |
| | Cosmos Complect, a.k.a., the following three aliases: —Kosmos Komplekt; —Cosmos Complect Ltd.; <i>and</i> —COSMOS. Sokolovo-Meshcherskaya Street, Building 14, Office 9, 125466 Moscow, Russia; <i>and</i> Pyatnitskaya 39, building 2, Moscow, 119017, Russia. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | * * * | * | * | * |
| | Ilias Kharesovich Sabirov, Solovjinaya Roscha Str 9–1–86, Moscow, Russia. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
| | * * * | * | * | * |
| | OOO Sovtest Comp, a.k.a., the following one alias: —SOVTEST. Sokolovo-Meshcherskaya Street, Building 14, Office 9, 125466 Moscow, Russia. | All items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
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| UNITED ARAB EMIRATES | * * * | * | * | * |
| | Satori Corporation, a.k.a., the following one alias: —Satori SAS. Dubai Silicon Oasis, Apricot Tower, Office 810 P.O. Box 341028, Dubai, U.A.E. (See alternate address under France). | For all items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
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| Country | Entity | License requirement | License review policy | Federal Register citation |
|---------|---|--|-----------------------------|---|
| | Sky Float Aviation FZE, M6 Office 1309, Building R2, Near Urban Line Group, SAIF Zone, P.O. Box 121887, Sharjah, U.A.E. | For all items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 85 FR [INSERT FR PAGE NUMBER] 12/22/2020. |
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Matthew S. Borman,
Deputy Assistant Secretary for Export Administration.
 [FR Doc. 2020–28031 Filed 12–18–20; 11:15 am]
BILLING CODE 3510–33–P

DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection
19 CFR Chapter I

Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Canada

AGENCY: Office of the Secretary, U.S. Department of Homeland Security; U.S. Customs and Border Protection, U.S. Department of Homeland Security.
ACTION: Notification of continuation of temporary travel restrictions.

SUMMARY: This document announces the decision of the Secretary of Homeland Security (Secretary) to continue to temporarily limit the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border. Such travel will be limited to “essential travel,” as further defined in this document.

DATES: These restrictions go into effect at 12 a.m. Eastern Standard Time (EST) on December 22, 2020 and will remain in effect until 11:59 p.m. EST on January 21, 2020.

FOR FURTHER INFORMATION CONTACT: Stephanie Watson, Office of Field Operations Coronavirus Coordination Cell, U.S. Customs and Border Protection (CBP) at 202–325–0840.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2020, DHS published notice of the Secretary’s decision to temporarily limit the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border to “essential travel,” as further defined in

that document.¹ The document described the developing circumstances regarding the COVID–19 pandemic and stated that, given the outbreak and continued transmission and spread of the virus associated with COVID–19 within the United States and globally, the Secretary had determined that the risk of continued transmission and spread of the virus associated with COVID–19 between the United States and Canada posed a “specific threat to human life or national interests.” The Secretary later published a series of notifications continuing such limitations on travel until 11:59 p.m. EST on December 21, 2020.²

The Secretary has continued to monitor and respond to the COVID–19 pandemic. As of the week of December 8, there have been over 65 million confirmed cases globally, with over 1.5 million confirmed deaths.³ There have been over 15.2 million confirmed and probable cases within the United States,⁴ over 400,000 confirmed cases in Canada,⁵ and over 1.1 million confirmed cases in Mexico.⁶

¹ 85 FR 16548 (Mar. 24, 2020). That same day, DHS also published notice of the Secretary’s decision to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border to “essential travel,” as further defined in that document. 85 FR 16547 (Mar. 24, 2020).

² See 85 FR 74603 (Nov. 23, 2020); 85 FR 67276 (Oct. 22, 2020); 85 FR 59670 (Sept. 23, 2020); 85 FR 51634 (Aug. 21, 2020); 85 FR 44185 (July 22, 2020); 85 FR 37744 (June 24, 2020); 85 FR 31050 (May 22, 2020); 85 FR 22352 (Apr. 22, 2020). DHS also published parallel notifications of the Secretary’s decisions to continue temporarily limiting the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border to “essential travel.” See 85 FR 74604 (Nov. 23, 2020); 85 FR 67275 (Oct. 22, 2020); 85 FR 59669 (Sept. 23, 2020); 85 FR 51633 (Aug. 21, 2020); 85 FR 44183 (July 22, 2020); 85 FR 37745 (June 24, 2020); 85 FR 31057 (May 22, 2020); 85 FR 22353 (Apr. 22, 2020).

³ WHO, Coronavirus disease 2019 (COVID–19) Weekly Epidemiological Update (Dec. 8, 2020), available at <https://www.who.int/publications/m/item/weekly-epidemiological-update-8-december-2020>.

⁴ CDC, COVID Data Tracker (accessed Dec. 10, 2020), available at <https://covid.cdc.gov/covid-data-tracker/>.

⁵ WHO, COVID–19 Weekly Epidemiological Update (Dec. 8, 2020).

⁶ *Id.*

Notice of Action

Given the outbreak and continued transmission and spread of COVID–19 within the United States and globally, the Secretary has determined that the risk of continued transmission and spread of the virus associated with COVID–19 between the United States and Canada poses an ongoing “specific threat to human life or national interests.”

U.S. and Canadian officials have mutually determined that non-essential travel between the United States and Canada poses additional risk of transmission and spread of the virus associated with COVID–19 and places the populace of both nations at increased risk of contracting the virus associated with COVID–19. Moreover, given the sustained human-to-human transmission of the virus, returning to previous levels of travel between the two nations places the personnel staffing land ports of entry between the United States and Canada, as well as the individuals traveling through these ports of entry, at increased risk of exposure to the virus associated with COVID–19. Accordingly, and consistent with the authority granted in 19 U.S.C. 1318(b)(1)(C) and (b)(2),⁷ I have

⁷ 19 U.S.C. 1318(b)(1)(C) provides that “[n]otwithstanding any other provision of law, the Secretary of the Treasury, when necessary to respond to a national emergency declared under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) or to a specific threat to human life or national interests,” is authorized to “[t]ake any . . . action that may be necessary to respond directly to the national emergency or specific threat.” On March 1, 2003, certain functions of the Secretary of the Treasury were transferred to the Secretary of Homeland Security. See 6 U.S.C. 202(2), 203(1). Under 6 U.S.C. 212(a)(1), authorities “related to Customs revenue functions” were reserved to the Secretary of the Treasury. To the extent that any authority under section 1318(b)(1) was reserved to the Secretary of the Treasury, it has been delegated to the Secretary of Homeland Security. See Treas. Dep’t Order No. 100–16 (May 15, 2003), 68 FR 28322 (May 23, 2003). Additionally, 19 U.S.C. 1318(b)(2) provides that “[n]otwithstanding any other provision of law, the Commissioner of U.S. Customs and Border Protection, when necessary to respond to a specific threat to human life or national interests, is authorized to close temporarily any Customs office or port of entry or take any other lesser action that may be necessary to respond to the specific threat.” Congress has vested in the Secretary of Homeland Security the “functions of

determined that land ports of entry along the U.S.-Canada border will continue to suspend normal operations and will only allow processing for entry into the United States of those travelers engaged in “essential travel,” as defined below. Given the definition of “essential travel” below, this temporary alteration in land ports of entry operations should not interrupt legitimate trade between the two nations or disrupt critical supply chains that ensure food, fuel, medicine, and other critical materials reach individuals on both sides of the border.

For purposes of the temporary alteration in certain designated ports of entry operations authorized under 19 U.S.C. 1318(b)(1)(C) and (b)(2), travel through the land ports of entry and ferry terminals along the United States-Canada border shall be limited to “essential travel,” which includes, but is not limited to—

- U.S. citizens and lawful permanent residents returning to the United States;
- Individuals traveling for medical purposes (e.g., to receive medical treatment in the United States);
- Individuals traveling to attend educational institutions;
- Individuals traveling to work in the United States (e.g., individuals working in the farming or agriculture industry who must travel between the United States and Canada in furtherance of such work);
- Individuals traveling for emergency response and public health purposes (e.g., government officials or emergency responders entering the United States to support federal, state, local, tribal, or territorial government efforts to respond to COVID-19 or other emergencies);
- Individuals engaged in lawful cross-border trade (e.g., truck drivers supporting the movement of cargo between the United States and Canada);
- Individuals engaged in official government travel or diplomatic travel;
- Members of the U.S. Armed Forces, and the spouses and children of members of the U.S. Armed Forces, returning to the United States; and
- Individuals engaged in military-related travel or operations.

The following travel does not fall within the definition of “essential travel” for purposes of this Notification—

- Individuals traveling for tourism purposes (e.g., sightseeing, recreation, gambling, or attending cultural events).

At this time, this Notification does not apply to air, freight rail, or sea travel

all officers, employees, and organizational units of the Department,” including the Commissioner of CBP. 6 U.S.C. 112(a)(3).

between the United States and Canada, but does apply to passenger rail, passenger ferry travel, and pleasure boat travel between the United States and Canada. These restrictions are temporary in nature and shall remain in effect until 11:59 p.m. EST on January 21, 2020. This Notification may be amended or rescinded prior to that time, based on circumstances associated with the specific threat.⁸

The Commissioner of U.S. Customs and Border Protection (CBP) is hereby directed to prepare and distribute appropriate guidance to CBP personnel on the continued implementation of the temporary measures set forth in this Notification. The CBP Commissioner may determine that other forms of travel, such as travel in furtherance of economic stability or social order, constitute “essential travel” under this Notification. Further, the CBP Commissioner may, on an individualized basis and for humanitarian reasons or for other purposes in the national interest, permit the processing of travelers to the United States not engaged in “essential travel.”

The Acting Secretary of Homeland Security, Chad F. Wolf, having reviewed and approved this document, has delegated the authority to electronically sign this document to Chad R. Mizelle, who is the Senior Official Performing the Duties of the General Counsel for DHS, for purposes of publication in the **Federal Register**.

Chad R. Mizelle,

Senior Official Performing the Duties of the General Counsel, U.S. Department of Homeland Security.

[FR Doc. 2020-28381 Filed 12-21-20; 8:45 am]

BILLING CODE 9112-FP-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Chapter I

Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Mexico

AGENCY: Office of the Secretary, U.S. Department of Homeland Security; U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: Notification of continuation of temporary travel restrictions.

⁸DHS is working closely with counterparts in Mexico and Canada to identify appropriate public health conditions to safely ease restrictions in the future and support U.S. border communities.

SUMMARY: This document announces the decision of the Secretary of Homeland Security (Secretary) to continue to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border. Such travel will be limited to “essential travel,” as further defined in this document.

DATES: These restrictions go into effect at 12 a.m. Eastern Standard Time (EST) on December 22, 2020 and will remain in effect until 11:59 p.m. EST on January 21, 2020.

FOR FURTHER INFORMATION CONTACT: Stephanie Watson, Office of Field Operations Coronavirus Coordination Cell, U.S. Customs and Border Protection (CBP) at 202-325-0840.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2020, DHS published notice of the Secretary’s decision to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border to “essential travel,” as further defined in that document.¹ The document described the developing circumstances regarding the COVID-19 pandemic and stated that, given the outbreak and continued transmission and spread of the virus associated with COVID-19 within the United States and globally, the Secretary had determined that the risk of continued transmission and spread of the virus associated with COVID-19 between the United States and Mexico posed a “specific threat to human life or national interests.” The Secretary later published a series of notifications continuing such limitations on travel until 11:59 p.m. EST on December 21, 2020.²

The Secretary has continued to monitor and respond to the COVID-19

¹ 85 FR 16547 (Mar. 24, 2020). That same day, DHS also published notice of the Secretary’s decision to temporarily limit the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border to “essential travel,” as further defined in that document. 85 FR 16548 (Mar. 24, 2020).

² See 85 FR 74604 (Nov. 23, 2020); 85 FR 67275 (Oct. 22, 2020); 85 FR 59669 (Sept. 23, 2020); 85 FR 51633 (Aug. 21, 2020); 85 FR 44183 (July 22, 2020); 85 FR 37745 (June 24, 2020); 85 FR 31057 (May 22, 2020); 85 FR 22353 (Apr. 22, 2020). DHS also published parallel notifications of the Secretary’s decisions to continue temporarily limiting the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border to “essential travel.” See 85 FR 74603 (Nov. 23, 2020); 85 FR 67276 (Oct. 22, 2020); 85 FR 59670 (Sept. 23, 2020); 85 FR 51634 (Aug. 21, 2020); 85 FR 44185 (July 22, 2020); 85 FR 37744 (June 24, 2020); 85 FR 31050 (May 22, 2020); 85 FR 22352 (Apr. 22, 2020).

pandemic. As of the week of December 8, there have been over 65 million confirmed cases globally, with over 1.5 million confirmed deaths.³ There have been over 15.2 million confirmed and probable cases within the United States,⁴ over 400,000 confirmed cases in Canada,⁵ and over 1.1 million confirmed cases in Mexico.⁶

Notice of Action

Given the outbreak and continued transmission and spread of COVID-19 within the United States and globally, the Secretary has determined that the risk of continued transmission and spread of the virus associated with COVID-19 between the United States and Mexico poses an ongoing “specific threat to human life or national interests.”

U.S. and Mexican officials have mutually determined that non-essential travel between the United States and Mexico poses additional risk of transmission and spread of the virus associated with COVID-19 and places the populace of both nations at increased risk of contracting the virus associated with COVID-19. Moreover, given the sustained human-to-human transmission of the virus, returning to previous levels of travel between the two nations places the personnel staffing land ports of entry between the United States and Mexico, as well as the individuals traveling through these ports of entry, at increased risk of exposure to the virus associated with COVID-19. Accordingly, and consistent with the authority granted in 19 U.S.C. 1318(b)(1)(C) and (b)(2),⁷ I have

determined that land ports of entry along the U.S.-Mexico border will continue to suspend normal operations and will only allow processing for entry into the United States of those travelers engaged in “essential travel,” as defined below. Given the definition of “essential travel” below, this temporary alteration in land ports of entry operations should not interrupt legitimate trade between the two nations or disrupt critical supply chains that ensure food, fuel, medicine, and other critical materials reach individuals on both sides of the border.

For purposes of the temporary alteration in certain designated ports of entry operations authorized under 19 U.S.C. 1318(b)(1)(C) and (b)(2), travel through the land ports of entry and ferry terminals along the United States-Mexico border shall be limited to “essential travel,” which includes, but is not limited to—

- U.S. citizens and lawful permanent residents returning to the United States;
- Individuals traveling for medical purposes (e.g., to receive medical treatment in the United States);
- Individuals traveling to attend educational institutions;
- Individuals traveling to work in the United States (e.g., individuals working in the farming or agriculture industry who must travel between the United States and Mexico in furtherance of such work);
- Individuals traveling for emergency response and public health purposes (e.g., government officials or emergency responders entering the United States to support federal, state, local, tribal, or territorial government efforts to respond to COVID-19 or other emergencies);
- Individuals engaged in lawful cross-border trade (e.g., truck drivers supporting the movement of cargo between the United States and Mexico);
- Individuals engaged in official government travel or diplomatic travel;
- Members of the U.S. Armed Forces, and the spouses and children of members of the U.S. Armed Forces, returning to the United States; and
- Individuals engaged in military-related travel or operations.

The following travel does not fall within the definition of “essential

travel” for purposes of this Notification—

- Individuals traveling for tourism purposes (e.g., sightseeing, recreation, gambling, or attending cultural events).

At this time, this Notification does not apply to air, freight rail, or sea travel between the United States and Mexico, but does apply to passenger rail, passenger ferry travel, and pleasure boat travel between the United States and Mexico. These restrictions are temporary in nature and shall remain in effect until 11:59 p.m. EST on January 21, 2020. This Notification may be amended or rescinded prior to that time, based on circumstances associated with the specific threat.⁸

The Commissioner of U.S. Customs and Border Protection (CBP) is hereby directed to prepare and distribute appropriate guidance to CBP personnel on the continued implementation of the temporary measures set forth in this Notification. The CBP Commissioner may determine that other forms of travel, such as travel in furtherance of economic stability or social order, constitute “essential travel” under this Notification. Further, the CBP Commissioner may, on an individualized basis and for humanitarian reasons or for other purposes in the national interest, permit the processing of travelers to the United States not engaged in “essential travel.”

The Acting Secretary of Homeland Security, Chad F. Wolf, having reviewed and approved this document, has delegated the authority to electronically sign this document to Chad R. Mizelle, who is the Senior Official Performing the Duties of the General Counsel for DHS, for purposes of publication in the **Federal Register**.

Chad R. Mizelle,

Senior Official Performing the Duties of the General Counsel, U.S. Department of Homeland Security.

[FR Doc. 2020-28375 Filed 12-21-20; 8:45 am]

BILLING CODE 9112-FP-P

³ WHO, Coronavirus disease 2019 (COVID-19) Weekly Epidemiological Update (Dec. 8, 2020), available at <https://www.who.int/publications/m/item/weekly-epidemiological-update-8-december-2020>.

⁴ CDC, COVID Data Tracker (accessed Dec. 10, 2020), available at <https://covid.cdc.gov/covid-data-tracker/>.

⁵ WHO, COVID-19 Weekly Epidemiological Update (Dec. 8, 2020).

⁶ *Id.*

⁷ 19 U.S.C. 1318(b)(1)(C) provides that “[n]otwithstanding any other provision of law, the Secretary of the Treasury, when necessary to respond to a national emergency declared under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) or to a specific threat to human life or national interests,” is authorized to “[t]ake any . . . action that may be necessary to respond directly to the national emergency or specific threat.” On March 1, 2003, certain functions of the Secretary of the Treasury were transferred to the Secretary of Homeland Security. See 6 U.S.C. 202(2), 203(1). Under 6 U.S.C. 212(a)(1), authorities “related to Customs revenue functions” were reserved to the Secretary of the Treasury. To the extent that any authority under section 1318(b)(1) was reserved to the Secretary of the Treasury, it has been delegated to the Secretary of Homeland Security. See Treas. Dep’t Order No. 100-16 (May 15, 2003), 68 FR 28322 (May 23, 2003). Additionally, 19 U.S.C.

1318(b)(2) provides that “[n]otwithstanding any other provision of law, the Commissioner of U.S. Customs and Border Protection, when necessary to respond to a specific threat to human life or national interests, is authorized to close temporarily any Customs office or port of entry or take any other lesser action that may be necessary to respond to the specific threat.” Congress has vested in the Secretary of Homeland Security the “functions of all officers, employees, and organizational units of the Department,” including the Commissioner of CBP. 6 U.S.C. 112(a)(3).

⁸ DHS is working closely with counterparts in Mexico and Canada to identify appropriate public health conditions to safely ease restrictions in the future and support U.S. border communities.

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 266

[Docket No FR-5881-F-02]

RIN 2502-AJ35

**Section 542(c) Housing Finance
Agency Risk Sharing Program**

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: Through the Section 542(c) Housing Finance Agency (HFA) Risk Sharing program, HUD enters into risk-sharing agreements with qualified state and local HFAs so they can provide FHA (Federal Housing Administration) mortgage insurance and credit enhancement for new loans on multifamily affordable housing properties. This final rule amends the program's existing regulations, to better align with the policies of other HUD programs, reflect current industry and HUD practices, and conform to statutory amendments. Additionally, this rule provides HUD with greater flexibility to operate the Section 542(c) HFA Risk Sharing program more efficiently and provides HFAs which accept a greater share of the risk of loss on mortgages insured under the program with expanded program delegation. This rule also updates outdated references and terminology and clarifies other provisions.

DATES: Effective January 21, 2021.

FOR FURTHER INFORMATION CONTACT: Carmelita A. James, Office of Multifamily Production, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW, Room 6146, Washington, DC 20410; telephone number (202)-402-2579 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 542 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z-22) (Section 542) directs HUD to carry out programs through FHA to demonstrate the effectiveness of providing new forms of Federal credit enhancement for loans on multifamily affordable housing properties which are underwritten, processed, serviced, and disposed of by HFAs. HUD and the HFAs share in the risk of loss, which enables the HFAs to

provide more mortgage insurance and credit for new multifamily loans. Under the program, qualified state and local HFAs are delegated to originate and underwrite loans for new construction, substantial rehabilitation, acquisition, refinancing, and housing for the elderly. HFAs may elect to share from 10 to 90 percent of the loss on a mortgage with HUD. In the event of a claim, HFAs will reimburse HUD for their portion of the loss pursuant to their risk-sharing agreement's terms.

On March 8, 2016, HUD proposed a new rule to update the Section 542(c) HFA Risk Sharing regulations set out in 24 CFR part 266, which were last updated over fifteen years ago. Additional details about the proposed rule may be found at 81 FR 12051 (March 8, 2016).

II. This Final Rule

This final rule follows publication of the March 8, 2016 proposed rule and considers the public comments received. HUD is adopting the proposed rule as final with no substantive changes.

III. Discussion of Public Comments

HUD received eight public comments on the proposed rule from housing and finance agencies, a law firm, and other interested parties. One commenter did not discuss the proposed rule and therefore the comment will not be addressed here as it is outside the rulemaking's scope. In general, the comments received supported the rule, with no expressed opposition.

The comments largely contained requests for clarification, suggested technical changes, and provided additional recommendations. Several commenters stated the proposed rule's revisions were necessary updates that would help streamline the regulation, add flexibility, and make the program more effective. In addition, commenters stated they appreciated HUD's extensive outreach and exchanges with HFAs prior to issuing the proposed rule.

HUD appreciates the time that commenters took to provide helpful information and valuable suggestions.

A. Affordable Housing Definition

Comment: The revisions to the definition of "affordable housing" are helpful. Commenters supported HUD amending the proposed rule's definition of "affordable housing." One commenter supported the proposed revisions because they would expand the Section 542(c) program to better support loans on projects with Federal low-income housing tax credits (LIHTC)

and synchronize the risk sharing program with the LIHTC rules.

HUD Response: HUD appreciates the support but emphasizes that the revised definition of "affordable housing" is technical and does not expand the program's scope. As discussed in the proposed rule, the existing definition of "affordable housing," as well as the definitions of "gross rent" and "supportive services," are unnecessarily repetitive so the proposed change removes redundant verbiage and simplifies the regulatory language without substantively changing the program's scope. This rule amends the "affordable housing" definition to more closely conform to the statutory language in Section 542(c)(7) of the Housing and Community Development Act of 1992 and meet the requirements for a qualified low-income housing tax credit project under section 42(g) of the Internal Revenue Code.

Comment: The rule should clarify that cooperatives meet the proposed rule's definition of "affordable housing," and that "gross rent" includes charges for the occupancy of a cooperative unit. A commenter stated that the existing Risk-Sharing regulations make it clear that loans for cooperatives with five or more units are eligible for Risk-Sharing mortgage insurance, but the rule's revision of the "affordable housing" definition makes that less clear. According to the commenter, the revision should incorporate all the requirements for a qualified low-income housing project that are set forth in I.R.C. Section 42(g) and not simply the gross rent rules that are required by the Section 542(c) Risk-Sharing statute.

The commenter stated further that Section 42(g) contains several LIHTC-specific concepts that may need to be disregarded when they are applied to non-LIHTC, Risk-Sharing projects. Further, Section 42(g) should not be interpreted as implying that cooperatives are not eligible for Risk Sharing. The commenter suggested clarifying the definition of affordable housing so that, for purposes of the Risk-Sharing regulations, any reference to a residential rental project in Section 42(g) includes cooperative projects.

In addition, the commenter stated that the proposed rule continues existing cooperative-related language from the current rule that is unnecessarily confusing because charges for a cooperative unit occupancy are said to be a form of utility allowance. Lastly, the commenter said it is awkward to refer to cooperative occupancy charges in such terms, which are otherwise known as "maintenance fees," and the final rule should specify that gross rent,

and not just the utility allowance, is included in the charges for a cooperative unit occupancy.

HUD Response: HUD appreciates the comments on ensuring that the rule is clear that cooperative units are eligible as “affordable housing” for purposes of the Risk Sharing program, if they otherwise meet the Risk Sharing statute’s other requirements. This rule continues to apply to cooperative housing units, and HUD does not believe any additional changes are necessary to confirm that.

B. Housing Finance Agency Requirements

Comment: Be consistent regarding rating requirements. A commenter stated the HFA qualifier with an “overall rating of ‘A’ on general obligation bonds” used in § 266.110(a) and § 266.120(e)(5) should also be used in § 266.100(a)(1). This commenter also indicated that while HFAs may qualify to participate in the program if they carry an issuer credit rating of “A” or better, the regulations do not provide that HFAs may qualify if they receive a rating of “A” or better for their general obligation bonds. In addition, the commenter said that, considering this, an “AA” or “AAA” rating would technically not be sufficient, and recommended that the rule specify in § 266.100(a)(1), § 266.110(a), and § 266.120(e)(5) that a HFA can qualify for the program if it receives a rating of “A” or better for its general obligation bonds.

The commenter also said it assumes that references to “general obligation bonds” in the rule mean bonds whose rating depends on the issuer’s general ability to pay, and area proxy for an issuer rating, and are not intended to include general obligation bonds that also have pledged collateral that serves as the basis for the rating. The commenter said that the mere fact that loans are pledged does not necessarily mean they will be the basis for the bond rating, although they often are.

HUD Response: The commenter’s requested language is already included in § 266.100(a)(2), which remains unchanged, and as such there is no need to change § 266.100(a)(1).

Comment: Reconsider reviewing underwriting standards, loan terms and conditions, and asset management and servicing procedures for HFAs with Level II approval every five years. A commenter suggested that reviewing Level II HFA underwriting standards every five years to align them with FHA standards is not necessary and should only apply to “large claims made.”

HUD Response: HUD has the statutory authority to impose additional underwriting criteria, loan terms, and conditions when HUD assumes more than 50% of the risk of loss and may do so for a variety of risk management and program oversight reasons. HUD interprets the commenters reference to “large claims made” as intending to refer to mortgage insurance commitments issued for large loans. HUD disagrees that reviewing underwriting standards, loan terms and conditions only as they apply to large loans would be sufficient to manage risk and to protect the Risk Sharing program’s safety and soundness.

Comment: Termination. One commenter objected to the proposed change allowing HUD to withdraw program approval for Level II HFAs that do not adopt new underwriting standards, loan terms and conditions, and asset management and servicing procedures that HUD may establish every five years. The comment stated that termination seems inappropriate for HFAs that are otherwise performing under the program. The commenter asked that HUD allow for a reasonable transition period and establish processes the HFAs can use to negotiate HUD’s new standards and to appeal a possible termination.

HUD Response: The language in the proposed rule states that, every five years, HUD will review the underwriting standards, loan terms and conditions, and asset management and servicing procedures for HFAs with Level II approval, under which HFAs assume less than 50% of the risk of loss and that HUD may require changes to these standards and procedures as a condition of continued Level II approval. The rule does not state that HUD will necessarily establish new procedures every five years, but only that HUD will review the standards and procedures of HFAs with Level II approval every five years. Under this regulation, HUD may require changes to these standards and procedures to ensure they are updated and that they conform to HUD’s standards and requirements, but the rule does not state that HUD will necessarily terminate an HFA’s approval. As noted in the proposed rule’s preamble, many of the standards used by HFAs with Level II approval have been in place for more than 20 years without being reviewed by HUD, and may likely be outdated.

C. Program Requirements

Comment: Clarify eligibility requirements for existing projects and projects receiving Section 8 rental subsidies or other rental subsidies. A

commenter indicated that § 266.200(c)(4), (5), and (7) of the proposed rule, which describe eligibility requirements for existing projects, relate to projects with Section 8 contracts, but none of them states that explicitly, and that beginning each of these paragraphs with a phrase such as “If the project is the subject of a Housing Assistance Payments (HAP) contract . . .” would provide clarity. Alternatively, this commenter said that § 266.200(c)(4), (5), and (7) could be consolidated into a single subsection that addresses Section 8 assisted projects.

HUD Response: HUD agreed with the suggestions. Sections 266.200(c)(4), (5) and (7) were consolidated into a single subsection (5) for Section 8 assisted projects which begins with the phrase “If the project is subject to a Housing Assistance Payment (HAP) contract” This paragraph was moved to clarify the circumstances to which this applies, after the general provisions in § 266.200.

Comment: Differences between § 266.200(c)(7) and § 266.200(d). Under Section 266.200(d), for projects that receive rental subsidies, the HUD insured mortgage may not exceed an amount supported by the lower of the contract rents under the rental assistance agreement or market rents, except for Section 202 projects. Under Section 266.200(c)(7), the HUD-insured mortgage may not exceed an amount supported by the lower of the unit rents under the rental assistance agreement or unit rents at unassisted projects in the market area, except for Section 202 projects. The commenter asked why both provisions were necessary and how they differed.

HUD Response: HUD agreed with the commenter that the language in both Sections is similar, however, the difference is intentional. Section 266.200(c)(7) has requirements for existing projects which may or may not have Section 8 subsidies, whereas Section 266.200(d) has requirements exclusively for projects receiving Section 8 subsidies.

Comment: Exception for 202 projects. The exception for 202 projects in the revised § 266.200(d) seems to contradict the preamble’s explanation that the amendment to this Section would result in Level I HFAs being subject to the same underwriting standards as for other Section 202 projects, in that the loans may be underwritten to contract rents. The commenter stated that the “same underwriting standard” refers to the program allowing Section 202 projects to obtain Risk Sharing loans which are underwritten based on contract rents, regardless of market

rents, and asked that HUD provide clarity.

HUD Response: HUD reviewed the proposed § 266.200(b)(7) and § 266.200(d) and determined that Level I participants may underwrite Section 202 projects to contract rents, regardless of market comparable.

Comment: Clarify § 266.200(c)(4). Commenters asked HUD to clarify that § 266.200(c)(4), which requires that property owners agree to renew the HAP contract for a 20-year term, applies only to Section 8 Project-Based Rental Assistance (PBRA) and not Section 8 Project-Based Vouchers (PBV). The commenters said that administering agencies are not obligated to extend PBV contracts and can let them expire, unlike PBRA. Furthermore, even if administering agencies were willing to extend PBV contracts, uncertainty regarding third-party consent requirements could deter owners from using the Section 542(c) program to preserve affordable housing. Additionally, commenters said the regulatory requirements for the term of the PBV contracts could make compliance with the requirement in this rule problematic, as the regulations impose limitations on the total, aggregate term allowed for a PBV contract. See 24 CFR 983.205.

Commenters also asked HUD to clarify whether the requirement for a 20-year renewal of a HAP contract is deemed satisfied for projects with an existing HAP contract if the owner commits to a future extension upon the existing HAP contract's expiration, or if it requires that the owner enter into a new 20-year HAP contract at the closing on the loan. Commenters said the former should achieve HUD's policy goals and will avoid any potential detrimental impact on a project's appraised value that could result from extending HUD's use agreement now, as would be required upon certain types of HAP contract extensions.

HUD Response: The PBV program permits 20-year contract extensions at any time during the contract term, effectively creating a 40-year contract option. Extensions are at the PHA's discretion, so a PHA could decide not to extend a PBV contract, since PBVs are not like PBRA, where owners have a general right to renewal under the Multifamily Assisted Housing Reform and Affordability Act. However, even if the administering agencies were willing to extend a PBV contract at some point during its term, HUD recognizes that uncertainty regarding third-party consent requirements could deter owners from using the Risk Sharing program to preserve the affordable

housing. However, as noted above, a contract extension could be agreed to at the time of loan closing with the mortgagee's consent requested at that time. The commenter stated that the regulatory requirements for the PBV contract's term (24 CFR 983.205) could make compliance with the requirement in this rule problematic, as the regulations impose limitations on the total, aggregate term allowed for a PBV contract. Section 983.205 has been modified by the Housing Opportunity Through Modernization Act (HOTMA), with the initial and extension term language contained in the FR Implementation Notice dated 1–18–17, with further guidance provided in Notice PIH 2017–21. Eventually, HUD will codify these changes. However, HOTMA allows the agency to initially implement by FR Notice, which is what has occurred.

Comment: Residual receipts. Further, commenters asked whether the provision in the proposed rule regarding residual receipts to fund future Housing Assistance Payments in § 266.200(c)(5) only applies to so-called “New Regulation” HAP contracts, pursuant to HUD Notice 2012–14 and the FAQ memo of October 2, 2012, and asked that the rule be specific as to which HAP contracts it applies in order to avoid restricting distributions where the HAP contract itself has no limit.

HUD Response: Notice 2012–14 applies to contracts subject to the revised Section 8 regulations. HUD will specify the applicable HAP contracts in the final rule, in accordance with Notice 2012–14, which states: “For projects subject to 24 CFR part 883, in effect as of February 29, 1980, the State Housing Agency, rather than HUD, is entitled to make the determination that project funds are more than the amount needed and to require that the excess be deposited into an interest-bearing account to be used for project purposes.” See 24 CFR 883.306(e).

Comment: Expand the underwriting exception. Commenters requested that the rule's exception regarding underwriting to the lower of market or HAP rents be expanded. Commenters said that § 266.200(c)(7) and § 266.200(d) generally require underwriting rents to be the lower of market or Section 8 rents, but there is an exception to underwrite at higher HAP contract rents on Section 202 refinances. Commenters said there are other exceptions available for other multifamily loans insured by FHA, specifically, if the long-term HAP contract rents are above market rents and are not subject to being reset to market (for example, Mark-to-Market

(M2M), Option 4, or some Option 5 Low-Income Housing Preservation and Resident Homeownership Act (LIHPRHA) projects). The FHA Multifamily Accelerated Processing (MAP) program allows rents to be underwritten to the above-market HAP contract rents for the full term of the contract. Commenters suggested that the proposed rule incorporate comparable provisions for the HFA Risk-Sharing Program.

Another commenter asked that HUD extend the flexibility provided for Section 202 projects to situations in which Risk-Sharing is used to finance loans for projects under other programs, such as M2M, Option 4 and some Option 5 LIHPRHA deals.

HUD Response: Under M2M, once a property has gone through an M2M restructuring (which sets the Section 8 rents at market), the only permitted rent increase is an annual Operating Cost Adjustment Factors increase. HUD is unable to act on the commenter's suggestion regarding Section 202 projects since that program is governed by its own statutory and regulatory structure, which is beyond the scope of the Risk Sharing regulation.

Comment: Expand the Risk-Sharing program. A commenter recommended that HUD expand project eligibility to include financing workforce housing projects where the resident could earn up to 80–100 percent of Area Median Income (AMI). This commenter said that, currently, workforce transactions where rents are above 60 percent of AMI and do not meet the minimum set-aside defined in the Handbook cannot be financed under Risk Sharing. This commenter also recommended that HUD expand the definition of senior properties for the Risk Sharing program to include renters age 55 and older in order to provide greater flexibility for HFAs and to align with current industry practices defining a senior property. Further, the commenter asked that the regulation clarify whether manufactured housing rental communities can be insured under the Section 542(c) program, assuming they meet other program requirements.

HUD Response: Expanding project eligibility to include residents earning up to 80 to 100 percent of AMI would not conform to the program's statutory requirements, under which the affordability restriction must meet the requirements of I.R.C. § 42(g). Projects restricted to renters age 55 and older are required to comply with the Fair Housing Act's exemption and HUD's Housing for Older Person regulations in 24 CFR part 100, subpart E. Manufactured housing rental

communities are eligible for Risk Sharing in accordance with 24 CFR 266.200(a)—Eligible Projects, if all other statutory and regulatory requirements of the Risk Sharing program are met.

Comment: Revise HFA environmental review requirements. A commenter said HFAs that serve as a Responsible Entity (RE) for conducting the environmental assessment for Risk-Sharing mortgages must follow 24 CFR part 58 regulations, but that HUD follows 24 CFR part 50 for mortgage insurance applications processed under the MAP program. The commenter suggested changing the Risk-Sharing regulations to allow HFAs that take at least 50 percent risk of loss to utilize 24 CFR part 50 for the environmental reviews in order to align Risk-Sharing loans with the same standards as the MAP program, which will result in more streamlined reviews and a more expedited process.

HUD Response: The National Environmental Policy Act required environmental reviews are lengthy and create an additional responsibility for already overburdened HUD field offices. To lessen this burden and to facilitate more expeditious processing of applications for mortgage insurance, HUD will continue to serve in a monitoring role for environmental reviews performed by the HFAs. Assumption of this authority is critical to giving the HFAs the maximum authority to carry out the Risk Sharing program's intent.

D. Mortgage Requirements

Comment: Provide further information about the rule's fully amortizing loan requirement and exceptions. A commenter stated that § 266.410(e) provides that the rule's fully amortizing loan requirement does not apply to Level I participants, where the loan can have a minimum 17-year term and the HFA's underwriting standards have been approved by HUD. This commenter stated that the industry standard for a LIHTC first mortgage loan is 30-year amortization with a 17-year term, and the commenter said it presumed this provision is intended to apply to properties of this type. The commenter also said the rule does not require a specific amortization period since HUD has the ultimate veto of the HFA's underwriting criteria. Another commenter suggested giving HFAs the ability to extend the maximum amortization period to 40 years for loans that will have a shorter term. This commenter also suggested the rule clarify HUD's flexibility to extend the mortgage insurance at the time a term loan balloon payment is due provided

the HFA is willing to extend the loan term.

HUD Response: HUD agreed with the comment and the language was changed accordingly.

Comment: Provide specificity regarding HUD's authority to adjust the amount of mortgage insurance. Commenters said that the current § 266.417 allows HUD to modify the insured loan amount up until final endorsement but does not specify the factors that HUD would consider in doing so. Commenters said this potential reduction is separate from HUD's right to challenge the cost certification under § 266.310(d)(4) and to deny endorsement based on a finding of fraud or misrepresentation under § 266.300(e). The uncertainty regarding how HUD might exercise its discretion to adjust the amount of insurance under § 266.417 can be problematic for Low Income Tax Credit equity investors and developers. As a result, commenters said it would be helpful if the rule could be revised to limit HUD's discretion to reduce the insured loan amount to certain specific factors.

HUD Response: HUD reserves the right to mitigate the risks posed by delegation of underwriting, servicing, and processing of Risk Sharing loans to HFAs. By retaining final authority to adjust the insured mortgage amount up to and including the final endorsement, HUD is not suggesting that it will, as a matter of policy, routinely review all decisions about insured advances or cost certification.

E. Claim Procedure

Comment: Permit more time for HFAs to use initial claim payments to retire bonds. A commenter said that the proposed § 266.628(a)(3) requires that an HFA use the initial claim payment's proceeds to retire bonds within 30 days of the claim payment, but this may not be realistic in many instances and cannot always be accomplished under the controlling bond documents. Commenter suggested that the proposed rule require redemption as soon as reasonably permitted by the bond resolution or indenture, and that the claim payment be returned if not used to call bonds within 60 days instead of 30 days.

HUD Response: The 30-day requirement is in the existing regulations and the only change made in this rule is to clarify that 30 days means 30 calendar days. HUD did not believe that this requirement was problematic for HFAs when the existing regulations were issued, and HUD will not change the requirement at this time.

Comment: Revise the current regulation's termination of insurance effective date provisions. Commenters said that the current § 266.622 does not contemplate a refinancing that involves the payoff or cancellation of an existing Risk Sharing loan with the proceeds from a new Risk-Sharing (or other FHA-insured) loan. Additionally, commenters said the Form 9807 instructions, which state that voluntary insurance terminations are effective on the date that all requirements are met, seems inconsistent with § 266.620, which refers to a termination being effective at the end of the month when the requirements are met. Commenters suggested that § 266.622 provide that "The termination shall be the last day of the month in which one of the events specified in § 266.620 occurs except in the case of a prepayment termination under § 266.620(a) or voluntary termination under § 266.620(d), which shall be effective at the time or upon the conditions requested by the HFA in the request to terminate, provided that in the event such prepayment termination or voluntary termination is in coordination with the issuance of Risk-Sharing (or other FHA) insurance on new financing for the subject project, the prepayment termination or voluntary termination shall in no event be effective later than the date of the initial disbursement of funds under such new insured loan."

HUD Response: Section 266.620(d) states if "[t]he HFA notifies the Commissioner of Termination of Insurance (voluntary termination);" then § 266.622 specifies "[t]he termination shall be the last day of the month in which one of the events specified in § 266.620 occurs." Voluntary termination, by submitting HUD Form 9807, must be completed before the initial endorsement of a new refinancing loan can proceed. Therefore, it is vital that the Form 9807 is submitted in a timely manner to ensure that the existing project is terminated in HUD's systems before the new project can be added. HUD agrees that the requirements of the Form 9807 are inconsistent with regulations in § 266.622. Form 9807 was primarily designed for mortgage terminations insured under the National Housing Act and does not include any instructions on Risk Sharing terminations. HUD will explore revising the Form 9807 to include instructions for terminating Risk Sharing loans. However, HFAs are instructed that when submitting terminations, Block #5 of the Form 9807 should indicate the "official"

termination date (the last day of the month).

F. Endorsement and Approval

Comment: No requirement that large loans require the FHA Commissioner's approval. A commenter said that calling for the FHA Commissioner to review a "large loan" under Risk Sharing is not necessary and could delay the loan process.

HUD Response: As explained in the rule, FHA currently requires a National Loan Committee to approve all large loans under the MAP Guide for risk management purposes. Risk-sharing loans where the HFA assumes less than 50 percent of the risk of loss pose a similar risk to FHA as do MAP loans that are fully insured. The National Loan Committee large loans review requirement does not impact the time it takes to process loans. Loans are usually reviewed and completed within 1–2 days. Furthermore, this ensures that the FHA insurance fund is protected from potential losses on large loans. Therefore, this final rule maintains the revision that amends § 266.305(a) that establishes the underwriting standards for HFAs accepting less than 50 percent of the risk, to add a provision that large loans processed by these HFAs under Risk Sharing also requires the FHA Commissioner's prior approval.

Comment: Provide that HUD may accept an indemnification from the HFA in lieu of refusing to endorse a mortgage note for insurance at final endorsement due to fraud or material misrepresentation. Commenters stated that they approve of the rule's new provision in § 266.620(b) that allows HUD, in its discretion, to accept an indemnification from the HFA to avoid insurance cancellation for fraud or misrepresentation. Commenters asked that the rule be clarified or extended to specify that, for substantial rehabilitation or new construction, HUD also has the discretion to accept an indemnification from the HFA in lieu of refusing to endorse the mortgage note at final endorsement due to fraud or material misrepresentation under § 266.300(e). Commenters further said that conceptually, the issue is the same, and they believe that HUD would be covered by the indemnification.

HUD Response: The new provision in § 266.620(b) is designed to provide flexibility for HUD to accept indemnification from an HFA in lieu of terminating an existing contract of insurance for the reasons stated in the provision and applies to all Risk Sharing transactions, including for new construction and substantial rehabilitation. For clarification

purposes, HUD will specify that all Risk Sharing transactions would be subject to this rule. Note that § 266.620 governs only the potential termination of mortgage insurance for the reasons stated in the provision but does not contain any provisions governing the Final Endorsement of loans for mortgage insurance. This provision gives HUD the flexibility to accept an indemnification from an HFA based on the circumstances of a transaction, but does not necessarily require that HUD do so.

G. Non-Regulatory Actions

Comment: Update the Firm Approval and the Closing Docket submission process. A commenter asked if HUD considered updates to the submission process for both Firm Approval and the Closing Docket to remove obsolete references such as utilizing a diskette, as well as an amortization schedule for loans "Insured of Advances" when being submitted for the initial endorsement. The commenter said that the current practice is to submit an electronic package as well as a hard copy to the local office for review. The commenter said the amortization schedule is useful when the note is modified as part of the final endorsement but not during the construction period, when loan payment is interest only.

HUD Response: HUD agreed with the commenter and will eliminate all obsolete references when the HFA Risk Sharing Handbook 4590.1 is revised. The amortization schedule at initial and final endorsement submission is used by the Department's Office of Financial Analysis and Controls Division and the Office of Insurance Operations to record the Department's collections, receivables, and payables.

Comment: Consider creating an Applicability Matrix for Risk-Sharing Loans. A commenter said an "Applicability Matrix" is currently used for transactions financed under the MAP LIHTC Pilot program and having a similar matrix for Risk Sharing loans will ensure consistency among HFAs as part of underwriting and loan closing due diligence involving LIHTC properties.

HUD Response: HFA Risk Sharing lenders are granted the maximum range of processing responsibilities and flexibilities. Program regulations provide for primary decision-making by participating HFAs in selecting projects to finance. An Applicability Matrix would be inconsistent with the program's basic principles, which is delegating the underwriting, including loans' terms and conditions, to the HFA.

IV. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the order's requirements. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are "outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned."

This final rule updates HUD's regulations pertaining to Housing Finance Agency Risk Sharing Program for Insured Affordable Multifamily Project Loans, codified in 24 CFR part 266. The program regulations were initially promulgated in 1994, with the last updates undertaken in 2000, but only to a few regulatory sections. This update is undertaken to reflect statutory changes and revise outdated references and older terminology. The rule also better aligns HUD's regulations with current industry and current HUD practices and policies. These changes would not create additional significant burdens for the public. As a result, this rule was determined not to be a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and therefore was not reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The regulatory amendments would update the regulations governing HUD's HFA Risk-Sharing program to conform to current industry practices and FHA policies with which HFAs and other program participants are already familiar. Other regulatory changes will provide greater flexibility for HFAs, alleviating administrative burdens and related program operating costs. While there may be some costs for HFAs to update their practices and procedures to reflect some of the regulatory changes, these costs are minimal in comparison to the streamlining benefits provided by the revised program regulations.

For the reasons presented, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

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

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made prior to publication of the proposed rule 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)). The Finding of No Significant Impact remains applicable and is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the Finding by calling the Regulations Division at (202) 402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule does not impose any Federal mandates on any state, local, or tribal government, or on the private sector, within UMRA’s meaning.

Information Collection Requirements

The information collection requirements contained in this rule 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 2502–0500. In accordance with the Paperwork Reduction Act of 1995, an agency 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 (CFDA) Program number for the Housing Finance Agencies Section 542(c) Risk Sharing Program is 14.188.

List of Subjects in 24 CFR Part 266

Intergovernmental relations, Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated above, HUD amends 24 CFR part 266 as follows:

PART 266—HOUSING FINANCE AGENCY RISK-SHARING PROGRAM FOR INSURED AFFORDABLE MULTIFAMILY PROJECT LOANS

- 1. The authority citation for part 266 is revised to read as follows:

Authority: 12 U.S.C. 1715z–22.; 42 U.S.C. 3535(d).

- 2. Amend part 266 by removing the words “Contract of Insurance” and add in their place the words “contract of insurance” wherever they occur.

- 3. Revise § 266.1 to read as follows:

§ 266.1 Purpose and scope.

(a) *Authority and scope.* (1) Section 542 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–22), directs the Secretary of the Department of Housing and Urban Development (HUD), acting through the Federal Housing Administration (FHA), to carry out programs that will provide new forms of Federal credit enhancement for multifamily loans. Section 542, entitled, “Multifamily Mortgage Credit Programs,” provides insurance authority independent from that provided by the National Housing Act.

(2) Section 542(c) of the Housing and Community Development Act of 1992 specifically directs HUD to carry out a program of risk-sharing with qualified State and local housing finance agencies (HFAs). The qualified HFAs are authorized to underwrite and process loans. HUD provides full mortgage insurance on affordable multifamily

housing projects processed by such HFAs under this program. Through risk-sharing agreements with HUD, HFAs contract to reimburse HUD for a portion of the loss from any defaults that occur while HUD insurance is in force.

(3) The extent to which HUD directs qualified HFAs regarding their underwriting standards, loan terms and conditions, and asset management and servicing procedures is related to the proportion of the risk taken by an HFA.

(b) *Purpose.* The primary purpose of this program is to provide credit enhancement for multifamily loans, *i.e.*, utilization of full insurance by HUD, pursuant to risk-sharing agreements with qualified housing finance agencies, for the development of affordable housing. The utilization of Federal credit enhancements increases access to capital markets and, thereby, increases the supply of affordable multifamily housing. By permitting HFAs to underwrite, process, and service loans and to manage and dispose of properties that fall into default, affordable housing is made available to eligible families and individuals in a timely manner.

- 4. Amend § 266.5 by:
 - a. Removing “, as amended” from the definition of “Act”;
 - b. Revising the definition of “Affordable housing”;
 - c. Removing from the definition of “Commissioner” the words “his or her” and adding in their place the words “the Commissioner’s”;
 - d. Revising the definition of “Credit subsidy”;
 - e. Removing from the definition of “Designated offices” the words “HUD Field Offices” and adding in their place the words “local HUD offices”;
 - f. Removing the definition of “Gross rent”;
 - g. Removing from the definition of “Multifamily housing” the word “Secretary” and add in its place the word “Commissioner”; and
 - h. Removing the definition of “Supportive services”.

The revisions read as follows:

§ 266.5 Definitions.

* * * * *

Affordable housing means a project that meets the requirements for a qualified low-income housing project under section 42(g) of the Internal Revenue Code of 1986 (26 U.S.C. 42(g)). For purposes of this part, the reference to a utility allowance in 26 U.S.C. 42(g) includes charges for the occupancy of a cooperative unit.

* * * * *

Credit subsidy means the cost of a direct loan or loan guarantee under the

Federal Credit Reform Act of 1990 (subtitle B of title XIII of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508, approved Nov. 5, 1990).

* * * * *

§ 266.10 [Removed]

- 5. Remove § 266.10.
- 6. Revise § 266.30 to read as follows:

§ 266.30 Nonapplicability of 24 CFR part 246.

The regulations at 24 CFR part 246, pertaining to local rent control, do not apply to projects that are security for mortgages insured under this part.

- 7. Amend § 266.100 by:
 - a. Revising the first sentence of paragraph (a) introductory text;
 - b. Revising paragraphs (a)(1), (a)(6)(i), (b)(1), (b)(2) introductory text, and (b)(3); and
 - c. Adding paragraph (b)(4).

The revisions and addition read as follows:

§ 266.100 Qualified housing finance agency (HFA).

(a) *Qualifications.* To participate in the program, an HFA must apply and be specifically approved for the program described in this part, in addition to being approved as a mortgagee under § 202.10 of this part. * * *

(1) Carry an issuer credit rating of “A” or better, or an equivalent as evaluated by Standard and Poor’s or any other nationally recognized rating agency; or

* * * * *

(6) * * *

(i) The Department of Justice has not brought a civil rights suit against the HFA, and no suit is pending;

* * * * *

(b) * * *

(1) Level I approval to originate, service, and dispose of multifamily mortgages where the HFA uses its own underwriting standards, loan terms and conditions, and asset management and servicing procedures, and assumes 50 to 90 percent of the risk of loss (in 10 percent increments).

(2) Level II approval to originate, service, and dispose of multifamily mortgages where the HFA uses underwriting standards, loan terms and conditions, and asset management and servicing procedures approved by HUD, and:

* * * * *

(3) For HFAs who plan to use Level I and Level II processing, the underwriting standards, loan terms and conditions, and asset management and servicing procedures to be used on Level II loans must be approved by HUD.

(4) Every five years, HUD will review the underwriting standards, loan terms and conditions, and asset management and servicing procedures for HFAs with Level II approval. HUD may require changes to these procedures as a condition for continued Level II approval.

- 8. Amend § 266.105 by revising paragraph (b) to read as follows:

§ 266.105 Application requirements.

* * * * *

(b) *Applications for participation in program.* Applications from HFAs for approval to participate in the program under this part may be submitted at any time, and must be submitted in the form and manner established by HUD.

- 9. Amend § 266.110 by revising the paragraph (a) subject heading, the first sentence of paragraph (a), and the third sentence of paragraph (b)(1) introductory text to read as follows:

§ 266.110 Reserve requirements.

(a) *HFAs with an issuer credit rating of “A” or better or overall rating of “A” or better on general obligation bonds.* An HFA with an issuer credit rating of “A” or better, or an equivalent designation, or an HFA with an overall rating of “A” or better on its general obligation bonds, is not required to have additional reserves so long as the HFA maintains that designation or rating, unless the Commissioner determines that a prescribed level of reserves is necessary. * * *

(b) * * *

(1) * * * The account must be established prior to the execution of any risk-sharing agreement under this part in an initial amount of not less than \$500,000. * * *

* * * * *

§ 266.115 [Amended]

- 10. Amend § 266.115 by removing the words “his or her” from the first sentence in paragraph (a) and from paragraph (c).

- 11. Amend § 266.120 by revising paragraphs (d) and (e)(5) to read as follows:

§ 266.120 Actions for which sanctions may be imposed.

* * * * *

(d) Actions or conduct for which sanctions may be imposed against the HFA by HUD’s Mortgagee Review Board under 24 CFR 25.9, which pertains to “notice of administrative action”.

(e) * * *

(5) Maintain an issuer credit rating of “A” or better, or an equivalent designation, or overall rating of “A” on general obligation bonds (or if such

rating is lost, comply with paragraph (e)(6) of this section);

* * * * *

- 12. Amend § 266.125 by revising paragraph (a)(6), adding paragraph (a)(8), and revising the first sentence of paragraph (d)(1) to read as follows:

§ 266.125 Scope and nature of sanctions.

(a) * * *

(6) Recommend to the Commissioner that the HFA’s mortgagee approval be withdrawn pursuant to 24 CFR part 25 (regulations of the Mortgagee Review Board) and/or that penalties be imposed pursuant to 24 CFR part 30 (regulations pertaining to Civil Money Penalties; Certain Prohibited Contact);

* * * * *

(8) Require the HFA to revise any or all of its underwriting, processing, asset management, or servicing policies and procedures as directed by the Commissioner.

* * * * *

(d) * * *

(1) Any sanction imposed by a designated office in writing will be immediately effective, will state the grounds for the action, and provide for the HFA’s right to an informal hearing before the designated office representative or designee in the designated office. * * *

* * * * *

- 13. Amend § 266.200 by:
 - a. Revising paragraphs (b)(2), (c), (d), (e), and (g);
 - b. Redesignating paragraph (h) as paragraph (i); and
 - c. Adding new paragraph (h).

The revisions and addition read as follows:

§ 266.200 Eligible projects.

* * * * *

(b) * * *

(2) *Substantial rehabilitation* occurs when the scope of work to improve an existing project exceeds in aggregate cost a sum equal to the base per dwelling unit limit times the applicable high cost factor established by the Commissioner, or when the scope of work involves the replacement of two or more building systems. *Replacement* is when the cost of replacement work exceeds 50% of the cost of replacing the entire system. The base per dwelling unit limit is \$15,933 for 2019, and will be adjusted annually based on the percentage change in the consumer price index.

(c) *Existing projects.* Financing of existing properties for acquisition or refinancing without substantial rehabilitation is allowed.

(1) If the financing will result in the preservation of affordable housing,

where the property will be maintained as affordable housing for a period of at least 20 years, regardless of whether the loan is prepaid; and

(2) Project occupancy is not less than 93 percent (to include consideration of rent in arrears), based on the average occupancy in the project over the most recent 12 months; and

(3) The loan to be refinanced has not been in default within the 12 months prior to the date of the application for refinancing; and

(4) A capital needs assessment is performed, and funds escrowed for all necessary repairs and replacement reserves funded for future capital repairs; and

(5) If the project is subject to a Housing Assistance Payment (HAP) contract, and is not a project financed under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) by a Level I participant, then:

(i) The owner of the property agrees to renew the HAP contract for a 20-year term;

(ii) Existing and post-refinance HAP residual receipts are set aside to be used to reduce future HAP payments; and

(iii) The HUD-insured mortgage does not exceed an amount supportable by the lower of the unit rents being collected under the rental assistance agreement or the unit rents being collected at unassisted projects in the market area that are similar in amenities and location to the project for which insurance is being requested; and

(6) For Level II participants only, the HUD-insured mortgage may not exceed the sum of the existing indebtedness, cost of refinancing, or acquisition, the cost of repairs and reasonable transaction costs as determined by the Commissioner. (This paragraph does not apply to Level I participants.)

(d) *Projects receiving section 8 rental subsidies or other rental subsidies.* Projects receiving project-based housing assistance payments under section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f) or other rental subsidies and meeting the requirements of this part may be insured under this part only if the mortgage does not exceed an amount supportable by the lower of the unit rents being or to be collected under the rental assistance agreement or the unit rents being collected at unassisted projects in the market that are similar in amenities and location to the project for which insurance is being requested.

This paragraph does not apply to projects of Level I participants if those projects are financed under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q).

(e) *SRO projects.* Single room occupancy (SRO) projects, as defined in § 266.5, are eligible for insurance under this part. Units in SRO projects must be subject to 30-calendar day or longer leases; however, rent payments may be made on a weekly basis in SRO projects.

(g) *Elderly projects.* Projects or parts of projects specifically designed for the use and occupancy by elderly families. An elderly family means any household where the head or spouse is 62 years of age or older, including children under 18, and also any single person who is 62 years of age or older.

(h) *Housing for older persons.* Projects eligible for and in compliance with 42 U.S.C. 3607(b) and 24 CFR part 100, subpart E.

§ 266.205 [Amended]

■ 14. Amend § 266.205 in paragraph (a)(1) by adding the word “calendar” after the number “30” and in paragraph (b)(2) by adding the letters “U.S.” before the term “Department of Defense”.

- 15. Amend § 266.210 by:
 - a. Removing paragraph (b);
 - b. Redesignating paragraphs (c), (d) and (e) as paragraphs (b), (c) and (d), respectively; and
 - c. Revising newly redesignated paragraphs (c) and (d).

The revisions read as follows:

§ 266.210 HUD-retained review functions.

(c) *Subsidy layering.* The Commissioner, or Housing Credit Agencies as defined by section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42), through such delegation as may be in effect by regulation hereafter, shall review all projects receiving tax credits and some form of HUD assistance for any excess subsidy provided to individual projects and reduce subsidy sources in accordance with outstanding guidelines.

(d) *Davis-Bacon Act.* The Commissioner shall obtain and provide to the HFA the appropriate U.S. Department of Labor wage rate determinations under the Davis-Bacon Act, where they apply under this part.

■ 16. Amend § 266.215 by revising paragraph (e) to read as follows:

§ 266.215 Functions delegated by HUD to HFAs.

(e) *Lead-based paint.* The HFA will perform functions related to Lead-based paint requirements as set forth in 24 CFR part 35, subparts A, B, G, and R.

■ 17. Add § 266.217 to read as follows:

§ 266.217 Environmental review requirements.

The responsible entity, as defined in 24 CFR part 58 (Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities), assumes legal responsibility for compliance with the requirements of the National Environmental Policy Act of 1969 and related laws and authorities. The responsible entity will visit each project site proposed for insurance under this part and prepare the applicable environmental reviews as set forth in 24 CFR part 58. HUD may make a finding in accordance with 24 CFR 58.11, Legal Capacity and Performance, and may perform the environmental review itself under 24 CFR part 50 (Protection and Enhancement of Environmental Quality). In all cases the environmental review must be completed before HUD may issue the firm approval letter.

■ 18. Revise § 266.220 to read as follows:

§ 266.220 Nondiscrimination in housing and employment.

The mortgagor must certify to the HFA that, so long as the mortgage is insured under this part, the mortgagor will:

(a) Not use tenant selection procedures that discriminate against families with children, except in the case of a project qualifying for and complying with the requirements of the “housing for older persons” exemption, as defined in section 807(b)(2) of the Fair Housing Act (42 U.S.C. 3607(b)) and further described in 24 CFR part 100, subpart E. Projects receiving Federal financial assistance in which elderly families include minor children may not avail themselves of the housing for older persons exemption;

(b) Determine eligibility for admission and continued occupancy without regard to actual or perceived sexual orientation, gender identity, or marital status and refrain from inquiries about sexual orientation and gender identity in accordance with 24 CFR 5.105(a)(2);

(c)(1) Comply with:

- (i) The Fair Housing Act (42 U.S.C. 3601 through 3619), as implemented by 24 CFR part 100;

- (ii) Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 through 12213), as implemented by 28 CFR part 35;

- (iii) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), as implemented by 24 CFR part 135;

- (iv) The Equal Credit Opportunity Act (15 U.S.C. 1691–1691f), as implemented by 12 CFR part 202;

(v) Executive Order 11063, as amended by Executive Order 12259 (3 CFR 1958–1963 Comp., p. 652 and 3 CFR 1980 Comp., p. 307), and implemented by 24 CFR part 107;

(vi) Executive Order 11246 (3 CFR 1964–1965 Comp., p. 339), as implemented by 41 CFR part 60; and

(vii) Other applicable Federal laws and regulations issued pursuant to these authorities; and applicable State and local fair housing and equal opportunity laws.

(2) In addition to the authorities listed in paragraph (c)(1) of this section, a mortgagor that receives Federal financial assistance must also certify to the HFA that, so long as the mortgage is insured under this part, it will comply with:

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), as implemented by 24 CFR part 1;

(ii) The Age Discrimination Act of 1975 (42 U.S.C. 6101 through 6107), as implemented by 24 CFR part 146; and

(iii) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by 24 CFR part 8.

■ 19. Amend § 266.225 by revising paragraphs (a)(1) introductory text, (a)(1)(i), (b), (c), (d)(1), and the second sentence of paragraph (e) to read as follows:

§ 266.225 Labor standards.

(a) * * *

(1) All laborers and mechanics employed by contractors or subcontractors on a project insured under this part shall be paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed in construction of a similar character, as determined by the Secretary of the U.S. Department of Labor (Secretary of Labor) in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 3141 *et seq.*), where the project meets all of the following conditions:

(i) Advances for construction of the project are insured under this part;

* * * * *

(b) *Volunteers.* The provisions of this section shall not apply to volunteers under the conditions set out in 24 CFR part 70 (Use of Volunteers on Projects Subject to Davis-Bacon and HUD-Determined Wage Rates). In applying 24 CFR part 70, insurance under this part shall be treated as a program for which there is a statutory exemption for volunteers.

(c) *Labor standards.* Any contract, subcontract, or building loan agreement executed for a project subject to Davis-

Bacon wage rates under paragraph (a) of this section shall comply with all labor standards and provisions of the U.S. Department of Labor regulations in 29 CFR parts 1, 3, and 5 that would be applicable to a mortgage insurance program to which Davis-Bacon wage rates are made applicable by statute, provided, that regulatory provisions relating to investigations and enforcement by the U.S. Department of Labor shall not be applicable, and enforcement of Davis-Bacon labor standards shall be the responsibility of the Commissioner in accordance with paragraph (e) of this section.

(d) * * *

(1) No advance under a mortgage on a project subject to Davis-Bacon wage rates under paragraph (a) of this section shall be eligible for insurance under this part unless the HFA determines (in accordance with the Commissioner’s administrative procedures) that the general contractor or any subcontractor or any firm, corporation, partnership or association in which the contractor or subcontractor has a substantial interest was not, on the date the contract or subcontract was executed, on the ineligible list established by the Comptroller General of the United States, pursuant to 29 CFR 5.12, issued by the Secretary of Labor.

* * * * *

(e) * * * Where routine administration and enforcement functions are delegated to the HFA, the HFA shall bear financial responsibility for any deficiency in payment of prevailing wages or, where applicable under 29 CFR part 1 (Procedures for Predetermination of Wage Rates), any increase in compensation to a contractor, that is attributable to any failure properly to carry out its delegated functions. * * *

■ 20. Amend § 266.300 by:

- a. Revising paragraph (b)(1);
- b. Redesignating paragraphs (b)(3), (4), and (5) as paragraphs (b)(4), (5), and (6), respectively;
- c. Adding new paragraph (b)(3);
- d. Revising newly redesignated paragraph (b)(5); and
- e. Revising paragraph (c).

The revisions and addition read as follows:

§ 266.300 HFAs accepting 50 percent or more of risk.

* * * * *

(b) * * *

(1) Determine that a market for the project exists, taking into consideration any comments from the local HUD office relative to the potential adverse impact the project will have on existing

or proposed Federally insured and assisted projects in the area.

* * * * *

(3) Arrange for the performance of an environmental review in accordance with § 266.217;

* * * * *

(5) Approve the Affirmative Fair Housing Marketing Plan, required by § 266.215(a); and

* * * * *

(c) *HUD-retained reviews.* After positive completion of the HUD-retained reviews specified in § 266.210(a) and (b) the local HUD office will issue a firm approval letter.

* * * * *

- 21. Amend § 266.305 by:
 - a. Revising paragraphs (a) and (b)(1);
 - b. Redesignating paragraphs (b)(3), (4), and (5) as paragraphs (b)(4), (5), and (6), respectively;
 - c. Adding new paragraph (b)(3);
 - d. Revising newly redesignated paragraph (b)(5), and
 - e. Revising paragraph (c).

The revisions and additions read as follows:

§ 266.305 HFAs accepting less than 50 percent of risk.

(a) *Underwriting standards.* The underwriting standards and loan terms and conditions of any HFA electing to take less than 50 percent of the risk on certain projects are subject to review, modification, and approval by HUD in accordance with § 266.100(b). These HFAs may assume 25 percent or 10 percent of the risk depending upon the loan-to-replacement-cost or loan-to-value ratios of the projects to be insured as specified in § 266.100(b)(2)(i) and (ii). Large loans, as defined by HUD for its insured multifamily mortgage programs, require prior approval by the Commissioner.

(b) * * *

(1) Determine that a market for the project exists, taking into consideration any comments from the local HUD office relative to the potential adverse impact the project will have on existing or proposed Federally insured and assisted projects in the area;

* * * * *

(3) Arrange for the performance of an environmental review in accordance with § 266.217;

* * * * *

(5) Approve the Affirmative Fair Housing Marketing Plan, required by § 266.215(a); and

* * * * *

(c) *HUD-retained reviews.* After positive completion of the HUD-retained reviews specified in

§ 266.210(a) and (b), the local HUD office will issue a firm approval letter.
* * * * *

■ 22. Amend § 266.410 by revising paragraph (e) to read as follows:

§ 266.410 Mortgage provisions.
* * * * *

(e) *Amortization.* The mortgage must provide for complete amortization (*i.e.*, be regularly amortizing) over the term of the mortgage. The complete amortization requirement does not apply to:

- (1) Construction loans, or
- (2) Level I participants where the loan has a minimum term of 17 years that would amortize over a maximum period of 40 years and the HFA’s underwriting standards, loan terms and conditions, and asset management and servicing procedures have been approved by HUD.

* * * * *

■ 23. Amend § 266.420 by revising the second sentence of paragraph (a) and paragraphs (b)(3), (4), and (7) and adding paragraph (b)(13) to read as follows:

§ 266.420 Closing and endorsement by the Commissioner.

(a) * * * The note must provide that the mortgage is insured under section 542(c) of the Housing and Community Development Act of 1992 and the regulations set forth in this part that are in effect on the date of endorsement.
* * *

(b) * * *

(3) Certification that the loan has been processed, prudently underwritten (including a determination that a market exists for the project), cost certified (if the project is being submitted for final endorsement) and closed in full compliance with the HFA’s standards and requirements (or where the mortgage is insured under Level II, in full compliance with the underwriting standards, loan terms and conditions, and asset management and servicing procedures, as approved by HUD).

(4) At the time of final endorsement, for periodic advances cases, a certification that the advances were made in accordance with the mortgage pursuant to § 266.310.
* * * * *

(7) A certification that the HFA has reviewed and approved the Affirmative Fair Housing Marketing Plan, required by § 266.215(a), and found it acceptable.
* * * * *

(13) Certification that housing claiming the housing for older persons exemption is eligible for and complies with 42 U.S.C. 3607(b) and 24 CFR part 100, subpart E.

■ 24. Revise § 266.500 to read as follows:

§ 266.500 General.

(a) *HFA responsibility for monitoring project owners.* The HFA will have full responsibility for managing and servicing projects insured under this part (in accordance with procedures disclosed and submitted with its application and the requirements of this part). The HFA is responsible for monitoring and determining the compliance of the project owner in accordance with the provisions of this subpart. HUD will monitor the performance of the HFA, not the project owner, to determine its compliance with the provisions covered under this subpart.

(b) *HUD review of procedures for HFAs with Level II approval.* Asset management and servicing procedures of any HFA electing to take less than 50 percent of the risk on certain projects are subject to review, modification, and approval by HUD in accordance with § 266.100(b).

§ 266.505 [Amended]

■ 25. Amend § 266.505:

■ a. In paragraph (b)(8), after the word “Plan” by adding the phrase “, required by § 266.215(a),”;

■ b. In paragraph (b)(10), by removing the words “General Accounting” and adding in their place “U.S. Government Accountability”.

■ 26. Revise § 266.507 to read as follows:

§ 266.507 Maintenance requirements.

The mortgagor must maintain the project in accordance with the physical condition standards in 24 CFR part 5, subpart G (Physical Condition Standards and Inspection Requirements).

■ 27. Amend § 266.510 by revising paragraph (a) to read as follows:

§ 266.510 HFA responsibilities.

(a) *Inspections.* The HFA must perform inspections in accordance with the physical inspection procedures in 24 CFR part 5, subpart G (Physical Condition Standards and Inspection Requirements).
* * * * *

■ 28. Revise § 266.600 to read as follows:

§ 266.600 Mortgage insurance premium: Insurance upon completion.

(a) *Initial premium.* For projects insured upon completion, on the date of the final closing, the HFA shall pay to the Commissioner an initial premium in

an amount established by the Commissioner under § 266.604.

(b) *Premium payable with first payment of principal.* On the date of the first payment of principal the HFA shall pay a second premium (calculated on a per annum basis) in an amount established by the Commissioner under § 266.604.

(c) *Subsequent premiums.* Until one of the conditions is met under § 266.606(a), the HFA on each anniversary of the date of the first principal payment shall pay to the Commissioner an annual mortgage insurance premium in an amount established by the Commissioner under § 266.604, without taking into account delinquent payments, or partial claim payment under § 266.630, or prepayments, for the year following the date on which the premium becomes payable.

■ 29. Amend § 266.602 by revising paragraph (a), the first sentence of paragraph (b), the first sentence of paragraph (c), and paragraph (d) to read as follows:

§ 266.602 Mortgage insurance premium: Insured advances.

(a) *Initial premium.* For projects involving insured advances, on the date of the initial closing, the HFA shall pay to the Commissioner an initial premium equal to an amount established by the Commissioner under § 266.604.

(b) *Interim premium.* On each anniversary of the initial closing, the HFA shall pay an interim mortgage insurance premium in an amount established by the Commissioner under § 266.604. * * *

(c) *Premium payable with first payment of principal.* On the date of the first principal payment, the HFA shall pay a mortgage insurance premium in an amount established by the Commissioner under § 266.604. * * *

(d) *Subsequent premiums.* Until one of the conditions is met under § 266.606(a), the HFA on each anniversary of the date of the first principal payment shall pay to the Commissioner an annual mortgage insurance premium in an amount established by the Commissioner under § 266.604, without taking into account delinquent payments, prepayments, or a partial claim payment under § 266.630, for the year following the date on which the premium becomes payable.

■ 30. Amend § 266.604 by revising paragraphs (a) and (b), the first sentence of paragraph (c), and the second and third sentences of paragraph (d) to read as follows:

§ 266.604 Mortgage insurance premium: Other requirements.

(a) *Premium calculations on or after first principal payment.* The premiums payable to the Commissioner on and after the first principal payment shall be calculated in accordance with the amortization schedule prepared by the HFA for final closing and an amount established by the Commissioner through a notice published in the **Federal Register** and providing a 30-day comment period. After the comments have been considered, HUD will publish a final notice announcing the premium and its effective date. The premium shall not take into account delinquent payments or prepayments.

(b) *Future premium changes.* Notice of future premium changes will be published in the **Federal Register**. The Commissioner will propose mortgage insurance premium changes for the Risk-Sharing Program and provide a 30-calendar day public comment period for the purpose of accepting comments on whether the proposed changes are appropriate. After the comments have been considered, HUD will publish a final notice announcing the premium and its effective date.

(c) *Closing information.* The HFA shall provide final closing information to the Commissioner within 15 calendar days of the final closing in a format prescribed by the Commissioner. * * *

(d) *Due date for premium payments.* * * * Any premium received by the Commissioner more than 15 calendar days after the due date shall be assessed a late charge of 4 percent of the amount of the premium payment due. Mortgage insurance premiums that are paid to the Commissioner more than 30 calendar days after the due date shall begin to accrue interest at the rate prescribed by the Treasury Fiscal Requirements Manual.

■ 31. Amend § 266.620 by:

- a. Revising the section heading;
- b. Redesignating the introductory text as paragraph (a) and redesignating paragraphs (a) through (g), as paragraphs (a)(1) through (7), respectively; and
- c. Adding new paragraph (b).

The revision and addition read as follows:

§ 266.620 Termination of contract of insurance and indemnification.

* * * * *

(b) In lieu of termination of the mortgage insurance contract pursuant to paragraph (a)(5) of this section, the Commissioner may, in his or her full discretion, permit a Level I participant rated "A" or higher to indemnify HUD, or otherwise reimburse HUD in a manner acceptable to the Commissioner,

for the full amount of the mortgage claim.

■ 32. Amend § 266.626 by revising the first sentence of paragraph (c) and revising paragraph (d) to read as follows:

§ 266.626 Notice and date of termination by the Commissioner.

* * * * *

(c) *Notice of default.* If a default (as defined in paragraph (a) of this section) continues for a period of 30 calendar days, the HFA must notify the Commissioner within 10 calendar days thereafter, unless the default is cured within the 30-day period. * * *

(d) *Timing of claim filing.* Unless a written extension is granted by HUD, the HFA must file an application for initial claim payment (or, if appropriate, for partial claim payment) within 75 calendar days from the date of default and may do so as early as the first day of the month following the month for which a payment was missed. Upon request of the HFA, HUD may extend, up to 180 calendar days from the date of default, the deadline for filing a claim. In those cases where the HFA certifies that the project owner is in the process of transacting a bond refunder, refinancing the mortgage, or changing the ownership for the purpose of curing the default and bringing the mortgage current, HUD may extend the deadline for filing a claim beyond 180 calendar days, not to exceed 360 calendar days from the date of default.

■ 33. Amend § 266.628 by revising paragraph (a)(3) to read as follows:

§ 266.628 Initial claim payments.

(a) * * *

(3) The HFA must use the proceeds of the initial claim payment to retire any bonds or any other financing mechanisms securing the mortgage within 30 calendar days of the initial claim payment. Any excess funds resulting from such retirement or repayment shall be returned to HUD within 30 calendar days of the retirement.

* * * * *

■ 34. Amend § 266.630 by revising the second sentence of paragraph (c)(2), paragraphs (d)(1), (2), and (4), and the second sentence of paragraph (d)(5) to read as follows:

§ 266.630 Partial payment of claims.

* * * * *

(c) * * *

(2) * * * The HFA is granted an extension of 30 calendar days from the date of any notification for further action.

(d) *Requirements*—(1) *One partial claim payment.* Only one partial claim payment may be made under a contract of insurance.

(2) *Partial claim payment amount.* The amount of the partial claim payment is limited to 50% of the amount of relief provided by the HFA in the form of a reduction in principal and a reduction of delinquent interest due on the insured mortgage times the lesser of HUD's percentage of the risk of loss or 50 percent.

* * * * *

(4) *Partial claim repayment by HFA.* The HFA must remit to HUD a percentage of all amounts collected on the HFA's second mortgage within 15 calendar days of receipt by the HFA. The applicable percentage is equal to the percentage used in paragraph (d)(2) of this section to determine the partial claim payment amount. Payments made after the 15th day must include a 5 percent late charge plus accrued interest at the debenture rate.

(5) * * * The HFA must submit a final certified statement within 30 calendar days after the second mortgage is paid in full, foreclosed, or otherwise terminated.

§ 266.634 [Amended]

■ 35. Amend § 266.634 in paragraph (c) by adding the word "calendar" before the word "days" in the first sentence.

§ 266.638 [Amended]

■ 36. Amend § 266.638 by:

- a. Adding the word "calendar" before the word "days" in the first sentence of paragraph (a);
- b. Removing the word "five" from the second sentence of paragraph (b) and adding in its place the number "5";
- c. Removing the words "five year" from the third sentence of paragraph (b) and adding in their place "5-year".

§ 266.642 [Amended]

■ 37. Amend § 266.642 in the third sentence of by removing the phrase "45-day" and adding in its place the phrase "45-calendar-day".

§ 266.644 [Amended]

■ 38. Amend § 266.644 in the introductory text by adding the word "calendar" before the word "days".

§ 266.648 [Amended]

■ 39. Amend § 266.648 in paragraph (c)(4) by removing the words "the Office of General Counsel" and adding in their place "HUD".

■ 40. Amend § 266.650 by revising paragraph (a) to read as follows:

§ 266.650 Items deducted from total loss.

* * * * *

(a) All amounts received by the HFA on account of the mortgage after the date of default, including any partial payment of claim paid by HUD in the event a full claim follows a partial payment of claim;

* * * * *

§ 266.654 [Amended]

■ 41. Amend § 266.654 in paragraph (b) by adding the word “calendar” before the word “days” in the first sentence.

Dana T. Wade,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2020–27914 Filed 12–21–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 301**

[TD 9940]

RIN 1545–BP41

Misdirected Direct Deposit Refunds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: These final regulations provide the procedures under section 6402(n) of the Internal Revenue Code (Code) for identification and recovery of a misdirected direct deposit refund. The final regulations reflect changes to the law made by the Taxpayer First Act. The final regulations affect taxpayers who have made a claim for refund, requested the refund be issued as a direct deposit, but did not receive a refund in the account designated on the claim for refund.

DATES:

Effective date: These regulations are effective on December 22, 2020.

Applicability date: These regulations apply to reports to the IRS made after [date of publication] that a taxpayer never received a direct deposit refund.

FOR FURTHER INFORMATION CONTACT:

Mary C. King at (202) 317–5433 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background**

This document contains amendments to 26 CFR part 301 under section 6402(n) of the Code and provides guidance on the procedures used to identify and recover tax refunds issued by electronic funds transfer (direct

deposit) that were not delivered to the account designated to receive the direct deposit refund on the federal tax return or other claim for refund. Section 6402(n) was added to the Code by section 1407 of the Taxpayer First Act, Public Law 116–25, 133 Stat. 981 (2019) (TFA) on July 1, 2019. On December 23, 2019, the Department of the Treasury (Treasury Department) and the IRS published in the **Federal Register** (84 FR 70462) a notice of proposed rulemaking (REG–116163–19) providing the procedures under section 6402(n) for reporting, identification, and recovery of a misdirected direct deposit refund. The Treasury Department and the IRS received one comment responding to the proposed regulations. The comment is available at www.regulations.gov or upon request. No public hearing was requested or held on the proposed regulations.

After consideration of the written comment, this Treasury Decision adopts the proposed regulations as final regulations with minor modifications, as described in the Summary of Comments and Explanation of Provisions. A detailed explanation of these regulations can be found in the preamble to the proposed regulations.

Summary of Comments and Explanation of Provisions

The Treasury Department and the IRS received one comment regarding the proposed regulations. After consideration of the comment, the proposed regulations are adopted as final regulations without any substantive changes.

I. Applicability Date

A commenter expressed a concern that the procedures in these regulations would not apply to claims for refund from taxable years before the applicability date of the final regulations. The commenter requested that the procedures should be applied to refund claims for prior years. Consistent with the comment, the final regulations clarify that these procedures apply to any report of a misdirected direct deposit refund for a current or prior year submitted after the publication of the final regulations in the **Federal Register**.

II. Coordination With Financial Institutions

Section 301.6402–2(g)(1) of the proposed regulations defines “misdirected direct deposit refund” as any refund of an overpayment of tax that is disbursed as a direct deposit but is not deposited into the account designated on the claim for refund to receive the direct deposit refund. The

proposed regulations include in the definition of a misdirected direct deposit refund only those refunds which are actually issued as a direct deposit. A misdirected direct deposit refund does not include an overpayment that is credited against another outstanding tax liability of the taxpayer pursuant to section 6402(a) or that is offset pursuant to the law. An overpayment that is offset or applied as mandated by law is not a misdirected direct deposit refund because these actions are mandated by law. Section 301.6402–2(g)(1) of the final regulations clarifies this by striking the last sentence from the proposed regulations, as it is not needed to define a “misdirected direct deposit refund.” Instead, the final regulations clarify in section 301.6402–2(g)(3)(i) that the offset or setoff of an overpayment occurs prior to the issuance of a direct deposit. The IRS will determine if a reported missing refund is setoff or offset as part of the procedure for the identification of the account that received the misdirected direct deposit refund. This reorganization simplifies the definition of a misdirected direct deposit refund and more accurately describes the process of identification of a misdirected direct deposit refund.

The final regulations reflect this clarification to the definition of a misdirected direct deposit refund and the identification procedure, but the proposed regulations are otherwise adopted without change.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

These regulations do not impose any additional information collection requirements in the form of reporting, recordkeeping requirements, or third-party disclosure requirements related to tax compliance. However, because a taxpayer or a taxpayer’s representative may elect to report a missing refund using the procedures described in § 301.6402–2(g)(2)(ii)(B), some taxpayers may use a form to report a missing refund. The collection of information in § 301.6402–2(g)(2)(ii)(B) is through use of a Form 3911, “Taxpayer Statement Regarding Refund,” and is the sole collection of information requirement established by the final regulations.

For the purposes of the Paperwork Reduction Act, 44 U.S.C. 3501–3520, the reporting burden associated with the

collection of information with respect to section 6402(n) will be reflected in Paperwork Reduction Act submissions for IRS Form 3911 (OMB Control Number 1545-1384). The estimated average time to complete Form 3911 is five minutes. However, use of a form is not required in every case. There are certain situations in which a taxpayer may instead elect to investigate a missing refund over the telephone or in person at the Office of the Taxpayer Advocate and, after the IRS identifies the tax refund and informs the taxpayer that the refund was issued as a direct deposit, orally report that the already-identified refund is missing. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). The certification is based on the information that follows. There is no significant impact from these regulations on any small entity utilizing the procedures prescribed by these regulations to report a missing refund because there is no significant cost associated with reporting a missing refund. There is no fee charged in connection with reporting a missing refund, and the estimated time to complete a Form 3911, "Taxpayer Statement Regarding Refund," is five minutes. There are no tax consequences associated with the final rule, as it merely sets forth the procedures for reporting a missing refund and describes the process the IRS uses in locating a missing refund and, in some instances, issuing a replacement refund. The process in these regulations mirrors the existing process and does not change the reporting burden.

Accordingly, the Treasury Department and the IRS have determined that this Treasury Decision will not have a significant economic impact on a substantial number of small entities. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business entities, and no comments were received.

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other

actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. This regulation does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

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

Drafting Information

The principal author of these regulations is Mary C. King of the Office of the Associate Chief Counsel (Procedure and Administration). Other personnel from the Treasury Department and the IRS participated in the development of the regulations.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 is amended by adding an entry in numerical order for § 301.6402-2(g) to read in part as follows:

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

Section 301.6402-2(g) also issued under 26 U.S.C. 6402(n).

* * * * *

■ **Par. 2.** Section 301.6402-2 is amended by:

■ 1. Redesignating paragraph (g) as paragraph (h) and adding new paragraph (g).

■ 2. Revising the subject heading of newly redesignated paragraph (h) and

adding a sentence at the end of the paragraph.

The additions and revision read as follows:

§ 301.6402-2 Claims for credit or refund.

* * * * *

(g) *Misdirected direct deposit refund*—(1) *Definition.* The term *misdirected direct deposit refund* includes any refund of an overpayment of tax that is disbursed as a direct deposit but is not deposited into the account designated on the claim for refund to receive the direct deposit refund.

(2) *Procedures for reporting a misdirected direct deposit refund*—(i) *In general.* A taxpayer or a taxpayer's authorized representative may report to the IRS that the taxpayer never received a direct deposit refund and request a replacement refund. The report must include the name of the taxpayer who requested the refund, the taxpayer identification number of the taxpayer, the taxpayer's mailing address, the type of return to which the refund is related, the account number and routing number that the taxpayer requested the refund be directly deposited into, and any other information necessary to locate the misdirected direct deposit refund.

(ii) *How to report a misdirected direct deposit refund.* A reporting described in paragraph (g)(2)(i) of this section may be made in the following ways:

(A) By calling the IRS;

(B) On the form prescribed by the IRS and in accordance with the applicable publications, instructions, or other appropriate guidance;

(C) By contacting the Office of the Taxpayer Advocate by telephone, by mail, facsimile, or in person; or

(D) By submitting the appropriate form in person at a Taxpayer Assistance Center.

(3) *Procedures for coordination with financial institutions*—(i) *Identification of the account that received the misdirected direct deposit refund.* If the IRS receives a report described in paragraph (g)(2)(ii) of this section, the IRS will confirm that the overpayment was issued as a direct deposit. The IRS will confirm that the overpayment was not credited or offset pursuant to the law in effect immediately prior to the direct deposit being disbursed. If the direct deposit described in the report was issued, the IRS will initiate a refund trace to request the assistance of the Department of the Treasury's Bureau of the Fiscal Service. In accordance with its own procedures, the Bureau of the Fiscal Service coordinates with the financial institution that holds directly or indirectly the deposit account into

which the refund was made, requesting from the financial institution such information as is necessary to identify whether the financial institution received the refund; whether the financial institution returned, or will return, the refund to the IRS, or if no funds are available for return; whether a deposit was made into the account designated on the claim for refund; and the identity of the deposit account owner to whom the deposit was disbursed.

(ii) *Coordination to recover the amounts transferred.* Recovery of the misdirected direct deposit refund from a financial institution shall follow the procedures established by the Bureau of the Fiscal Service. The Bureau of the Fiscal Service shall request the return of the misdirected direct deposit refund from the financial institution that received it. The IRS may contact the financial institution directly to recover the misdirected direct deposit refund.

(4) *Issuance of replacement refund.* When the IRS has determined that a misdirected direct deposit refund has occurred, the IRS will issue a replacement refund in the full amount of the refund that was misdirected. The replacement refund may be issued as a direct deposit or as a paper check sent to the taxpayer's last known address.

(5) *Applicability of this paragraph (g) to missing refunds.* The provisions of paragraphs (g)(2) through (g)(3)(i) of this section should be used for any refund that was disbursed as a direct deposit and that the taxpayer reports as missing. For example, although a refund that was deposited into an incorrect bank account because the taxpayer transposed two digits in their bank account number is not considered to be a misdirected direct deposit refund, the provisions of paragraphs (g)(2) through (g)(3)(i) of this section should be used. If the application of these procedures results in an amount recovered by the IRS, the recovered amount will be refunded or credited as allowed by law.

(h) *Applicability dates.* * * * Paragraph (g) of this section applies to reports described in paragraph (g)(2)(ii) of this section made after December 22, 2020.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

Approved: December 8, 2020.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2020-28167 Filed 12-18-20; 4:15 pm]

BILLING CODE 4830-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2020-0716]

RIN 1625-AA00

Safety Zone; Pipeline Testing; Tampa Bay, Gibsonton, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters in the navigable waters of Tampa Bay, Gibsonton, FL. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by pipeline pressure testing in the area. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port St. Petersburg.

DATES: This rule is effective from 12:01 a.m. on January 1, 2021, through 7:00 a.m. on January 4, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2020-0716 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

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

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary

to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be impracticable. The Coast Guard was unable to publish an NPRM and hold a comment period for this rulemaking due to the short time period the Captain of the Port St. Petersburg (COTP) was notified of the need for the safety zone. It is necessary for the Coast Guard to establish this safety zone by January 1, 2021, in order to ensure the appropriate level of protection exists in order to mitigate the potential safety hazards associated with pipeline pressure testing in the event of an explosion.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule for the same reasons stated in the preceding paragraph.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The COTP has determined that potential hazards associated with pipeline pressure testing starting January 1, 2021 will be a safety concern for anyone within this safety zone in the event of an explosion. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the testing is occurring.

IV. Discussion of the Rule

This rule establishes a safety zone from 12:00 a.m. on January 1, 2021, until 7:00 a.m. on January 4, 2021. The safety zone will cover all navigable waters of Tampa Bay, east of a line formed by connecting the points of 27°48'9" N, 082°24'56" W and 27°48'0" N, 082°24'56" W. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while pipeline pressure testing is occurring. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. This area of Tampa Bay is not in a critical navigation area.

B. Impact on Small Entities

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

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

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions

annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a

category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting approximately 4 days that will prohibit entry to all navigable waters of Tampa Bay, east of a line formed by connecting the points of 27°48’9” N, 082°24’56” W and 27°48’0” N, 082°24’56” W. It is categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Memorandum for Record supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—SAFETY ZONE; PIPELINE TESTING; TAMPA BAY, GIBSONTON, FL

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

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

■ 2. Add § 165.T07–0716 to read as follows:

§ 165.T07–0716 Safety Zone; Pipeline Testing; Tampa Bay, Gibsonton, FL.

(a) *Location.* The following regulated area is a safety zone: All navigable waters of Tampa Bay, east of a line formed by connecting the points of 27°48’9” N, 082°24’56” W and 27°48’0” N, 082°24’56” W in the vicinity of Gibsonton, Florida.

(b) *Definition.* The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the

Captain of the Port St. Petersburg in the enforcement of the regulated area.

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

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

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

(d) *Enforcement period.* This rule will be enforced daily from 12:01 a.m. on January 1, 2021, through 7:00 a.m. on January 4, 2021.

Dated: December 16, 2020.

Matthew A. Thompson,

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

[FR Doc. 2020-28161 Filed 12-21-20; 8:45 am]

BILLING CODE 9110-04-P

POSTAL SERVICE

39 CFR Part 20

International Mailing Services: Mailing Services Product and Price Changes

AGENCY: Postal Service™.

ACTION: Final action.

SUMMARY: On October 15, 2020, the Postal Service published proposed product and price changes to reflect a notice of price adjustments filed with the Postal Regulatory Commission (PRC). The PRC found that price adjustments contained in the Postal Service's notification may go into effect on January 24, 2021. The Postal Service will revise Notice 123, *Price List* to reflect the new prices.

DATES: The revisions to Notice 123, *Price List*, are effective January 24, 2021.

FOR FURTHER INFORMATION CONTACT: Kathy Frigo at 202-268-4178.

SUPPLEMENTARY INFORMATION:

I. Proposed Rule and Response

On October 9, 2020, the Postal Service filed a notice with the PRC in Docket Number R2021-1 of mailing services price adjustments to be effective on January 24, 2021. On October 15, 2020, USPS® published a notification of proposed product and price changes in the **Federal Register** entitled "International Mailing Services: Proposed Product and Price Changes—CPI" (85 FR 65310). The notification included price changes that the Postal Service would adopt for products and services covered by *Mailing Standards of the United States Postal Service*, *International Mail Manual (IMM®)* and publish in Notice 123, *Price List*, on Postal Explorer® at *pe.usps.com*. The Postal Service received no comments.

II. Decision of the Postal Regulatory Commission

As stated in the PRC's Order No. 5757, issued on November 18, 2020, in PRC Docket No. R2021-1, the PRC found that the prices in the Postal Service's notification may go into effect on January 24, 2021. The new prices will accordingly be posted in Notice 123, *Price List* on Postal Explorer at *pe.usps.com*.

Joshua J. Hofer,

Attorney, Federal Compliance.

[FR Doc. 2020-27021 Filed 12-21-20; 8:45 am]

BILLING CODE 7710-12-P

POSTAL SERVICE

39 CFR Part 111

New Mailing Standards for Domestic Mailing Services Products

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: On October 9, 2020, the Postal Service (USPS®) filed a notice of mailing services price adjustments with the Postal Regulatory Commission (PRC), effective January 24, 2021. This final rule contains the revisions to *Mailing Standards of the United States Postal Service*, *Domestic Mail Manual (DMM®)* to implement the changes coincident with the price adjustments.

DATES: *Effective Date:* January 24, 2021.

FOR FURTHER INFORMATION CONTACT: Jacqueline Erwin at (202) 268-2158 or Dale Kennedy at (202) 268-6592.

SUPPLEMENTARY INFORMATION: On November 18, 2020, the PRC favorably reviewed the price adjustments proposed by the Postal Service. The price adjustments and DMM revisions are scheduled to become effective on

January 24, 2021. Final prices are available under Docket No. R2021-1 (Order No. 5757) on the Postal Regulatory Commission's website at *www.prc.gov*.

Seamless Acceptance Incentive

USPS is providing a \$.001 per mailpiece incentive. The incentive is available for First-Class Mail, USPS Marketing Mail, Periodicals and Bound Printed Matter mail flats that use the Full-Service Intelligent Mail barcode (IMb) option. The change provides an incentive to the Electronic Documentation (eDoc) submitters (with a Seamless CRID and an Enterprise Payment System Account) for adoption of the program. The incentive would be based on the eDoc submitter's Customer Registration ID (CRID).

A Seamless Mailer is defined by their CRID's status in PostalOne! as "Seamless Acceptance." Note: Seamless Parallel does not qualify for the discount. The proposal is to allow Electronic Documentation (eDoc) submitters to receive a Seamless Acceptance incentive for the pieces that claim Full-Service prices in the mailing, provided the eDoc submitter has an Enterprise Payment account that is used for the incentive.

- The incentive is available to all eDoc submitters with a Seamless Acceptance CRID and an Enterprise Payment account who enroll in PostalOne!

- The incentive is applied to the Enterprise Payment account that corresponds with the permit selected during registration to receive the discount.

- A permit that corresponds with an Enterprise Payment trust or ACH debit account must be selected, in *PostalOne!*, to receive the incentive. Trust accounts will receive the incentive upon postage statement finalization and ACH debit accounts will receive the incentive as a daily aggregate.

- *Mail.dat changes:* No impact—Use existing Segment Record's (.seg) "eDoc Sender CRID" field to identify the CRID of the eDoc submitter.

- *Mail.XML changes:* No impact—Use existing OpenMailingGroupRequest > MailingGroupData > MailingFacilityfield to identify the CRID of the eDoc submitter.

- *Postage Statement Changes:* No impact—For eligible mailings the postage may be paid using any authorized payment account.

- *Intelligent Mail for Small Business—Mailing Agent CRID (same as Permit Holder CRID) is used as the eDoc Submitter CRID.*

- Business Mail Entry Unit—Hard-copy Postage Statement entry (only for contingency)—Mailing Agent CRID must be populated on the Postage Statement.

- *Shipping Services File (SSF)*
Changes: No impact.

- *Indicium Creation Record (ICR)*
File: No impact.

- *Price Change Type/Product Type:*
Market Dominant Comments on Proposed Changes and USPS Responses.

The Postal Service did not receive any formal comments on the October 15, 2020 proposed rule (85 FR 65311).

* * * * *

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations*. See 39 CFR 111.1.

Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

Notice 123 (Price List)

[Revise prices as applicable.]

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Joshua J. Hofer,

Attorney, Federal Compliance.

[FR Doc. 2020–27020 Filed 12–21–20; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 20119–0307]

RIN 0648–BJ24

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Ice Roads and Ice Trails Construction and Maintenance Activities on Alaska's North Slope

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

ACTION: Final rule; notification of issuance of Letters of Authorization.

SUMMARY: Upon application from Hilcorp Alaska, LLC (Hilcorp) and Eni US Operating Co. Inc. (Eni), NMFS is issuing regulations under the Marine Mammal Protection Act (MMPA) for the taking of small numbers of marine mammals incidental to ice road and ice trail construction, maintenance, and operation in Alaska's North Slope, over the course of 5 years (2020–2025). These regulations allow NMFS to issue Letters of Authorization (LOA) for the incidental take of marine mammals during the specified construction and maintenance activities carried out during the rule's period of effectiveness, set forth the permissible methods of taking, set forth other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, and set forth requirements pertaining to the monitoring and reporting of the incidental take.

DATES: Effective December 22, 2020 through November 30, 2025.

ADDRESSES: To obtain an electronic copy of the Hilcorp-Eni's LOA application or other referenced documents, visit the internet at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Regulatory Action

This final rule establishes a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) to allow

for the authorization of take of marine mammals incidental to Hilcorp and Eni's ice roads and ice trails construction and maintenance activities on Alaska's North Slope.

We received an application from Hilcorp and Eni requesting 5-year regulations and authorization to take marine mammals. Take would occur by Level B harassment, Level A harassment and serious injury and/or mortality incidental to ice roads and ice trails construction and maintenance. Please see Background below for definitions of harassment.

Legal Authority for the Action

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region for up to 5 years if, after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking pursuant to that activity and other means of effecting the “least practicable adverse impact” on the affected species or stocks and their habitat (see the discussion below in the Mitigation section), as well as monitoring and reporting requirements. Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing this rule containing 5-year regulations and for any subsequent LOAs. As directed by this legal authority, this rule contains mitigation, monitoring, and reporting requirements.

Summary of Major Provisions Within the Rule

Following is a summary of the major provisions of this rule regarding Hilcorp and Eni's construction activities. These measures include:

- No initiation of ice road or trail construction if a ringed seal is observed within approximately 46 meters (m) (150 feet (ft)) of the action area after March 1 through May 30 of each year.
- Requiring monitoring of the construction areas to detect the presence of marine mammals before beginning construction activities.

Background

The MMPA prohibits the “take” of marine mammals with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon

request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization (ITA) may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

NMFS received a joint application from Hilcorp and Eni requesting authorization for take of marine mammals incidental to construction activities related to ice roads and ice trails in the North Slope, Alaska. The application was determined to be adequate and complete on May 31, 2019. The requested regulations would be valid for 5 years, from December 22,

2020 through November 30, 2025. Hilcorp and Eni plan to conduct necessary work, including use of heavy machinery on ice, to facilitate access to North Slope offshore oil and gas facilities. The action may incidentally expose marine mammals occurring in the vicinity to elevated levels of sound, human presence on ice habitat, and interactions with heavy machinery, thereby resulting in incidental take, by Level A and Level B harassment and serious injury or mortality. Since Hilcorp and Eni’s ice roads and trails construction and maintenance activities have the potential to cause serious injury or mortality to a few ringed seals, an LOA is appropriate. On January 17, 2020, NMFS published a proposed rule (85 FR 2988) and proposed regulations to govern takes of marine mammals incidental to Hilcorp and Eni’s ice roads and trails construction and maintenance activities, and requested comments on the proposed regulations.

Description of Activity

Overview

Hilcorp and Eni conduct oil and gas operations at Northstar Production Facility (Northstar) and Spy Island Drillsite (SID), respectively, in coastal Beaufort Sea, Alaska. During the ice-covered season, Hilcorp constructs annual ice roads and trails to connect and allow access between West Dock and Northstar. Similarly, Eni builds and utilizes an ice road connecting the Oliktok Production Pad (OPP) and SID. Eni also builds an annual ice road from shore to the Ooguruk Drill Site (ODS) (Figures 1–4). This regulation and the implementing LOAs authorize takes of marine mammals incidental to Hilcorp and Eni’s ice roads and ice trails construction during the ice-covered season on Alaska’s North Slope.

Dates and Duration

Both Hilcorp and Eni generally begin constructing sea ice roads and ice trails as early as possible, usually by late December depending on weather. Maintenance and use of the ice roads and trails continue generally through mid-May when the ice becomes too unstable to access. Depending on the weather, from the initial surveying until the ice is thick enough to allow travel by wheeled vehicles, ice road construction takes about six weeks.

Specific Geographic Region

Northstar, an artificial gravel island, is located in State of Alaska coastal waters about 9.7 kilometers (km) (6 miles (mi)) offshore from Point Storkersen in the Beaufort Sea (Figure 1). Water depth at the island is about 12 m (39 ft). This region is covered by landfast ice in winter and with water depths greater than 3 m (10 ft).

The 0.05 square kilometer (km²) (11-acre) SID is also an artificial, gravel island constructed in shallow (1.8–2.4 m, 6–8 ft), State of Alaska coastal waters approximately 4.8 km (3 mi) north of Oliktok Point and just south of the Spy Island barrier island (Figure 2). While SID is situated in water depths considered unsuitable for ringed seals, each year a crack or lead has developed in the road between OPP and SID.

The ODS consists of a 0.024 km² (6-acre) gravel drillsite approximately 8 km (5 mi) offshore in 1.4 m (4.5 ft) of water (Figures 3 and 4). The site is connected to an onshore facility by a flowline system consisting of a 9.2 km (5.7 mi) subsea buried flowline bundle which transitions onshore to a 3.7 km (2.3 mi) traditional North Slope aboveground flowline support system.

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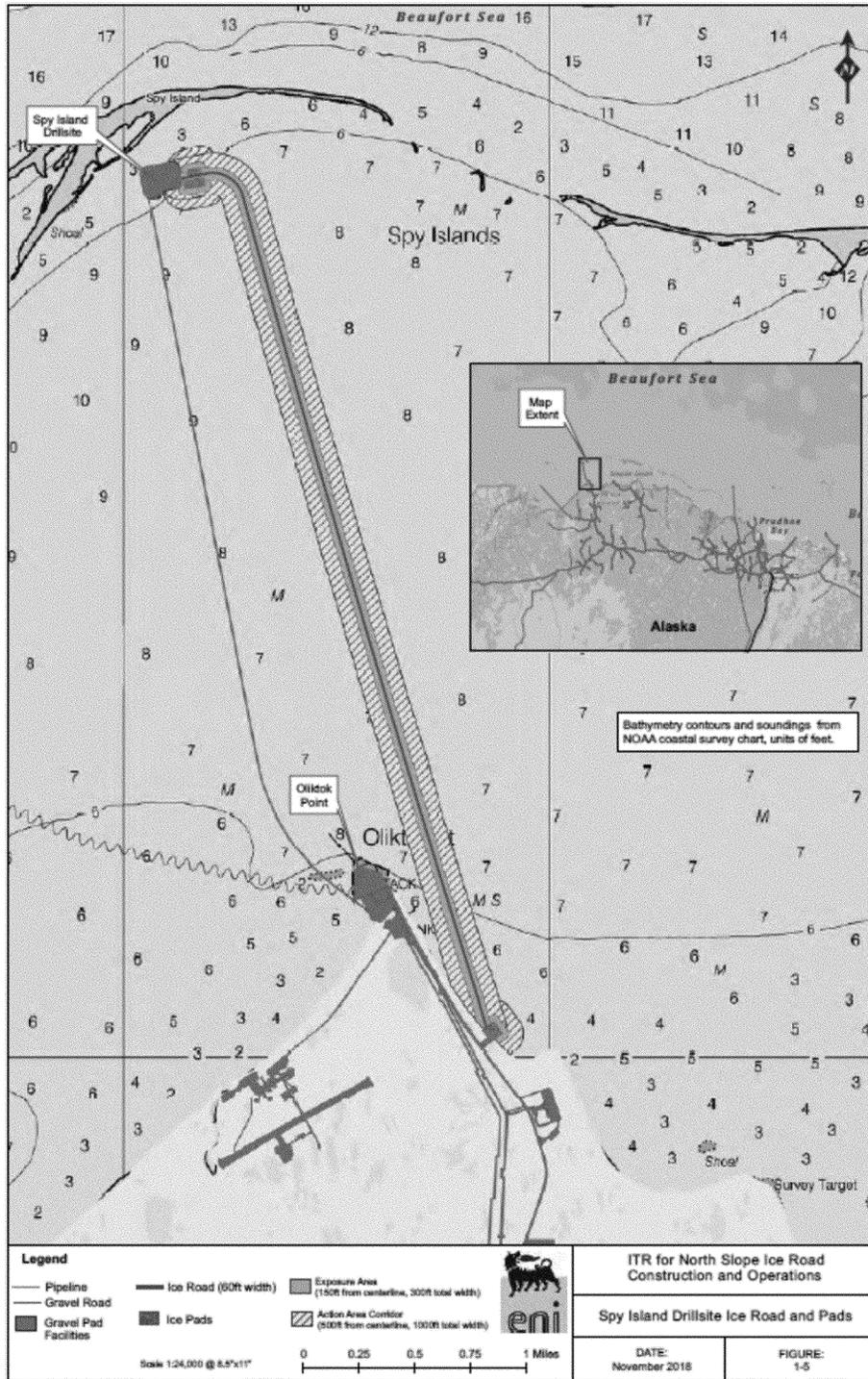


Figure 2. SID Ice Road/Trail and Ice Pads

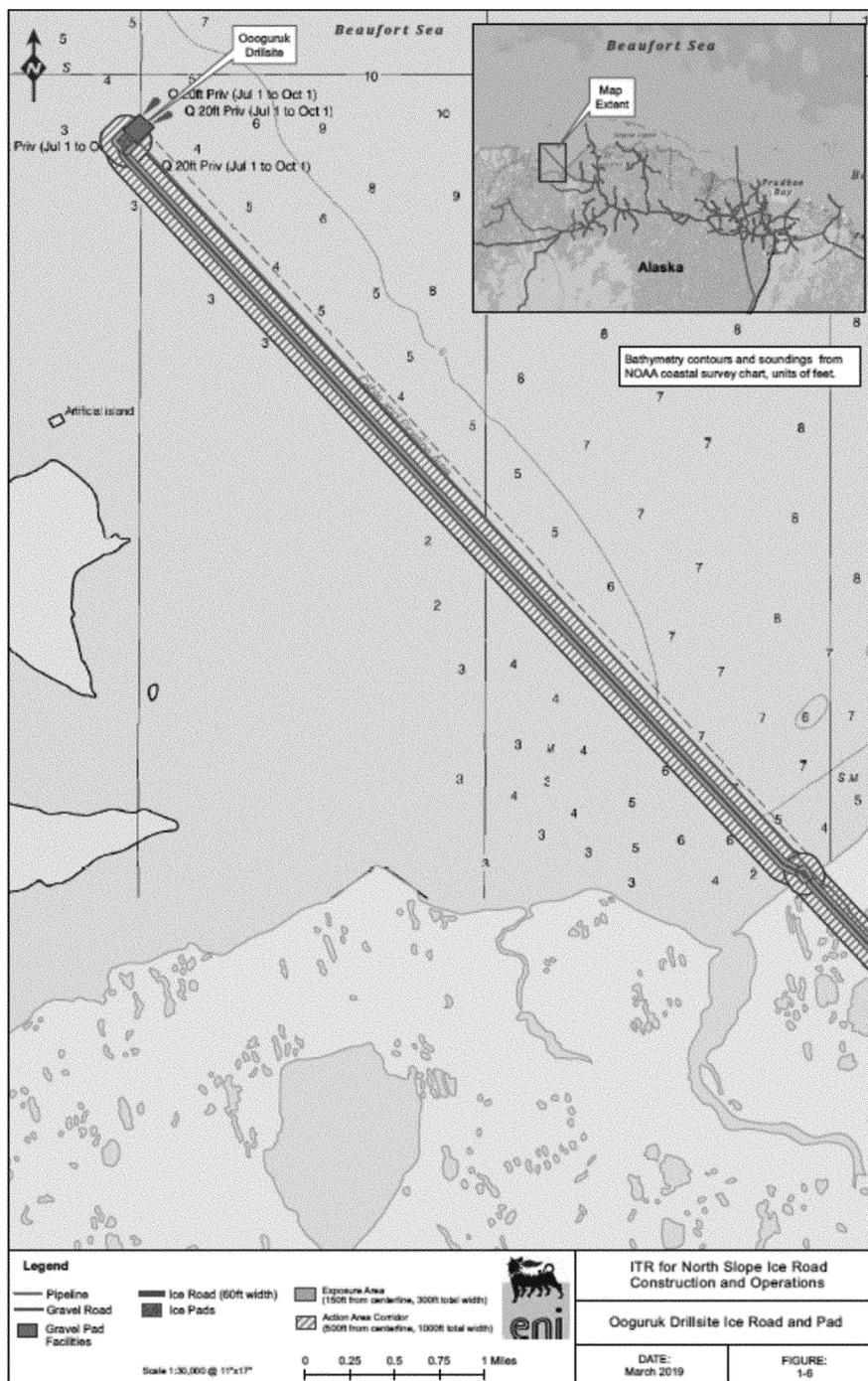


Figure 3. Ooguruk Ice Road



Figure 4. Oooguruk Ice Road Alternate Location

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Detailed Description of Specific Activity

Hilcorp: Northstar to West Dock

Ice Road Construction, Use, and Maintenance

Each year during the ice-covered season an approximately 11.7 km (7.3 mi) long ice road is constructed between Northstar and the Prudhoe Bay facilities at West Dock to transport personnel, equipment, materials, and supplies (Figure 1). Ice roads allow standard vehicles such as pick-up trucks, SUVs, buses and other trucks to be used to transport personnel and equipment to and from the island during the ice-covered period.

In some years depending on operational needs and weather conditions, Hilcorp may elect to not build the main improved ice road. In this case, a primary ice trail that can support only tracked, lighter-weight vehicles would be built in the location of the improved ice road shown on Figure 1. However, to cover all scenarios, Hilcorp assumes that an ice road would be built in each year for the next 5 years.

In water deeper than 3 m (10 ft), the ice must be approximately 2.4 m (8 ft) thick to support construction equipment. Ice road construction activities occur 24 hours a day, 7 days a week during the construction phase and are only halted in unsafe conditions such as high winds or extremely low temperatures. The ice roads are typically constructed by specially-designed pumps with ice augers. Seawater for creating the offshore ice road is obtained by drilling holes through the existing sea ice using augers and pumping salt water to flood the ice surface. The rolligons (vehicles with large low-pressure tires) move along the road alignment while flooding the surface. Water trucks are used to spray a freshwater cap over the thickened sea ice to provide durability.

Following construction, ice road surfaces are maintained using graders with snow wings and blowers, or front-end loaders with snow blower attachments. Snow can also be cleared by personnel with snow blowers. When snow blowing, wind direction is used to assist in dispersing the blown snow over a large area so that large berms or piles are not created. Delineators may be used to mark the roadway in 15 m (50 ft) increments down the centerline of the road, and at no more than 0.4 km (¼ mi) increments on both sides of the ice road to delineate the path of vehicle travel and areas to be maintained. Corners of rig mats, steel plates, and other

materials used to bridge sections of hazardous ice, are clearly marked or mapped using Global Positioning System (GPS) coordinates of the locations.

The following steps are used to build the Northstar ice road:

- Clear snow using lighter-weight tracked vehicles;
- Grade or drag the ice to smooth the surface, incorporating rubble ice into the road or moving it outside of the expected road surface;
- Drill holes through floating ice along the planned ice road route using rolligons equipped with ice augers and pumps;
- Pump seawater from drilled holes over floating ice; and
- Flood the ice road. Flooding techniques are dependent on the conditions of the sea ice (*i.e.*, grounded vs. floating).

Grounded ice requires minimal freshwater flooding to either cap or repair cracks. Floating ice requires flooding with seawater until a desired thickness is achieved. Thickness of floating ice would be determined by the required strength and integrity of the ice. After achieving desired thickness, floating ice areas may then be flooded with fresh water to either cap or repair cracks. This technique minimizes the amount of freshwater used to obtain the desired thickness of the ice road. Hilcorp would use permitted freshwater sources if fresh water is needed to construct the Northstar ice roads. Water would be transported by truck from permitted freshwater sources via existing roads.

Ice Trails

Ice trails are unimproved access corridors used by Tuckers (a type of tracked vehicle that moves on snow), PistenBullys® (a type of tracked vehicle that moves on snow), snow machines, or similar tracked equipment. Seawater flooding of the entire trail and freshwater caps are not used. However, small rough areas of a trail may require minimal seawater flooding to allow tracked vehicles, rolligons, and the hovercraft (if needed) to travel along the corridor.

To construct the trail, snow machines and light-weight tracked vehicles are used to initially mark the corridor as soon as it is determined to be safe for access. Sea ice in the unimproved roads would be allowed to thicken through natural freeze up as the ice, and snow is packed down by larger tracked vehicles. Generally, snow removal or large surface modifications are not required for ice trails.

Hilcorp usually builds the following unimproved ice trails to Northstar:

- Along the pipeline corridor from the valve pad near the Dew Line site to Northstar (9.5 km, 5.93 mi),
- From West Dock to the pipeline shore crossing (grounded ice along the coastline (7.8 km, 4.82 mi), and
- Two unimproved ice road paths from the hovercraft tent at Dockhead 2.

One would go under the West Dock causeway bridge to Dockhead 3 (1.4 km, 0.86 mi) and the other would go around West Dock and intersect the main ice road north of the Seawater Treatment Plant (4.6 km, 2.85 mi).

In addition to these trails, Hilcorp may need to construct several shorter length trails into undisturbed areas to work around unstable and unsafe areas of ice as the season progresses. Due to safety considerations these work-around or detour trails may need to be constructed after March 1st. They are constructed similarly to the planned ice trails and are not flooded or capped with seawater or freshwater. Typically, these detours deviate approximately 23 to 46 m (75 to 150 ft) from the original road or trail to allow crews to safely go around soft spots or cracks.

Eni: Oliktok Production Pad to SID

Ice Road Construction, Use, and Maintenance

Each year Eni builds a single ice road and three ice pads. The ice road extends 6.8 km (4.2 mi) offshore from OPP to SID (Figure 2). This ice road has both supported on water (floating) and grounded ice sections; the first 244 m (800 ft) of the road from shore is grounded ice (*i.e.*, frozen to the bottom). In addition, Eni typically also builds two floating ice pad parking areas at SID: A 152 m by 6 m (500 ft by 200 ft) area located on the southeast side of SID, and a 91 m by 46 m (300 ft by 150 ft) area on the northeast side, and one grounded ice pad at the Oliktok Point end of the ice road.

Initial construction of the sea ice road begins with surveying and staking the route as soon as the ice is thick enough to support snow machines. The floating sections of the road are constructed using the free flood method; low pressure pumps flood the ice surface with seawater. A 7.6 centimeters (cm) (3 inches (in.)) layer of water is applied, some of which may move to lower parts of the roadway. After the water has frozen, the next flood can be applied.

Small rolligon vehicles with augers and pumps are used for augering and flooding. Hand augers can be used to check the ice thickness. Ice needs to be 41 to 51 cm (16 to 20 in.) thick to

support these vehicles. Rolligon tires distribute the load over a larger tire print. Flooding operations occur 24 hours a day, 7 days a week during this phase. Once the ice is about 183 cm (72 in.) thick and determined to be able to support full loads, vehicles such as passenger trucks, vacuum trucks, drill trucks and other tractor plus trailer loads can use the ice road. Up until that time, only rolligon vehicles and tracked vehicles are used on the road. The maintained ice road width (including the shoulder areas) is 49 m (160 ft).

Rig mats are used to bridge small leads (fractures within large expanse of ice) and wet cracks during construction and maintenance. During maintenance activities, fresh water is used for road surfacing and repair. Once fully flooded and open to traffic, snow loads on the ice road must be managed. Snow on the ice road is cleared frequently and the width of the ice road (including the shoulder areas) is maintained at 49 m (160 ft). At the end of the ice road season, as temperatures and sun exposure increase, snow may be spread over the road surface to insulate and shade the ice surface, helping to preserve ice road integrity.

Ice Trails

Following the same general construction methods used at Northstar, Eni plans to build an unimproved ice trail just west of and parallel to the sea ice road corridor near SID. The ice trail is typically approximately 15–30 m (50–100 ft) west of the western edge of the ice road shoulder and is used when the ice road is being constructed. Once the ice road is open to regular traffic, the ice trail is not used. After March 1st, due to safety considerations, Eni may also need to use several shorter length trails in undisturbed areas to work around unstable and unsafe areas of ice as the season progresses. As described above, these work-around or detour trails allow PistenBullys® and other tracked vehicles to safely go around soft spots or cracks.

Eni: Oooguruk Ice Road

Ice Road Construction, Use, and Maintenance

A single ice road and staging area ice pad are required each year to operate the ODS. As shown in Figure 3, the typical or proposed ice road extends 8.9 km (5.5 mi) offshore to the ODS. An alternative ice road as shown on Figure 4 would be located in shallower water and, therefore, can be grounded and used earlier in the season. The alternative route extends 11.2 km (7 mi) offshore and is used in years when an

early road completion is required or when extra heavy loads, such as a drilling rig is expected. Either ice road is up to approximately 10.7 m (50 ft) wide with a similar width shoulder area on each side. The shoulders of the road are used when traffic must periodically detour around equipment or in areas where ice road maintenance is occurring. In addition, a grounded ice pad staging area is constructed on the southwest edge of the ODS (see Figures 3 and 4). The dimensions of the staging area are approximately 180 by 140 m (600 by 450 ft).

The ODS is located in 1.2 to 1.8 m (4 to 6 ft) of water, and the area from the site to the shore generally becomes grounded landfast ice in winter. The typical and alternate ice road routes shown in Figures 3 and 4 would be located in grounded rather than floating ice. There is one small area near the Colville River that has an open lead for a short duration in December but freezes solid within a few weeks. The road is clearly marked with delineators and monitored routinely by Alaska Clean Seas and industry environmental coordinators. Ice bridges or rig mats are not required for construction or maintenance of the ice road or ice pad staging area.

Initial construction of the sea ice road begins with surveying and staking the route as soon as the ice is thick enough to support snow machines. Low pressure pumps are used to flood the ice surface with seawater. Small tractor vehicles with augers and pumps are used for augering and flooding. An initial layer of water is applied, some of which may move to lower parts of the roadway. After the water has frozen, the next flood can be applied. Flooding operations occur 24 hours a day, 7 days a week during this phase. Depending on weather and sea ice conditions, construction of the ice road typically begins in early December and is complete by February 1st.

The ODS operations do not require offshore ice trails. However, a coastal trail in very shallow water right off of the beach is occasionally needed between Oliktok and the ODS ice road to demobilize equipment after tundra travel has been closed.

Mitigation, monitoring, and reporting measures are described in detail later in this document (please see Mitigation and Monitoring and Reporting).

Comments and Responses

NMFS published a proposed rule in the **Federal Register** on January 17, 2020 (85 FR 2988). During the 30-day public comment period on the proposed rule, NMFS received comments from the

Marine Mammal Commission (Commission), ECO49 Consulting, LLC (ECO49) on behalf of Hilcorp and Eni, and five private citizens. The comments and our responses are provided here, and the comments have been posted online at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. Please see the comment letters for the full rationales behind the recommendations we respond to below. As a result of these comments, NMFS revised the buffer zones for avoidance of seals and seal structures and added one additional monitoring and reporting measure in the final rule.

Comment 1: The Commission recommends that NMFS require Hilcorp and Eni to (1) meet with ice seal subsistence hunters in Nuiqsut and other North Slope communities and with members of the Ice Seal Committee to discuss their proposed construction, maintenance, and operation of ice roads and ice trails and its BMPs, and (2) revise its mitigation and monitoring measures as necessary to minimize disturbance of seals and subsistence hunting activities, based on input received.

Response: NMFS does not agree with the Commission's specific recommendations. Both Hilcorp and Eni have developed Plans of Cooperation (POCs) to ensure that no unmitigable adverse impact would occur to subsistence uses of marine mammals from their planned ice roads and ice trails construction and maintenance activities on the North Slope. As stated in the **Federal Register** notice for the proposed rule (85 FR 2988; January 17, 2020), both companies have been engaging the communities of Utqiagvik and Nuiqsut, as well as members of the Ice Seal Committee and the Alaska Eskimo Whaling Commission (AEWC) to share information about planned exploration/development activities and to maintain dialogue about measures to minimize potential impacts on subsistence harvest. For the ice roads and ice trails construction and maintenance activities, Hilcorp and Eni developed further mitigation and monitoring measures to minimize the potential impacts to subsistence uses of marine mammals in the area based on inputs from subsistence users in the area. These measures also include signing a Conflict Avoidance Agreement (CAA) with the AEWC and Whaling Captains' Associations of nearby North Slope communities. The CAA describes measures to minimize any adverse effects on the availability of bowhead whales for subsistence use. To date, the

Native community has not expressed concerns over interactions with seals, particularly during the ice-covered seasons. Hilcorp and Eni state that they will continue to address questions and concerns from community members, and continue to provide them with contact information of project management to which they can direct concerns related to these companies' specific activities. Therefore, the Commission's recommendations are not necessary.

Comment 2: The Commission recommends that NMFS revise the numbers of Level B harassment takes for ringed seals using inputs for the estimated length of road or trail to be constructed or maintained each day and the number of days each season that construction, maintenance, and operation of ice roads and ice trails are expected to occur.

Response: NMFS does not adopt the Commission's recommendation. We believe that the method used here is the best way to calculate take estimates for these activities. In this case, the take number is based on the density multiplied by the action area. Ice road construction, operations and maintenance does not occur continuously every day throughout the ice road season. While the ice road season is approximately December through May, ice road construction, operations and maintenance only occur in a small subsection for a given day. In addition, construction, operation and maintenance activity does not occur each day, and the number of days required for construction, maintenance or operations cannot be predicted given the variability in weather and ice conditions. For this reason, it is not appropriate to use the entire six months as the total duration. Also, it is not possible to predict with certainty the amount of time each company would use the ice roads each week or month given the seasonal variability. The take calculation considers the fact that in over >10 years of ice road activity (*i.e.*, at Northstar), there have only been two seals reported in what is defined as the "exposure area." The take calculations consider the total exposure area (in square km) multiplied by seal density.

Comment 3: The Commission recommends that NMFS include Level B harassment takes of bearded and spotted seals in the final rule using the same take estimation method.

Response: NMFS does not agree with the recommendation and does not adopt it. Bearded seals prefer areas of moving ice and open water with depths up to 200 m (656 ft) (Burns and Harbo 1972). The Liberty rule referenced by the

Commission (84 FR 70274; December 20, 2019) included bearded seals to be precautionary and considering the other activities (such as pile driving) that are part of the Liberty Project in addition to ice roads.

Likewise, spotted seals are not known to remain in the Beaufort Sea during the late fall and winter (BOEM, 2018). Given their seasonal occurrence and distribution (they are absent from the Beaufort Sea in winter) and low numbers in the nearshore waters of the central Alaskan Beaufort Sea during other seasons, no spotted seals are expected in the Action Areas in late winter and spring during ice road/trail activities.

Therefore, considering the fact that bearded and spotted seals are extremely unlikely to occur in the nearshore environment during winter months, and the small zone of disturbance that is only related to ice road construction and maintenance, including takes of bearded and spotted seals is not appropriate.

Comment 4: The Commission recommends that NMFS revise the buffer zones used in section 217.154(c)(3), (5), and (7)(i), and section 217.155(c) of the proposed rule to reference avoidance of seals within 50 m and avoidance of seal structures within 150 m, for consistency with other recent rulemakings (84 FR 70274; December 20, 2019) regarding avoidance of seals and seal structures during construction, maintenance, and operation of ice roads and trails on the North Slope. Hilcorp and Eni also recommend using the whole metric values for mitigation and monitoring distances as stated in the LOA application.

Response: NMFS concurs with the recommendations and has made the corrections in the final rule and the LOAs issued to Hilcorp and Eni.

Comment 5: The Commission recommends that NMFS require Hilcorp and Eni to (1) consult with local hunters regarding the best techniques for detecting seals and seal structures with a minimum of disturbance, (2) involve local hunters in the training of observers for ice road activities, and (3) include in the final reports the methods used for detection of seals and seal structures with an assessment of their effectiveness.

Response: NMFS concurs with this recommendation and has adopted it. NMFS worked with Hilcorp and Eni on these issues and will require Hilcorp and Eni to engage local hunters in Nuiqsut, Utqiagvik and Kaktovik through the Ice Seal Committee point of contact to gather recommendations on methods for ringed seal detection along

sea ice roads/trails within the exposure areas. These insights will be incorporated into Hilcorp and Eni's training materials provided to personnel responsible for monitoring for ringed seals along sea ice roads/trails. NMFS also requires Hilcorp and Eni to include the methods used for detection of seals and seal structures with an assessment of their effectiveness in the final reports. NMFS incorporated these recommendations into the final rule.

Comment 6: The Commission recommends that NMFS initiate a peer review of the proposed mitigation and monitoring plan (as described at 50 CFR 216.108(d)). The Commission states that authorization to take ringed seals incidental to construction and maintenance of ice roads and ice trails has been included in previous rulemakings that were peer-reviewed, most recently in December 2019 (84 FR 70274).

Response: NMFS does not agree that this is necessary and does not adopt the recommendation. As the Commission stated in its comment, marine mammal monitoring plans are required to be reviewed by an independent peer-review panel if the activities occur in Arctic waters and may affect the availability of marine mammal species or stocks for subsistence use. As discussed in detail in the proposed rule (85 FR 2988; January 17, 2020), Hilcorp and Eni's proposed ice roads and ice trails construction projects would occur far away from subsistence activities, and would be conducted during the time few subsistence activities occur. In winter and spring, small numbers of ringed seals may be disturbed and possibly displaced from the immediate locations of the ice roads and trails. Seal hunters would likely avoid the areas near SID, Northstar and ODS in favor of less developed, more productive areas closer to the main sealing areas near the Colville River delta. Therefore, construction and maintenance of the ice roads and trails is unlikely to impact winter subsistence hunting of ringed seals. The example that the Commission provided concerning peer-review of a marine mammal monitoring plan associated with ice roads and ice trails construction and maintenance is Hilcorp's Liberty Drilling and Production Island construction, but that project has potential effects to subsistence use of marine mammals from pile driving and artificial island construction activities during open-water season. NMFS is not aware of monitoring plans for ice road/trail construction and maintenance undergoing peer review because these activities are not typically considered as

meeting the “may affect” requirement pertaining to subsistence uses of marine mammal species and stocks.

Comment 7: ECO49, on behalf of Hilcorp and Eni, notes that takes of ringed seals by mortality/serious injury or Level A harassment were reduced from the LOA application by NMFS based on analysis using historical data. ECO49 states that they understand NMFS’ approach in take calculation, but request to closely work with NMFS if Level A harassment or mortality/serious injury approaches the level authorized, to review the manner of take and number of takes authorized.

Response: As discussed in detail in the proposed rule (85 FR 2988; January 17, 2020), the take request of a total of 30 ringed seal mortality/serious injury takes presented in the LOA application cannot be adequately justified based on historical data and comparable activities where takes were authorized (e.g., 2019 Hilcorp Liberty rule for ice road and ice trail construction on the North Slope). The proposed Level A harassment and mortality/serious injury of a total of 12 seals were estimated based on the level of activities by Hilcorp and Eni over the next 5 years. Based on the analysis, NMFS does not believe Hilcorp or Eni would exceed the Level A harassment and/or mortality/serious injury authorized under the rulemaking, with implementation of prescribed mitigation and monitoring measures. However, in the unlikely event such situation occurs, NMFS will work with Hilcorp and Eni closely to review the manner of take and number of takes authorized, and to reinstate section 7 consultation under the Endangered Species Act (ESA).

Comment 8: ECO49 points out that language in the proposed rule (85 FR 2988; January 17, 2020;) should be revised to make clear that an additional buffer area was added to the road/trail width for SID so the total width is 420 m, not 340 m as indicated. ECO49 proposes the following language to clarify the distance used to calculate potential seal exposures at SID: “The total width of the ice road and trail at SID accounts for the ice trail being constructed approximately 15 to 30 m west of the western edge of the ice road shoulder. Therefore, a total width of 420 m has been used to calculate potential seal exposures at SID whereas, the ice road/trail total width at Northstar and ODS is 340 m.”

Response: NMFS revised the description in the *Take Estimates* section below. While the language in the proposed rule contained an error, take calculation of ringed seals at SID used the correct information (420 m),

therefore, the take estimate remains unchanged.

Comment 9: ECO49 suggests adding a note after the last bullet in the subsection *Monitoring Measures After March 1st*, to read “During this monitoring period, maintenance work will proceed cautiously as to minimize impacts or disturbance to area.”

Response: NMFS understands that there will be limited activities after March 1, and that additional monitoring measures are being added to minimize impacts or disturbance to ringed seal pupping activities after March 1. However, the language ECO49 suggested is not part of the specific monitoring measure, therefore NMFS does not consider it appropriate to include that in that subsection.

Comment 10: ECO49 notes that the proposed rule includes language describing a process for modifying mitigation or monitoring measures should it be warranted. ECO49 states that it understands this language is non-binding and requests that NMFS coordinate closely with Hilcorp and Eni should any modifications to mitigation measures be needed in the future.

Response: NMFS will coordinate closely with Hilcorp and Eni and their contractors should any modifications to mitigation measures be needed in the future.

Comment 11: Four private citizens recommend prohibiting Hilcorp and Eni from constructing the ice roads to better protect the environment and sensitive wildlife. Another anonymous individual states that it is not in the best interest of Alaska and the entire U.S. population to continue letting Hilcorp and Eni take animals during their proposed ice-road construction.

Response: NMFS’ authority and these final regulations allow for issuance of a LOA to authorize takes of marine mammals incidental to ice road construction and maintenance activities by Hilcorp and Eni. NMFS has no authority over whether the ice road construction project is permitted. The MMPA directs the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity within a specified geographical region.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant).

Comment 12: One private citizen states their belief that Hilcorp and Eni would not be truthful in presenting the data that indicates ringed seals are experiencing serious injury/death because of the ice road/trail construction and use. The individual states that if Hilcorp and Eni find data that might prevent them from building these routes in the future they could be tempted to stretch or even hide the truth for the benefit of their company’s interests. The individual suggests that a third-party non-profit entity work with the companies to help monitor the seals and report the findings.

Response: NMFS has no basis for concern that Hilcorp and Eni would conceal serious injury/mortality incidents, if such incidents occur. The LOAs issued to Hilcorp and Eni authorize limited take by serious injury and mortality, therefore, it is not to the companies’ interests to falsify the monitoring report if such take occurs. In addition, falsifying a marine mammal report would lead to revocation of the LOA(s) issued to Hilcorp and/or Eni, and would affect any future application they might submit to obtain marine mammal ITA, in addition to subjecting them to potential legal actions. Therefore, NMFS does not believe Hilcorp or Eni would intentionally misrepresent the actual take numbers in their marine mammal monitoring reports, including reporting of serious injury and/or mortality takes.

Changes From the Proposed to Final Rule

There is no change in the Hilcorp and Eni’s proposed ice roads and ice trails construction activities from the proposed rule (85 FR 2988; January 17, 2020). NMFS revised the buffers in section 217.154(c)(3), (5), (7), and (7)(i), and section 217.155(b)(1) and (1)(ii) and (c)(1) and (2) to reference avoidance of seals within 50 m and avoidance of seal structures within 150 m. One additional monitoring and reporting measure was added to the final rule based on comments received during the public comment period. This measure requires that Hilcorp and Eni (1) engage local hunters through the Ice Seal Committee point of contact to gather recommendations on methods for ringed seal detection along sea ice roads/trails within the exposure areas, (2) incorporate these recommendations into Hilcorp and Eni’s training materials provided to personnel responsible for monitoring for ringed seals along sea ice roads/trails, and (3) include the methods used for detection of seals and seal structures with an assessment of their effectiveness in the final reports.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>), and more general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS' website (<https://www.fisheries.noaa.gov/find-species>).

Table 1 lists all species with expected potential for occurrence in the Beaufort Sea and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2020). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its Optimum Sustainable Population (OPS) (as described in NMFS's SARs). While no mortality is anticipated, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. 2019 SARs (Carretta *et al.*, 2020; Muto *et al.*, 2020). All values presented in Table 1 are the most recent available at the time of publication and are available in the 2019 SARs (Carretta *et al.*, 2020; Muto *et al.*, 2020).

TABLE 1—MARINE MAMMALS WITH POTENTIAL PRESENCE WITHIN THE PROJECT AREA

| Common name | Scientific name | Stock | ESA/MMPA status; Strategic (Y/N) ¹ | Stock abundance (CV, N _{min} , most recent abundance survey) ² | PBR | Annual M/SI ³ |
|--|------------------------------------|-----------------------------|---|--|--------|--------------------------|
| Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales) | | | | | | |
| Family Eschrichtiidae: | | | | | | |
| Gray whale | <i>Eschrichtius robustus</i> | Eastern North Pacific | -; N | 26,960 (0.05, 25,849) | 801 | 139 |
| Family Balaenidae: | | | | | | |
| Bowhead whale | <i>Balaena mysticetus</i> | Western Arctic | E/D; Y | 16,820 (0.052, 16,100) | 161 | 46 |
| Family Delphinidae: | | | | | | |
| Beluga whale | <i>Delphinapterus leucas</i> | Beaufort Sea | -; N | 39,258 (0.229, N/A) | Undet | 139 |
| Family Phocidae (earless seals) | | | | | | |
| Ringed seal ⁴ | <i>Phoca hispida</i> | Alaska | T/D; Y | 171,418 (NA, 170,000) | 4,755 | 700 |
| Spotted seal | <i>Phoca largha</i> | Alaska | -; N | 461,625 (NA, 423,237) | 12,697 | 329 |
| Bearded seal ⁵ | <i>Erignathus barbatus</i> | Alaska | T/D; Y | 301,836 (NA, 273,676) | Undet | 557 |
| Ribbon seal | <i>Histiophoca fasciata</i> | Alaska | -; N | 184,695 (NA, 163,086) | 9,785 | 3.9 |

¹ ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

² NMFS marine mammal stock assessment reports online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region#reports>. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

³ These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike). Annual mortality/serious injury (M/SI) often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

⁴ Ringed seal estimate is based on surveys conducted in the Alaska Chukchi and Beaufort seas in the late 1990s and 2000, and in the U.S. portion of the Bering Sea in 2012. This is the best available information for use here.

⁵ Bearded seal estimate is based on surveys conducted in the U.S. portion of the Bering Sea in 2012. This is the best available information for use here.

All species that could potentially occur in the proposed survey areas are included in Table 1. As described below, only the ringed seal temporally and spatially co-occurs with the activity to the degree that take is reasonably likely to occur. The temporal and/or spatial occurrence of the rest of the species listed in Table 1 is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here.

While ringed, spotted, and bearded seals are present in the Beaufort Sea during the open-water season, only ringed seals are likely to be in the nearshore environment during the ice-covered months. The other two species

of ice seals only occur in the project area during the open-water season. Ribbon seal mostly occurs in the Chukchi Sea and western Beaufort Sea, and is considered as extra-limital in the project area. Therefore, the potential for encounters with bearded, spotted, and ribbon seals during ice road/trail construction and maintenance is extremely unlikely. As a result, these ice seal species will not be discussed further in this document.

None of the cetacean species listed above is expected to enter the ice-covered action areas during the winter months when ice road activities would be occurring. Therefore, the potential for encounters with cetaceans during ice

road/trail construction and maintenance is extremely unlikely. As a result, cetacean species will not be discussed further in this document.

Ringed seal is the only species that would be reasonably likely to be affected by the ice road and ice trail construction and maintenance activity. A detailed description of this species in the action area is provided in the proposed rule (85 FR 2988; January 17, 2020).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact

marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

The Hilcorp and Eni’s sea ice roads and ice trails construction and maintenance activities on the North Slope could adversely affect ringed seals by exposing them to construction noise and presence of human activities, and potential serious injury or mortality in the project area.

A detailed description of the impacts on marine mammals and their habitat is provided in the **Federal Register** notice (85 FR 2988; January 17, 2020) for the proposed rule, and is not repeated here.

Estimated Take

This section provides an estimate of the number of incidental takes that may be authorized through this rulemaking, which will inform both NMFS’ consideration of “small numbers” and the negligible impact determination.

Harassment is one of the types of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines “harassment” as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing,

nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as exposure of ringed seals by construction activities and noise has the potential to result in disruption of behavioral patterns for individual animals. There could also be potential for serious injury/mortality if an animal is crushed by a construction machinery or vehicle while in its subnivean lair. Auditory injury is unlikely to occur because the overall noise levels generated from the construction activities are low. The mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable.

Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Marine mammals (ringed seals) likely to be exposed to visual and acoustic disturbances from ice roads and ice trails construction; (2) the density or occurrence of marine mammals within the areas likely to be disturbed; and, (3) the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (e.g., previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimate. This section includes an overview of estimated ringed seal density in the area, a description of the area of potential disturbance, estimates for noise sources (under ice-covered conditions and in air), and a discussion of the potential for behavioral responses or serious injury or mortality due to ice road/trail/pad activities.

Ringed Seal Densities

Ringed seals are present in the nearshore Beaufort Sea waters and sea

ice year round, maintaining breathing holes and excavating subnivean lairs in the landfast ice during the ice-covered season. During this ice-covered season, ringed seals’ home ranges are generally less than 5 km² (2 mi²) in area (Frost *et al.* 2002, Kelly *et al.* 2005). While older datasets from the 1970s and 80s provide important context for understanding seal presence in the region, only more recent surveys beginning in 1997 have been used to calculate density for this rule as described in the following sections.

Winter Densities

Ringed seals overwinter in the landfast ice in and around the project area. Relatively few data are available for ringed seal density in the southern Beaufort Sea during the winter months, but several studies on ringed seal winter ecology were undertaken during the 1980s (Kelly *et al.* 1986, Frost and Burns 1989). These reports, in addition to data associated with the Northstar development and the abandoned Seal Island (Williams *et al.* 2001, Frost *et al.* 2002) provide information on both seal ice structure use (where ice structures include both breathing holes and subnivean lairs) and the density of ice structures (Table 2).

Both male and female ringed seals maintain a number of breathing holes and haul out in more than one subnivean lair during the ice-covered season. Kelly *et al.* (1986) found that of their tagged seals, the animals would haul out between one and multiple subnivean lairs. The distances between each lair could be as great as 4 km (2.5 mi) with numerous breathing holes in between (Kelly *et al.* 1986). While these authors calculated the average number of lairs used by an individual seal to be 2.85 (SD=2.51) per animal, they also suggest that this is likely to be an underestimate.

TABLE 2—SEAL STRUCTURE DENSITY ALONG THE BEAUFORT SEA COAST NEAR THE PROJECT AREA

| Year | Sea structure density/km ² | Source |
|---|---------------------------------------|------------------------------|
| 1982 | 3.6 | Frost and Burns 1989. |
| 1983 | 0.81 | Kelly <i>et al.</i> 1986. |
| Dec. 1999 | 0.71 | Williams <i>et al.</i> 2001. |
| May 2000 | 1.2 | Williams <i>et al.</i> 2001. |
| Average structure density/km ² | 1.58 | |

In 1982, aerial surveys were conducted near Reindeer Island, just east of the project area (Northstar and SID), where seismic exploration activities were occurring. Seal structures

were located by searching with a dog along 267 km (166 mi) of seismic and control lines as well as 28 km (17 mi) of non-systematic search lines (295 linear km (183 linear mi) total). A total

of 157 structures were found resulting in an average estimate of 0.53/km seal structures (Kelly *et al.* 1986) or 3.6 structures/km² (Frost and Burns 1989).

In 1983, the vicinity of Reindeer Island was surveyed again and the average number of seal structures recorded was 0.70/km over approximately 81 km (50 mi) of linear survey lines resulting in an average number of total structures of 0.81/km².

In 1999, a total of 26 seal structures were located within a 36.5 km² area encompassing the Northstar Development resulting in an estimated 0.71 structures/km² in December 1999 and 1.2 structures/km² in May 2000 (Richardson and Williams 2001).

To estimate ringed seal density during the winter, an average structure density was divided by the average number of structures used by seals (Kelly *et al.* 1986). Thus, for the winter season ringed seal density has been estimated as the average ice structure density (1.58/km²) divided by the average number of ice structures used by an individual seal (2.85, SD = 2.51). This results in an estimated density of 0.55 ringed seals/km² (for example, 1.58/2.85 = 0.55). However, this density is likely to be an overestimate because the equation denominator of 2.85 is

assumed to be an underestimate (Kelly *et al.* 1986).

Average ice structure density/Average number of structures per seal = Estimated Average Winter Seal Density: 1.58/2.85 = 0.55 seals/km².

Spring Densities

In 1997, prior to Northstar construction, British Petroleum Exploration Alaska (BPXA) conducted aerial surveys for seals as part of the industry monitoring programs for the Northstar facility. These datasets provide the best available information on spring ringed seal density for the project area. Information is based on aerial surveys were flown around Northstar and west of Prudhoe Bay during late May and early June (Frost *et al.* 2002, Moulton *et al.* 2002a, b, Richardson and Williams 2003) when the greatest percentage of seals have abandoned their lairs and are hauled out on the ice (Kelly *et al.* 2010, Kelly *et al.* 2010).

Because densities were consistently very low where water depth was <3m (and these areas are generally frozen

solid during the ice-covered season) densities were calculated where water depth was >3m deep (Moulton *et al.* 2002a, b), Richardson and Williams 2003). Frost *et al.* (2002) and Frost *et al.* (2004) reported slightly higher densities based on surveys conducted during this same time period between 1997 and 1999. As with all aerial surveys, animal densities are underestimated because animals are missed, or not counted. This is generally because they are not hauled out where they can be seen or are missed by the observer. Therefore, these density estimates represent minimum estimates during the time and location of the surveys. The average uncorrected densities calculated based on these separate datasets (1997–1999) are provided in Table 3. It is acknowledged that densities of seals near the Eni SID Action Area are likely to be lower than densities calculated for the purposes of estimating take in this analysis, due to much shallower water near the Eni SID site. However, for consistency and as a precautionary measure, the same density estimates are used throughout this analysis.

TABLE 3—ESTIMATED RINGED SEAL DENSITIES (UNCORRECTED) BASED ON SPRING AERIAL SURVEYS DURING ICE-COVERED CONDITIONS, 1997–2002

| Year | Uncorrected seal density (no/km ²) | | Average uncorrected ringed seal density (no/km ²) |
|---|--|--------------------------------|---|
| | Moulton <i>et al.</i> 2002, 2005 * | Frost <i>et al.</i> 2002, 2004 | |
| 1997 | 0.43 | 0.73 | 0.58 |
| 1998 | 0.39 | 0.64 | 0.52 |
| 1999 | 0.63 | 0.87 | 0.75 |
| 2000 | 0.47 | ..... | 0.47 |
| 2001 | 0.54 | ..... | 0.54 |
| 2002 | 0.83 | ..... | 0.83 |
| Average density (no/km ²) ..... | ..... | ..... | 0.61 |

* Water depths >10 ft.

For the period 2000, 2001, and 2002, (Moulton *et al.* 2005) reported ringed seal densities (uncorrected) on landfast ice during Northstar construction were calculated as 0.47, 0.54, and 0.83 seals/km². Based on the average density of surveys flown from 1997 to 2002 the uncorrected density of ringed seals during the spring is expected to be 0.61 ringed seals/km².

As reported in Frost *et al.* (2002) habitat-related variables including water depth, location relative to the fast ice edge, and ice deformation have shown to result in substantial and consistent effects on the distribution and abundance of seals. Moulton *et al.* (2003) and Moulton *et al.* (2005) also reported that environmental factors such as date, water depth, degree of ice

deformation, presence of meltwater, and percent cloud cover had more conspicuous and statistically-significant effects on seal sighting rates than did any human-related factors. Thus, the intra- and inter-annual variability in survey conditions and ice characteristics is unavoidable and identifying trends in seal abundance or estimating density is challenging.

TABLE 4—RINGED SEAL DENSITIES

| Winter average density (seal/km ²) | Spring average density (seal/km ²) |
|--|--|
| 0.55 | 0.61 |

In summary, for the purposes of estimating take associated with ice road/trail activities, winter and spring densities are assumed to be 0.55 and 0.61 seals/km² (respectively) as shown in Table 4.

Take Estimates

Level B Harassment

To estimate exposures of ringed seals to disturbance that may result in a take, the total area of potential disturbance (*i.e.*, exposure area) associated with construction and maintenance of the roads/trails/pads is defined as 170 m (approximately 558 ft) on either side of the road/trail/pad centerline; a total width of 340 m (approximately 1,115 ft).

Again, the total width of the exposure area is 340 m (558 ft). This width is then multiplied by the total length of roads/trails likely to be constructed each year to calculate the exposure area in km². Due to the variability in the length of ice roads/trails that may be needed from year to year, a 10 percent buffer is also added to the total length and is accounted for in the total area calculated. The total area of exposure is then multiplied by the seasonal ringed seal density to calculate the total estimated ringed seals exposed each season. Since there are two seasons during which ringed seals may be exposed to ice road activity (winter and spring), the exposure estimates for winter and spring are then added together to calculate the total number of seals exposed per year. For example, the

following calculation was used for Northstar ice roads and trails:
 $TAE \times D = TES$
 $TES \text{ (winter)} + TES \text{ (spring)} = TEY$
 Where:
 TAE = Total Area of Exposure
 D = Species Density (variable by season)
 TES = Total Estimated Seals Exposed Per Season
 TEY—Total Estimated Seals Exposed Per Year
 For example:
 $12.96 \text{ km}^2 \text{ (TAE)} \times 0.55 \text{ (winter density per km}^2) = 7.13 \text{ seals/winter}$
 $12.96 \text{ km}^2 \text{ (TAE)} \times 0.61 \text{ (spring density per km}^2) = 7.91 \text{ seals/spring}$
 $7.13 \text{ seals/winter} + 7.91 \text{ seals/spring} = 15.03 \text{ seals/year}$
 The total width of the ice road and trail at SID accounts for the ice trail being constructed approximately 15 to

30 m west of the western edge of the ice road shoulder. Therefore, a total width of 420 m has been used to calculate potential seal exposures at SID as a more conservative approach whereas, the ice road/trail total width at Northstar and ODS is 340 m, as shown in Table 5.

Based on the exposure estimates, Eni and Hilcorp request takes for Level B harassment for the 5-year period as shown in Table 5. Takes are presented annually for each company and are requested for ice road and ice trail construction, operation and maintenance expected to occur between December and May of each year, depending on local conditions. Potential Level B harassment takes could occur in all 5 years.

Table 5. Ringed Seal Level B Harassment Take Estimate Associated with Ice Road/Trail Activities

| | Total ice road length (km) | Total ice trail length (km) | Total length plus 10% buffer ¹ | Total width (km) | Total area of exposure (km ²) | Est. no. seals exposed during winter (density) ² | Est. no. seals exposed during spring (density) ² | Total est. takes per year | Total Level B take estimates | Total est. takes over 5 years |
|-------------------|----------------------------|-----------------------------|---|------------------|---|---|---|---------------------------|------------------------------|-------------------------------|
| Eni SID | 6.76 | 0 ³ | 7.43 | 0.42 | 3.12 | 1.72 | 1.90 | 3.62 | 4 | 20 |
| Eni ODS | 11.26 ⁴ | 0 | 12.39 | 0.34 | 4.21 | 2.32 | 2.57 | 4.89 | 5 | 25 |
| Hilcorp Northstar | 11.71 | 22.94 | 38.12 | 0.34 | 12.96 | 7.13 | 7.91 | 15.03 | 16 | 80 |

¹ To account for variability.

² Density: Winter=0.55 seals/km²; Spring=0.61 seals/km².

³ Note that Eni constructs an ice trail each year that is approximately 15 to 30 m west of the ice road. The trail is located within the exposure area of 170 m and is accounted for in estimated takes.

⁴ Length of alternate route used as worst case.

NMFS does not expect Level A harassment of ringed seal to occur, as noise and visual exposure to construction activities will not become injurious as defined for purposes of a Level A harassment take under the MMPA. However, it is possible that a seal may be in its lair during ice roads/trails construction and thus, it is possible for a seal to become crushed by construction machinery or vehicle while the road/trail is being erected, resulting in injury, serious injury, or mortality. A detailed discussion of such events is provided below.

Potential Serious Injury or Mortality

Based on a review of literature and monitoring reports from Northstar and other North Slope projects, there is documentation of one seal mortality

associated with a vibroseis program outside the barrier islands east of Bullen Point in the eastern Beaufort Sea (MacLean 1998). During a 1999 NMFS workshop to review on-ice monitoring and research, Dr. Brendan Kelly (then of the University of Alaska), also indicated that a dead ringed seal pup was found during his research using trained dogs to locate seal structures in the ice. The dead ringed seal pup was located approximately 1.5 km (0.9 mi) from the Northstar ice road. No data on the age of the pup, date of death, necropsy results, or cause of death are available. Therefore, whether ice road construction at Northstar could have contributed to the death of this pup, or if its death was coincidental to Northstar activities cannot be

determined (Richardson and Williams 2000).

While the only recorded mortality of a seal occurred in 1998, Eni and Hilcorp also requested 10 takes for each development over the 5-year period for potential ringed seal serious injury or mortality during construction, operation and maintenance of ice roads and trails.

However, NMFS does not consider this request to be adequately justified, and is concerned that the requested mortality in this action is much higher than other similar actions.

For instance, in the 2019 Hilcorp Liberty rule for ice road and ice trail construction on the North Slope, there were two lethal takes authorized over the first 5 years (and 8 over the following 20 years, for 10 total mortalities over 25 years). In that action,

four ice roads, totaling 51.5 km in length would be constructed: In Years 1 through 3, all four roads would be constructed; in Years 4 and 5, only Road #1 would be constructed (11.3 km in length). By comparing the two actions, Hilcorp Northstar and Eni are constructing more ice roads/trails than Hilcorp is at the Liberty site over a 5-year period.

In terms of the distribution of construction activities between the two companies, Hilcorp is constructing 1.9 times as many ice road/trail kilometers as Eni is at either SID or ODS. However, Eni's construction activities encompass two separate sites and each have the potential to encounter inhabited seal lairs given an assumed equal distribution of species. Based on these factors, NMFS is authorizing three serious injury/mortalities for ice road/trail activities at each of Eni's sites (Spy Island and Ooguruk), and six serious injury/mortalities at Hilcorp's Northstar site, all over 5 years. A summary of serious injury/mortality for Hilcorp and Eni over the 5-year period is provided in Table 6.

TABLE 6—TOTAL ESTIMATED RINGED SEAL TAKES ANNUALLY AND OVER THE 5-YEAR LOA PERIOD

| | Serious injury/mortality for 5 years |
|-------------------------|--------------------------------------|
| Eni SID | 3 |
| Eni ODS | 3 |
| Hilcorp Northstar | 6 |
| Total | 12 |

Effects of Specified Activities on Subsistence Uses of Marine Mammals

Subsistence hunting continues to be an essential aspect of Inupiat Native life, especially in rural coastal villages. The Inupiat participate in subsistence hunting activities in and around the Beaufort Sea. The animals taken for subsistence provide a significant portion of the food that will last the community through the year. Marine mammals represent on the order of 60–80 percent of the total subsistence harvest. Along with the nourishment necessary for survival, the subsistence activities strengthen bonds within the culture, provide a means for educating the younger generation, provide supplies for artistic expression, and allow for important celebratory events.

The ice roads/trails construction projects are generally remote from subsistence use areas. Nuiqsut is the closest Native Alaskan community to the Northstar, ODS and SID facilities;

located approximately 91 km (about 57 mi) southwest from Northstar, 40 km (about 25 mi) from ODS, and 56 km (about 35 mi) from SID. Primary subsistence users in the area between Oliktok Point and West Dock are residents from the village of Nuiqsut. People from Utqiagvik (about 309 and 264 km [192 and 164 mi] west of Northstar and SID, respectively) and Kaktovik harvest marine mammals that pass through the area but generally do not hunt there. Kaktovik is 196 km (122 mi) east of Northstar and 241 km (150 mi) east of SID.

Nuiqsut hunters harvest ringed seals primarily during open water periods in July through August. In summer, boat crews hunt ringed, spotted and bearded seals. The most important seal hunting area for Nuiqsut hunters is off the Colville Delta, as far east as Pingok Island. The closest edge of the main sealing area at Pingok Island, is about 27 km (17 mi) west of Northstar (SRBA 2010, Galginaitis 2014). While less frequent than open water hunting, seals are taken by hunters on snow machines before break-up.

In summary, Hilcorp and Eni's ice roads and ice trails construction projects would occur far away from subsistence activities, and would be conducted during the time few subsistence activities occur. In winter and spring, small numbers of ringed seals may be disturbed and possibly displaced from the immediate locations of the ice roads and trails shown on Figures 1 through 4. Seal hunters would likely avoid the areas near SID, Northstar and ODS in favor of less developed more productive areas closer to the main sealing areas near the Colville River delta. Therefore, construction and maintenance of the ice roads and trails is unlikely to impact subsistence hunting of ringed seals.

Mitigation

In order to issue an LOA under Section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses. NMFS regulations require applicants for ITAs to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact

upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat, as well as subsistence uses. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Mitigation for Marine Mammals and Their Habitat

For Hilcorp and Eni's ice roads and trails construction project, Hilcorp and Eni worked with NMFS and proposed the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity. The primary purposes of these mitigation measures are to minimize human-seal interactions and to avoid takes by serious injury/mortality from the activities, to monitor marine mammals within designated zones of influence in the project vicinity and, if seals are within the designated shutdown zone after March 1 during the pupping season, to initiate immediate pause of all construction activities, making it very unlikely potential injury or serious injury/mortality to seals would occur and ensuring that Level B behavioral harassment of seals would be reduced to the lowest level practicable. Construction activities may result after the seals leave the shutdown zone on their own.

The prescribed mitigation and monitoring measures are described below.

Wildlife Training

Prior to initiation of sea ice road- and ice trail-related activities, project personnel associated with ice road construction, maintenance, use or decommissioning (*i.e.*, ice road construction workers, surveyors, security personnel, and the environmental team) will receive annual training on implementing mitigation and monitoring measures. Personnel are advised that interactions with, or approaching, any wildlife is prohibited. Annual training also includes reviewing the company's Wildlife Management Plan. In addition to the mitigation and monitoring plans, other topics in the training will include:

- Ringed Seal Identification and Brief Life History;
- Physical Environment (habitat characteristics and how to potentially identify habitat);
- Ringed Seal Use in the Ice Road Region (timing, location, habitat use, birthing lairs, breathing holes, basking, etc.);
- Potential Effects of Disturbance; and
- Importance of Lairs, Breathing Holes and Basking to Ringed Seals.

General Mitigation Measures Implemented Throughout the Ice Road/Trail Season

General mitigation measures will be implemented through the entire ice road/trail season (December through May) including during construction, maintenance, use and decommissioning.

- Ice road/trail speed limits will be no greater than approximately 74.5 km (45 miles) per hour (mph) under typical circumstances but may be exceeded in emergency situations. Travel on ice roads and trails is restricted to industry staff;
- Following existing safety measures, delineators will mark the roadway in a minimum of 0.4 km (¼-mile) increments on both sides of the ice road to delineate the path of vehicle travel and areas of planned on-ice activities (*e.g.*, emergency response exercises). Following existing safety measures currently used for ice trails, delineators will mark one side of an ice trail a minimum of every 0.4 km (¼ mile). Delineators will be color-coded, following existing safety protocol, to indicate the direction of travel and location of the ice road or trail. These measures will ensure that vehicles stay on disturbed ice roads/trails and will not deviate to undisturbed areas;
- Corners of rig mats, steel plates, and other materials used to bridge sections of hazardous ice, will be clearly marked or mapped using GPS coordinates of the

locations, so vehicles travel on ice roads/trails will not deviate to undisturbed areas; and

- Personnel will be instructed to remain in the vehicle and safely continue, if they encounter a ringed seal while driving on the road.

Mitigation Measures After March 1st

After March 1st, and continuing until decommissioning of ice roads/trails in late May or early June, the on-ice activities mentioned above can occur anywhere on sea ice where water depth is less than 3 m (10 ft) (*i.e.*, habitat is not suitable for ringed seal lairs). However, if the water is greater than 3 m (10 ft) in depth, these activities should only occur within the boundaries of the driving lane or shoulder area of the ice road/trail and other areas previously disturbed (*e.g.*, spill and emergency response areas, snow push areas) when the safety of personnel is ensured.

In addition to the general Mitigation Measures, the following measures will also be implemented after March 1st:

- Ice road/trail construction, maintenance and decommissioning will be performed within the boundaries of the road/trail and shoulders, with most work occurring within the driving lane. To the extent practicable and when safety of personnel is ensured, equipment will travel within the driving lane and shoulder areas;

- Blading and snow blowing of ice roads will be limited to the previously disturbed ice road/shoulder areas to the extent safe and practicable. Snow will be plowed or blown from the ice road surface;

- In the event snow is accumulating on a road within a 50 m (164 ft) radius of an identified downwind seal or seal lair (as identified by seal ice structure), operational measures will be used to avoid seal impacts, such as pushing snow further down the road before blowing it off the roadway. Vehicles will not stop within 50 m (164 ft) of identified seals or within 150 m (500 ft) of known seal lairs;

- When safety of personnel is ensured, tracked vehicle operation will be limited to the previously disturbed ice trail areas. When safety requires a new ice trail to be constructed after March 1st, construction activities such as drilling holes in the ice to determine ice quality and thickness, will be conducted only during daylight hours with good visibility. Ringed seal structures will be avoided by a minimum of 50 m (164 ft) during ice testing and new trail construction. Once the new ice trail is established, tracked vehicle operation will be limited to the

disturbed area and when safety of personnel is ensured;

- If a seal is observed on ice within 50 m (164 ft) of the centerline of the ice road/trail, the following mitigation measure will be implemented; and
- Construction, maintenance or decommissioning activities associated with ice roads and trails will not occur within 50 m (164 ft) of the observed ringed seal, but may proceed as soon as the ringed seal, of its own accord, moves farther than 50 m (164 ft) distance away from the activities or has not been observed within that area for at least 24 hours. Transport vehicles (*i.e.*, vehicles not associated with construction, maintenance or decommissioning) may continue their route within the designated road/trail without stopping.

Monitoring and Reporting

In order to issue an LOA for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;

- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (e.g., marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

General Monitoring Measures Implemented Throughout the Ice Road/Trail Season

General monitoring measures will be implemented through the entire ice road/trail season including during construction, maintenance, use and decommissioning.

Hilcorp and Eni are required to implement the following monitoring measures.

If a ringed seal is observed within 50 m (164 ft) of the center of an ice road or trail, the operator's Environmental Specialist will be immediately notified with the information provided in the *Reporting* section below.

- The Environmental Specialist will relay the seal sighting location information to all ice road personnel and the company's office personnel responsible for wildlife interaction, following notification protocols described in the company-specific Wildlife Management Plan. All other data will be recorded and logged.

- The Environmental Specialist or designated person will monitor the ringed seal to document the animal's location relative to the road/trail. All work that is occurring when the ringed seal is observed and the behavior of the seal during those activities will be documented until the animal is at least 50 m (164 ft) away from the center of the road/trail or is no longer observed.

- The Environmental Specialist or designated person will contact appropriate state and Federal agencies as required.

Monitoring Measures After March 1st

In addition to the general Monitoring Measures, the following measures will also be implemented after March 1st:

If an ice road or trail is being actively used, under daylight conditions with good visibility, a dedicated observer (not the vehicle operator) will conduct a survey along the sea ice road/trail to observe if any ringed seals are within 150 m (500 ft) of the roadway corridor. The following survey protocol will be implemented:

- Surveys will be conducted every other day during daylight hours;

- Observers for ice road activities need not be trained Protected Species Observers (PSOs), but they must have received the training described above and understand the applicable sections of the Wildlife Interaction Plan. In addition, they must be capable of detecting, observing and monitoring ringed seal presence and behaviors, and accurately and completely recording data; and

- Observers will have no other primary duty than to watch for and report observations related to ringed seals during this survey. If weather conditions become unsafe, the observer may be removed from the monitoring activity.

If a ringed seal structure (i.e., breathing hole or lair) is observed within 150 m (500 ft) of the ice road/trail, the location of the structure will be reported to the Environmental Specialist who will then carry out notification protocol identified above and:

- An observer will monitor the structure every 6 hours on the day of the initial sighting to determine whether a ringed seal is present. Monitoring for the seal will occur every other day the ice road is being used unless it is determined the structure is not actively being used (i.e., a seal is not sighted at that location during monitoring). A lair or breathing hole does not automatically imply that a ringed seal is present.

Engaging With Subsistence Hunters for Monitoring Recommendations

In addition, Hilcorp and Eni are required to (1) engage local hunters through the Ice Seal Committee point of contact to gather recommendations on methods for ringed seal detection along sea ice roads/trails within the exposure areas, and (2) incorporate these recommendations into Hilcorp and Eni's training materials provided to personnel responsible for monitoring for ringed seals along sea ice roads/trails.

Reporting

Hilcorp and Eni are required to submit a draft report on all ringed seals observed annually under the LOA within 90 calendar days of decommissioning the ice road/trail. A final report shall be prepared and submitted within 30 days following resolution of comments on the draft report from NMFS. If 30 days have passed and Hilcorp or Eni does not receive comments from NMFS, the draft report is considered to be final. The report must include:

- Date, time, location of observation;
- Ringed seal characteristics (i.e., adult or pup, behavior (avoidance, resting, etc.);

- Activities occurring during observation including equipment being used and its purpose, and approximate distance to ringed seal(s);

- Actions taken to mitigate effects of interaction emphasizing: (1) Which mitigation and/or monitoring measures were successful; (2) which mitigation and/or monitoring measures may need to be improved to reduce interactions with ringed seals; (3) the effectiveness and practicality of implementing mitigation and monitoring measures; (4) any issues or concerns regarding implementation of mitigation and/or monitoring measures; and (5) potential effects of interactions based on observation data;

- Proposed updates (if any) to Wildlife Management Plan(s) or Mitigation and Monitoring Measures; and

- The methods used for detection of seals and seal structures with an assessment of their effectiveness.

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, Hilcorp or Eni shall report the incident to the Office of Protected Resources (OPR) (301-427-8401), NMFS and to the Alaska Region (AKR) regional stranding coordinator (1-877-925-7773).

If in the rare event a seal is killed or seriously injured by ice road/trail activities, NMFS must be notified immediately. If an ice road/trail personnel discover a dead or injured seal but the cause of injury or death is unknown or believed not to be related to ice road/trail activities, NMFS must be notified within 48 hours of discovery.

Mitigation for Subsistence Uses of Marine Mammals or Plan of Cooperation

Regulations at 50 CFR 216.104(a)(12) further require ITA applicants conducting activities that take place in Arctic waters to provide a POC or information that identifies what measures have been taken and/or will be taken to minimize adverse effects on the availability of marine mammals for subsistence purposes. A plan must include the following:

- A statement that the applicant has notified and provided the affected subsistence community with a draft plan of cooperation;
- A schedule for meeting with the affected subsistence communities to discuss proposed activities and to resolve potential conflicts regarding any aspects of either the operation or the plan of cooperation;

- A description of what measures the applicant has taken and/or will take to ensure that proposed activities will not interfere with subsistence whaling or sealing; and

- What plans the applicant has to continue to meet with the affected communities, both prior to and while conducting the activity, to resolve conflicts and to notify the communities of any changes in the operation.

As discussed earlier, Hilcorp and Eni's ice roads and trails construction is expected to have no unmitigable adverse impacts on subsistence use of marine mammals in the project area, and the construction projects would occur in areas away from subsistence activities during the time when there is no subsistence activities. Nevertheless, both Hilcorp and Eni have developed POCs to ensure that no impact would occur. Both companies have been engaging the communities of Utqiagvik and Nuiqsut to share information about planned exploration/development activities and to maintain dialogue about measures to minimize potential impacts on the subsistence harvest of seals or whales. For the ice roads and ice trails construction and maintenance activities, Hilcorp and Eni developed further mitigation and monitoring measures to minimize the potential impacts to subsistence use of marine mammals in the area. These measures are described below.

Hilcorp

To help minimize disturbances to marine mammal subsistence resources, Hilcorp has signed a CAA with the Alaska Eskimo Whaling Commission (AEWC) and Whaling Captains' Associations of nearby North Slope communities. The CAA describes measures to minimize any adverse effects on the availability of bowhead whales for subsistence use. Hilcorp also conducts the Cross Island whaling survey every year to document any conflicts and ensure that operations continue to be compatible with the hunt.

The CAA and much of the coordination focus on whales and whaling activities. To date, the Native community has not expressed concerns over interactions with seals, particularly during the ice-covered seasons. Hilcorp states that it will continue to address questions and concerns from community members, and continue to provide them with contact information of project management to which they can direct concerns related to Northstar operations.

In addition, Hilcorp has adopted the "Good Neighbor Policy" originally put

in place for Northstar by BPXA. The policy is a commitment to the eleven whaling villages, the Inupiat Community and the Siberian Yupik Community to establish financial assurance in the event of an oil spill. While the focus is on bowhead whales, the policy does include other Arctic marine resources including ringed seals. The Good Neighbor Policy also outlines how Hilcorp would provide transportation for the subsistence community to alternate hunting areas in the event that a spill prevents the use of Cross Island or other hunting areas. It also has provisions for providing interim alternative food supplies to community members, along with counselling and cultural assistance. Hilcorp is committed to adhering to the CAA and Good Neighbor Policy for the duration of North Slope operations as necessary.

Eni

To help minimize disturbances to marine mammal subsistence resources, Eni also signs a CAA each year with the AEWC and Whaling Captains' Associations of nearby North Slope communities. The CAA describes measures to minimize any adverse effects on the availability of bowhead whales for subsistence use. Eni also conducted multiple community meetings and meetings with subsistence organizations such as the AEWC and NWCA to establish and maintain positive relationships with locals that rely on subsistence resources in the area.

Based on our evaluation of the applicant's proposed measures, NMFS has determined that the mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact

determination. In addition to considering estimates of the number of marine mammals that might be "taken" through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.*, intensity, duration), the context of any responses (*e.g.*, critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, and specific consideration of take by serious injury/mortality previously authorized for other NMFS research activities).

Serious Injury and Mortality

NMFS is authorizing a very small number of serious injuries or mortalities that could occur incidental to ice roads and ice trails construction and maintenance.

NMFS considers many factors, when available, in making a negligible impact determination, including, but not limited to, the status of the species or stock relative to the OSP level (if known), whether the recruitment rate for the species or stock is increasing, decreasing, stable, or unknown, the size and distribution of the population, and existing impacts and environmental conditions. The PBR metric can help inform the potential effects of serious injury and mortality caused by activities authorized under Section 101(a)(5)(A) of the MMPA on marine mammal stocks.

PBR is defined in the MMPA (16 U.S.C. 1362(20)) as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its OSP, and is a measure to be considered when evaluating the effects of serious injury and mortality on a marine mammal species or stock. OSP is defined by the MMPA (16 U.S.C. 1362(9)) as the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element. PBR values are calculated by NMFS as the level of

annual removal from a stock that will allow that stock to equilibrate within OSP at least 95 percent of the time.

To specifically use PBR, along with other factors, to evaluate the effects of serious injury and mortality, we first calculate a metric that incorporates information regarding ongoing anthropogenic serious injury and mortality into the PBR value (*i.e.*, PBR minus the total annual anthropogenic mortality/serious injury estimate), which is called “residual PBR”. We then consider how the anticipated potential incidental serious injury and mortality from the activities being evaluated compares to residual PBR. Anticipated or potential serious injury and mortality that exceeds residual PBR is considered to have a higher likelihood of adversely affecting rates of recruitment or survival, while anticipated serious injury and mortality that is equal to or less than residual PBR has a lower likelihood (both examples given without consideration of other types of take, which also factor into a negligible impact determination). For a species or stock with incidental serious injury and mortality less than 10 percent of residual PBR, we consider serious injury and mortality from the specified activities to represent an insignificant incremental increase in ongoing anthropogenic serious injury and mortality that alone (*i.e.*, in the absence of any other take) cannot affect annual rates of recruitment and survival.

Regarding the impacts of the specified activities analyzed here, a stock-wide PBR for ringed seals is unknown; however, Muto *et al.* (2019) estimate PBR for ringed seals in the Bearing Sea alone to be 4,755 seals. Total annual mortality and serious injury is 700 for a residual PBR (r-PBR) of 4,055, which means that the 10 percent insignificance threshold is 406 seals. Currently there is one authorized MMPA ITA authorizing takes of serious injury/mortality of ringed seals as a result of NMFS Alaska

Fisheries Science Center fisheries research activities in the Arctic (84 FR 46788; September 5, 2019). This authorization authorizes up to four mortalities annually over the 5-year regulation. In the case of the Hilcorp-Eni ice roads and ice trails construction, the authorized taking, by serious injury and mortality, of 12 ringed seals over the course of 5 years, equates to an average of less than four seals serious injury/mortality annually. This number is far less than the 10 percent r-PBR of 405 seals, when considering mortality and serious injuring caused by other anthropogenic sources. This amount of take, by mortality and serious injury, is considered insignificant and therefore supports our negligible impact finding.

Harassment

Hilcorp and Eni requested, and NMFS is authorizing, take, by Level B harassment, of ringed seals. The amount of taking to be authorized is low compared to marine mammal abundance. Potential impacts of Hilcorp-Eni’s ice roads and ice trails construction activities are mostly from behavioral disturbances due to exposure to machinery and human activity. The potential effect of the Level B harassment is expected to be localized and brief. The construction crew would be required to closely monitor ringed seals in the vicinity of the project activity and to make sure that potential impacts are within the levels that are analyzed.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- Only 12 ringed seals are authorized to be taken by serious injury/mortality over 5 years; *i.e.*, less than 0.1 percent of residual PBR (considering only a partial abundance estimate);
- No injury by permanent hearing threshold shift is expected;

- The only harassment is Level B harassment in the form of brief and localized behavioral disturbance and avoidance;

- The amount of takes, by harassment, is low compared to population sizes;

- Critical behaviors such as lairing and pupping by ringed seals would be avoided and minimized through implementation of ice road Best Management Plans;

- No long lasting modification in marine mammal habitat; and

- Ice roads/trails construction and maintenance would only occur between December and May each year.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(A) of the MMPA for specified activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of total taking (*i.e.*, Level B harassment and serious injury/mortality) of ringed seal each year is less than 1 percent of the population (Table 7).

TABLE 7—AMOUNT OF RINGED SEAL AUTHORIZED TAKE RELATIVE TO POPULATION ESTIMATES (N_{best})

| Species | Stock | Population estimate | Total take | Percent of population |
|-------------------|--------------|---------------------|------------|-----------------------|
| Ringed seal | Alaska | 170,000 | 27 | <1 |

Based on the analysis contained herein of the activity (including the prescribed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will

be taken relative to the population sizes of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

In order to issue an ITA, NMFS must find that the specified activity will not

have an “unmitigable adverse impact” on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined “unmitigable adverse impact” in 50 CFR 216.103 as an impact resulting from the specified activity: (1) That is likely to

reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

As described in the Effects of Specified Activities on Subsistence Uses of Marine Mammals section of the document, ringed seal is one of the key subsistence species that is being harvested by native subsistence users. However, the ice roads/trails construction and maintenance would occur far from any subsistence activities and would be separated temporarily from subsistence activities. In addition, Hilcorp and Eni have proposed and NMFS has included several mitigation measures to address potential impacts on the availability of marine mammals for subsistence use. In addition, both Hilcorp and Eni have developed POCs and worked with subsistence use communities in the vicinity of the project areas. Hilcorp and Eni further indicate that they will sign a CAA to ensure that there will be no unmitigable impact on subsistence uses of marine mammals during the ice roads and ice trails construction and maintenance.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the mitigation and monitoring measures, NMFS has determined that there will not be an unmitigable adverse impact on subsistence uses from Hilcorp and Eni's activities.

Adaptive Management

The regulations governing the take of marine mammals incidental to Hilcorp and Eni's ice roads/trails construction and maintenance activities contain an adaptive management component.

The reporting requirements associated with this final rule are designed to provide NMFS with monitoring data from the previous year to allow consideration of whether any changes are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from Hilcorp and Eni regarding practicability) on an annual or biennial basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such

modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) Results from monitoring reports, as required by MMPA authorizations; (2) results from general marine mammal and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOAs.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the promulgation of regulations and subsequent issuance of incidental take authorization) with respect to potential impacts on the human environment.

Accordingly, NMFS prepared an Environmental Assessment (EA) and issued a Finding of No Significant Impact (November 2020) to consider the environmental impacts associated with the final rule.

NMFS' final EA is available online at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>.

Endangered Species Act (ESA)

Section 7(a)(2) of the ESA of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of ITAs, NMFS consults internally, in this case with the Alaska Region Protected Resources Division, whenever we propose to authorize take for endangered or threatened species.

Pursuant to the MMPA and through these regulations and the associated LOA, NMFS is authorizing take of Alaska stock of ringed seal, which is listed under the ESA.

The Permit and Conservation Division requested initiation of section 7 consultation with the Alaska Region Protected Resources Division for the promulgation of 5-year regulations and the subsequent issuance of LOAs. The Alaska Region Protected Resources Division issued a Biological Opinion (March 2020) concluding that NMFS'

action is not likely to result in jeopardy to the species named above or adversely modify their critical habitat.

Classification

Pursuant to the procedures established to implement Executive Order 12866, the Office of Management and Budget has determined that this final rule is not significant.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration at the proposed rule stage that this action will not have a significant economic impact on a substantial number of small entities. Hilcorp and Eni are the only entities that would be subject to the requirements in these final regulations. During construction, Hilcorp and Eni would employ or contract hundreds of people and the ice roads and trails construction would generate a large sum of revenues. Therefore, Hilcorp and Eni are not small governmental jurisdictions, small organizations, or small businesses, as defined by the RFA. No comments were received regarding this certification or on the economic impacts of the rule more generally. As a result, a regulatory flexibility analysis is not required and none has been prepared. Notwithstanding any other provision of law, no person is required to respond to nor must a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number. This final rule contains collection-of-information requirements subject to the provisions of the PRA. These requirements have been approved by OMB under control number 0648-0151 and include applications for regulations, subsequent LOAs, and reports.

Waiver of Delay in Effective Date

The Assistant Administrator for NMFS has determined that there is good cause under the Administrative Procedure Act (5 U.S.C. 553(d)(3)) to waive the 30-day delay in the effective date of this final rule. No individual or entity other than Hilcorp and Eni is affected by the provisions of these regulations. Hilcorp and Eni have informed NMFS that they request that this final rule take effect as soon as is possible so as to avoid the potential for disruption in Hilcorp and Eni's planned activities. The delay in the issuance of the final rule would cause serious impacts on operations by Hilcorp and

Eni in the project areas, as the companies rely on the short ice-covered season for various activities on the North Slope. NMFS was unable to accommodate the 30-day delay of effectiveness period due to the need for additional time to address public comment and carry out required reviews, including, in particular, to ensure an accurate assessment of the likelihood of seal mortality and serious injury from Hilcorp and Eni's construction activities. For these reasons, NMFS finds good cause to waive the 30-day delay in the effective date.

List of Subjects in 50 CFR Part 217

Administrative practice and procedure, Alaska, Endangered and threatened species, Indians, Marine mammals, Oil and gas exploration, Reporting and recordkeeping requirements, Wildlife.

Dated: November 24, 2020.

Samuel D. Rauch, III,

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

For reasons set forth in the preamble, 50 CFR part 217 is amended as follows:

PART 217—REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

■ 2. Add subpart P to read as follows:

Subpart P—Taking Marine Mammals Incidental to Ice Roads and Ice Trails Construction and Maintenance on Alaska's North Slope

Sec.

- 217.150 Specified activity and specified geographical region.
- 217.151 Effective dates.
- 217.152 Permissible methods of taking.
- 217.153 Prohibitions.
- 217.154 Mitigation requirements.
- 217.155 Requirements for monitoring and reporting.
- 217.156 Letters of Authorization.
- 217.157 Renewals and modifications of Letters of Authorization.
- 217.158–217.159 [Reserved]

Subpart P—Taking Marine Mammals Incidental to Ice Roads and Ice Trails Construction and Maintenance on Alaska's North Slope

§ 217.150 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to Hilcorp Alaska, LLC (Hilcorp) and Eni US Operating Co. Inc. (Eni) and those persons they authorize or fund to conduct activities on their behalf for the taking of marine mammals that occurs in the areas outlined in paragraph (b) of this section and that occurs incidental to construction and maintenance of ice roads and ice trails.

(b) The taking of marine mammals by Hilcorp and Eni may be authorized in two Letters of Authorization (LOAs) only if it occurs on Alaska's North Slope.

§ 217.151 Effective dates.

Regulations in this subpart are effective from December 22, 2020 through November 30, 2025.

§ 217.152 Permissible methods of taking.

Under LOAs issued pursuant to § 216.106 of this chapter and 217.156, the Holders of the LOAs (hereinafter "Hilcorp" and "Eni") may incidentally, but not intentionally, take marine mammals within the area described in § 217.150(b) by mortality, serious injury, Level A harassment, or Level B harassment associated with ice road and ice trail construction and maintenance activities, provided the activities are in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOAs.

§ 217.153 Prohibitions.

Notwithstanding takings contemplated in § 217.152 and authorized by the LOAs issued under §§ 216.106 of this chapter and 217.156, no person in connection with the activities described in § 217.150 may:

- (a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or an LOA issued under §§ 216.106 of this chapter and 217.156;
- (b) Take any marine mammal not specified in such LOAs;
- (c) Take any marine mammal specified in such LOAs in any manner other than as specified;
- (d) Take a marine mammal specified in such LOAs if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(e) Take a marine mammal specified in such LOAs if NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such

marine mammal for taking for subsistence uses.

§ 217.154 Mitigation requirements.

When conducting the activities identified in § 217.150(a), the mitigation measures contained in any LOA issued under §§ 216.106 of this chapter and 217.156 must be implemented. These mitigation measures shall include but are not limited to:

(a) *General conditions.* (1) Hilcorp and Eni must renew, on an annual basis, the Plans of Cooperation (POCs), throughout the life of the regulations;

(2) Copies of any issued LOAs must be in the possession of Hilcorp and Eni, their designees, and work crew personnel operating under the authority of the issued LOAs; and

(3) Prior to initiation of sea ice road- and ice trail-related activities, project personnel associated with ice road construction, maintenance, use or decommissioning must receive annual training on implementing mitigation and monitoring measures:

- (i) Personnel must be advised that interactions with, or approaching, any wildlife is prohibited;
- (ii) Annual training must also include reviewing Hilcorp and Eni's Wildlife Management Plan; and
- (iii) In addition to the mitigation and monitoring plans, other topics in the training must include:

(A) Ringed seal identification and brief life history;

(B) Physical environment (habitat characteristics and how to potentially identify habitat);

(C) Ringed seal use in the ice road region (timing, location, habitat use, birthing lairs, breathing holes, basking, etc.);

(D) Potential effects of disturbance; and

(E) Importance of lairs, breathing holes and basking to ringed seals.

(b) *General mitigation measures throughout the Ice Road/Trail Season (December through May).* (1) Ice road/trail speed limits must be no greater than 72.4 km (45 miles) per hour (mph); speed limits must be determined on a case-by-case basis based on environmental, road conditions and ice road/trail longevity considerations;

(2) Following existing safety measures, delineators must mark the roadway in a minimum of 0.4 km (1/4-mile) increments on both sides of the ice road to delineate the path of vehicle travel and areas of planned on-ice activities (e.g., emergency response exercises). Following existing safety measures currently used for ice trails, delineators must mark one side of an ice trail a minimum of every 0.4 km (1/4

mile). Delineators must be color-coded, following existing safety protocol, to indicate the direction of travel and location of the ice road or trail;

(3) Corners of rig mats, steel plates, and other materials used to bridge sections of hazardous ice, must be clearly marked or mapped using GPS coordinates of the locations; and

(4) Personnel must be instructed to remain in the vehicle and safely continue, if they encounter a ringed seal while driving on the road.

(c) *Additional mitigation measures after March 1st.* In addition to the general mitigation measures listed in § 217.154(b), the following measures must also be implemented after March 1st:

(1) Ice road/trail construction, maintenance and decommissioning must be performed within the boundaries of the road/trail and shoulders, with most work occurring within the driving lane. To the extent practicable and when safety of personnel is ensured, equipment must travel within the driving lane and shoulder areas.

(2) Blading and snow blowing of ice roads must be limited to the previously disturbed ice road/shoulder areas to the extent safe and practicable. Snow must be plowed or blown from the ice road surface.

(3) In the event snow is accumulating on a road within a 50 m (164 ft) radius of an identified downwind seal or seal lair, operational measures must be used to avoid seal impacts, such as pushing snow further down the road before blowing it off the roadway. Vehicles must not stop within 50 m (164 ft) of identified seals or within 150 m (500 ft) of known seal lairs.

(4) To the extent practicable and when safety of personnel is ensured, tracked vehicle operation must be limited to the previously disturbed ice trail areas. When safety requires a new ice trail to be constructed after March 1st, construction activities such as drilling holes in the ice to determine ice quality and thickness, must be conducted only during daylight hours with good visibility.

(5) Ringed seal structures must be avoided by a minimum of 50 m (164 ft) during ice testing and new trail construction.

(6) Once the new ice trail is established, tracked vehicle operation must be limited to the disturbed area to the extent practicable and when safety of personnel is ensured.

(7) If a seal is observed on ice within 50 m (164 ft) of the centerline of the ice road/trail, the following mitigation measures must be implemented:

(i) Construction, maintenance or decommissioning activities associated with ice roads and trails must not occur within 50 m (164 ft) of the observed ringed seal, but may proceed as soon as the ringed seal, of its own accord, moves farther than 50 m (164 ft) distance away from the activities or has not been observed within that area for at least 24 hours; and

(ii) Transport vehicles (*i.e.*, vehicles not associated with construction, maintenance or decommissioning) may continue their route within the designated road/trail without stopping.

§ 217.155 Requirements for monitoring and reporting.

(a) All marine mammal monitoring must be conducted in accordance with Hilcorp and Eni's Marine Mammal Mitigation and Monitoring Plan (4MP). This plan may be modified throughout the life of the regulations upon NMFS review and approval.

(b) General monitoring measures will be implemented through the entire ice road/trail season including during construction, maintenance, use and decommissioning.

(1) If a ringed seal is observed within 50 m (164 ft) of the center of an ice road or trail, the operator's Environmental Specialist must be immediately notified with the information provided in paragraph (e) of this section.

(i) The Environmental Specialist must relay the seal sighting location information to all ice road personnel and the company's office personnel responsible for wildlife interaction, following notification protocols described in the company-specific Wildlife Management Plan. All other data will be recorded and logged.

(ii) The Environmental Specialist or designated person must monitor the ringed seal to document the animal's location relative to the road/trail. All work that is occurring when the ringed seal is observed and the behavior of the seal during those activities must be documented until the animal is at least 50 m (150 ft) away from the center of the road/trail or is no longer observed.

(2) [Reserved]

(c) Additional monitoring measures after March 1st. In addition to the general monitoring measures listed in § 217.155(b), the following measures must also be implemented after March 1st:

(1) If an ice road or trail is being actively used, under daylight conditions with good visibility, a dedicated observer (not the vehicle operator) must conduct a survey along the sea ice road/trail to observe if any ringed seals are within 150 m (500 ft) of the roadway

corridor. The following survey protocol must be implemented:

(i) Surveys must be conducted every other day during daylight hours;

(ii) Observers for ice road activities must have received the training described in § 217.154(a) and understand the applicable sections of the Wildlife Interaction Plan;

(iii) Observers for ice road activities must be capable of detecting, observing and monitoring ringed seal presence and behaviors, and accurately and completely recording data;

(iv) Observers must have no other primary duty than to watch for and report observations related to ringed seals during this survey; and

(v) If weather conditions become unsafe, the observer may be removed from the monitoring activity.

(2) If a ringed seal structure (*i.e.*, breathing hole or lair) is observed within 50 m (150 ft) of the ice road/trail, the location of the structure must be reported to the Environmental Specialist and:

(i) An observer must monitor the structure every 6 hours on the day of the initial sighting to determine whether a ringed seal is present.

(ii) Monitoring for the seal must occur every other day the ice road is being used unless it is determined the structure is not actively being used (*i.e.*, a seal is not sighted at that location during monitoring).

(d) Engaging with subsistence hunters for monitoring recommendations.

(1) Hilcorp and Eni must engage local hunters through the Ice Seal Committee point of contact to gather recommendations on methods for ringed seal detection along sea ice roads/trails within the exposure areas.

(2) Hilcorp and Eni must incorporate these recommendations into Hilcorp and Eni's training materials provided to personnel responsible for monitoring for ringed seals along sea ice roads/trails.

(e) Reporting requirement at the end-of-season.

(1) A final end-of-season report compiling all ringed seal observations must be submitted to NMFS Office of Protected Resources within 90 days of decommissioning the ice roads/trails annually. The report must include:

(i) Date, time, location of observation;

(ii) Ringed seal characteristics (*i.e.*, adult or pup, behavior (avoidance, resting, *etc.*));

(iii) Activities occurring during observation including equipment being used and its purpose, and approximate distance to ringed seal(s);

(iv) Actions taken to mitigate effects of interaction emphasizing:

(A) Which mitigation and/or monitoring measures were successful;

(B) Which mitigation and/or monitoring measures may need to be improved to reduce interactions with ringed seals;

(C) The effectiveness and practicality of implementing mitigation and monitoring measures;

(D) Any issues or concerns regarding implementation of mitigation and/or monitoring measures; and

(E) Potential effects of interactions based on observation data;

(v) Proposed updates (if any) to Wildlife Interaction Plan(s) or Mitigation and Monitoring Measures; and

(vi) The methods used for detection of seals and seal structures with an assessment of their effectiveness.

(2) In the event a seal is killed or seriously injured by ice road/trail activities, Hilcorp or Eni must immediately cease the specified activities and report the incident to the NMFS Office of Protected Resources (301-427-8401) and Alaska Region Stranding Coordinator (877-925-7773). The report must include the following information:

(i) Time and date of the incident;

(ii) Description of the incident;

(iii) Environmental conditions (*e.g.*, cloud over, and visibility);

(iv) Description of all marine mammal observations in the 24 hours preceding the incident;

(v) Species identification or description of the animal(s) involved;

(vi) Fate of the animal(s); and

(vii) Photographs or video footage of the animal(s).

(3) In the event ice road/trail personnel discover a dead or injured seal but the cause of injury or death is unknown or believed not to be related to ice road/trail activities, Hilcorp or Eni must report the incident to the NMFS Office of Protected Resources (301-427-8401) and Alaska Region Stranding Coordinator (877-925-7773) within 48 hours of discovery.

§ 217.156 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, Hilcorp and Eni must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, Hilcorp or Eni may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, Hilcorp and Eni must apply for

and obtain a modification of the LOA as described in § 217.57.

(e) The LOAs shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.*, mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOAs shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA shall be published in the **Federal Register** within 30 days of a determination.

§ 217.157 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 of this chapter and 217.156 for the activity identified in § 217.150(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOAs under these regulations were implemented.

(b) For LOAs modification or renewal requests by the applicants that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOAs in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) The LOAs issued under §§ 216.106 of this chapter and 217.156 for the activity identified in § 217.150(a) may be modified by NMFS under the following circumstances:

(1) *Adaptive management.* NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with Hilcorp or Eni regarding the practicability of the

modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from Hilcorp or Eni's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) *Emergencies.* If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to §§ 216.106 of this chapter and 217.156, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within 30 days of the action.

§§ 217.158—217.159 [Reserved]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 200227-0066]

RTID 0648-XA727

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2021 Bering Sea and Aleutian Islands Pollock, Atka Mackerel, and Pacific Cod Total Allowable Catch Amounts

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

ACTION: Temporary rule; inseason adjustment; request for comments.

SUMMARY: NMFS is adjusting the 2021 total allowable catch (TAC) amounts for the Bering Sea and Aleutian Islands

(BSAI) pollock, Atka mackerel, and Pacific cod fisheries. This action is necessary because NMFS has determined these TACs are incorrectly specified, and will ensure the BSAI pollock, Atka mackerel, and Pacific cod TACs are the appropriate amounts based on the best available scientific information. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.

DATES: Effective 0001 hours, Alaska local time (A.l.t.), January 1, 2021, until the effective date of the final 2021 and 2022 harvest specifications for BSAI groundfish, unless otherwise modified or superseded through publication of a notification in the **Federal Register**.

Comments must be received at the following address no later than 4:30 p.m., A.l.t., January 6, 2021.

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

- *Federal e-Rulemaking Portal:* Go to www.regulations.gov#!/docketDetail;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, Attn: Records. 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), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 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 Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council (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 final 2020 and 2021 harvest specifications for groundfish in the BSAI (85 FR 13553, March 9, 2020) set the 2021 Aleutian Islands (AI) pollock TAC at 19,000 metric tons (mt), the 2021 Bering Sea (BS) pollock TAC at 1,450,000 mt, the 2021 BSAI Atka mackerel TAC at 54,482 mt, the 2021 BS Pacific cod TAC at 92,633 mt, and the 2021 AI Pacific cod TAC at 13,796 mt. In December 2020, the Council recommended a 2021 BS pollock TAC of 1,375,000 mt, which is less than the 1,450,000 mt TAC established by the final 2020 and 2021 harvest specifications for groundfish in the BSAI. The Council also recommended a 2021 BSAI Atka mackerel TAC of 62,257 mt, which is more than the 54,482 mt TAC established by the final 2020 and 2021 harvest specifications for groundfish in the BSAI. Furthermore, the Council recommended a 2021 BS Pacific cod TAC of 111,380 mt, and an AI Pacific cod TAC of 13,796 mt, which is more than the BS Pacific cod TAC of 92,633 mt, and the same as the AI Pacific cod TAC of 13,796 mt established by the final 2020 and 2021 harvest specifications for groundfish in the BSAI. The Council’s recommended 2021 TACs, and the area and seasonal apportionments, are based on the Stock Assessment and Fishery Evaluation report (SAFE), dated November 2020, which NMFS has determined is the best available scientific information for these fisheries.

Steller sea lions occur in the same location as the pollock, Atka mackerel, and Pacific cod fisheries and are listed as endangered under the Endangered Species Act (ESA). Pollock, Atka mackerel, and Pacific cod are a principal prey species for Steller sea lions in the BSAI. The seasonal apportionment of pollock, Atka mackerel, and Pacific cod harvest is necessary to ensure the groundfish fisheries are not likely to cause jeopardy of extinction or adverse modification of critical habitat for Steller sea lions. NMFS published regulations and the revised harvest limit amounts for pollock, Atka mackerel, and Pacific cod fisheries to implement Steller sea lion protection measures to insure that groundfish fisheries of the BSAI are not likely to jeopardize the continued existence of the western distinct population segment of Steller sea lions or destroy or adversely modify their designated critical habitat (79 FR 70286, November 25, 2014).

In accordance with § 679.25(a)(1)(iii), (a)(2)(i)(B), and (a)(2)(iv), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the November 2020 SAFE report for this fishery, the current BSAI pollock, Atka mackerel, and Pacific cod TACs are incorrectly specified. Pursuant to § 679.25(a)(1)(iii), the Regional Administrator is adjusting the 2021 BS pollock TAC to 1,375,000 mt, the 2021 BSAI Atka mackerel TAC to 62,257 mt, and the 2021 BS Pacific cod TAC to 111,380 mt. Therefore, Table 2 of the final 2020 and 2021 harvest specifications for groundfish in the BSAI (85 FR 13553, March 9, 2020) is revised consistent with this adjustment.

Pursuant to § 679.20(a)(5)(i) and (iii), Table 5 of the final 2020 and 2021 harvest specifications for groundfish in the BSAI (85 FR 13553, March 9, 2020) is revised for the 2021 BS and AI allocations of pollock TAC to the directed pollock fisheries and to the Community Development Quota (CDQ) directed fishing allowances consistent with this adjustment.

TABLE 5—FINAL 2021 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) ¹

[Amounts are in metric tons]

| Area and sector | 2021 Allocations | 2021 A season ¹ | | 2021 B season ¹ |
|---|------------------|----------------------------|--------------------------------|----------------------------|
| | | A season DFA | SCA harvest limit ² | B season DFA |
| Bering Sea subarea TAC ¹ | 1,375,000 | n/a | n/a | n/a |
| CDQ DFA | 137,500 | 61,875 | 38,500 | 75,625 |
| ICA ¹ | 49,500 | n/a | n/a | n/a |
| Total Bering Sea non-CDQ DFA | 1,188,000 | 534,600 | 332,640 | 653,400 |

TABLE 5—FINAL 2021 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) ¹—Continued

[Amounts are in metric tons]

| Area and sector | 2021 Allocations | 2021 A season ¹ | | 2021 B season ¹ |
|---|------------------|----------------------------|--------------------------------|----------------------------|
| | | A season DFA | SCA harvest limit ² | B season DFA |
| AFA Inshore | 594,000 | 267,300 | 166,320 | 326,700 |
| AFA Catcher/Processors ³ | 475,200 | 213,840 | 133,056 | 261,360 |
| Catch by CPs | 434,808 | 195,664 | n/a | 239,144 |
| Catch by CVs ³ | 40,392 | 18,176 | n/a | 22,216 |
| Unlisted CP Limit ⁴ | 2,376 | 1,069 | n/a | 1,307 |
| AFA Motherships | 118,800 | 53,460 | 33,264 | 65,340 |
| Excessive Harvesting Limit ⁵ | 207,900 | n/a | n/a | n/a |
| Excessive Processing Limit ⁶ | 356,400 | n/a | n/a | n/a |
| Aleutian Islands subarea ABC | 58,384 | n/a | n/a | n/a |
| Aleutian Islands subarea TAC ¹ | 19,000 | n/a | n/a | n/a |
| CDQ DFA | 1,900 | 1,900 | n/a | ..... |
| ICA | 2,400 | 1,200 | n/a | 1,200 |
| Aleut Corporation | 14,700 | 14,700 | n/a | ..... |
| Area harvest limit ⁷ | n/a | n/a | n/a | n/a |
| 541 | 17,515 | n/a | n/a | n/a |
| 542 | 8,758 | n/a | n/a | n/a |
| 543 | 2,919 | n/a | n/a | n/a |
| Bogoslof District ICA ⁸ | 250 | n/a | n/a | n/a |

¹ Pursuant to § 679.20(a)(5)(i)(A), the Bering Sea subarea pollock TAC, after subtracting the CDQ DFA (10 percent) and the ICA (4 percent), is allocated as a DFA as follows: Inshore sector—50 percent, catcher/processor sector (CP)—40 percent, and mothership sector—10 percent. In the Bering Sea subarea, 45 percent of the DFA is allocated to the A season (January 20–June 10) and 55 percent of the DFA is allocated to the B season (June 10–November 1). Pursuant to § 679.20(a)(5)(iii)(B)(2)(i) through (iii), the annual Aleutian Islands subarea pollock TAC, after subtracting first for the CDQ DFA (10 percent) and second for the ICA (2,400 mt), is allocated to the Aleut Corporation for a pollock directed fishery. In the Aleutian Islands subarea, the A season is allocated up to 40 percent of the Aleutian Islands pollock ABC.

² In the Bering Sea subarea, pursuant to § 679.20(a)(5)(i)(C), no more than 28 percent of each sector's annual DFA may be taken from the SCA before noon, April 1.

³ Pursuant to § 679.20(a)(5)(i)(A)(4), 8.5 percent of the DFA allocated to listed CPs shall be available for harvest only by eligible catcher vessels with a CP endorsement delivering to listed CPs, unless there is a CP sector cooperative for the year.

⁴ Pursuant to § 679.20(a)(5)(i)(A)(4)(iii), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processor sector's allocation of pollock.

⁵ Pursuant to § 679.20(a)(5)(i)(A)(6), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

⁶ Pursuant to § 679.20(a)(5)(i)(A)(7), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the non-CDQ pollock DFAs.

⁷ Pursuant to § 679.20(a)(5)(iii)(B)(6), NMFS establishes harvest limits for pollock in the A season in Area 541 of no more than 30 percent, in Area 542 of no more than 15 percent, and in Area 543 of no more than 5 percent of the Aleutian Islands pollock ABC.

⁸ Pursuant to § 679.22(a)(7)(B), the Bogoslof District is closed to directed fishing for pollock. The amounts specified are for incidental catch only and are not apportioned by season or sector.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Pursuant to § 679.20(a)(8), Table 7 of the final 2020 and 2021 harvest specifications for groundfish in the BSAI (85 FR 13553, March 9, 2020) is

revised for the 2021 seasonal and spatial allowances, gear shares, CDQ reserve, incidental catch allowance, jig, BSAI trawl limited access, and Amendment

80 allocations of the BSAI Atka mackerel TAC consistent with this adjustment.

TABLE 7—FINAL 2021 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC

[Amounts are in metric tons]

| Sector ¹ | Season ^{2 3 4} | 2021 Allocation by area | | |
|---------------------------------|-------------------------|---------------------------------------|--|---------------------------|
| | | Eastern aleutian district/ Bering Sea | Central aleutian district ⁵ | Western aleutian district |
| TAC | n/a | 25,760 | 15,450 | 21,047 |
| CDQ reserve | Total | 2,756 | 1,653 | 2,252 |
| | A | 1,378 | 827 | 1,126 |
| | Critical Habitat | n/a | 496 | 676 |
| | B | 1,378 | 827 | 1,126 |
| | Critical Habitat | n/a | 496 | 676 |
| Non-CDQ TAC | n/a | 23,004 | 13,797 | 18,795 |
| ICA | Total | 800 | 75 | 20 |
| Jig ⁶ | Total | 111 | ..... | ..... |
| BSAI trawl limited access | Total | 2,209 | 1,372 | ..... |

TABLE 7—FINAL 2021 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC—Continued

[Amounts are in metric tons]

| Sector ¹ | Season ^{2 3 4} | 2021 Allocation by area | | |
|---------------------------|-------------------------|---------------------------------------|--|---------------------------|
| | | Eastern aleutian district/ Bering Sea | Central aleutian district ⁵ | Western aleutian district |
| Amendment 80 sector | A | 1,105 | 686 | ..... |
| | Critical Habitat | n/a | 412 | ..... |
| | B | 1,105 | 686 | ..... |
| | Critical Habitat | n/a | 412 | ..... |
| | Total | 19,883 | 12,350 | 18,775 |
| | A | 9,942 | 6,175 | 9,387 |
| | Critical Habitat | n/a | 3,705 | 5,632 |
| | B | 9,942 | 6,175 | 9,387 |
| | Critical Habitat | n/a | 3,705 | 5,632 |

¹ Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtracting the CDQ reserves, jig gear allocation, and ICAs, to the Amendment 80 and BSAI trawl limited access sectors. The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to 50 CFR part 679 and § 679.91. The CDQ reserve is 10.7 percent of the TAC for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31).

² Sections 679.20(a)(8)(ii)(A) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.

³ The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.

⁴ Section 679.23(e)(3) authorizes directed fishing for Atka mackerel with trawl gear during the A season from January 20 to June 10 and the B season from June 10 to December 31.

⁵ Section 679.20(a)(8)(ii)(C)(1)(i) limits no more than 60 percent of the annual TACs in Areas 542 and 543 to be caught inside of Steller sea lion critical habitat; section 679.20(a)(8)(ii)(C)(1)(ii) equally divides the annual TACs between the A and B seasons as defined at § 679.23(e)(3); and section 679.20(a)(8)(ii)(C)(2) requires that the TAC in Area 543 shall be no more than 65 percent of ABC in Area 543.

⁶ Sections 679.2 and 679.20(a)(8)(i) require that up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea TAC be allocated to jig gear after subtracting the CDQ reserve and the ICA. NMFS sets the amount of this allocation for 2021 at 0.5 percent. The jig gear allocation is not apportioned by season.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Pursuant to § 679.20(a)(7), Table 9 of the final 2020 and 2021 harvest specifications for groundfish in the BSAI (85 FR 13553, March 9, 2020) is revised for the 2021 gear shares and seasonal allowances of the BSAI Pacific cod TAC consistent with this adjustment.

TABLE 9—FINAL 2021 SECTOR ALLOCATIONS AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC

[Amounts are in metric tons]

| Sector | Percent | 2021 Share of total | 2021 Share of sector total | 2021 Seasonal apportionment | |
|---|---------|---------------------|----------------------------|---------------------------------|--------|
| | | | | Season | Amount |
| BS TAC | n/a | 111,380 | n/a | n/a | n/a |
| BS CDQ | n/a | 11,918 | n/a | see § 679.20(a)(7)(i)(B) | n/a |
| BS non-CDQ TAC | n/a | 99,462 | n/a | n/a | n/a |
| AI TAC | n/a | 13,796 | n/a | n/a | n/a |
| AI CDQ | n/a | 1,476 | n/a | see § 679.20(a)(7)(i)(B) | n/a |
| AI non-CDQ TAC | n/a | 12,320 | n/a | n/a | n/a |
| Western Aleutian Island Limit | n/a | 2,166 | n/a | n/a | n/a |
| Total BSAI non-CDQ TAC ¹ | 100 | 111,782 | n/a | n/a | n/a |
| Total hook-and-line/pot gear | 60.8 | 67,964 | n/a | n/a | n/a |
| Hook-and-line/pot ICA ² | n/a | 400 | n/a | see § 679.20(a)(7)(ii)(B) | n/a |
| Hook-and-line/pot sub-total | n/a | 67,564 | n/a | n/a | n/a |
| Hook-and-line catcher/processor | 48.7 | n/a | 54,118 | Jan 1–Jun 10 | 27,600 |
| | | | | Jun 10–Dec 31 | 26,518 |
| Hook-and-line catcher vessel ≥60 ft LOA | 0.2 | n/a | 222 | Jan 1–Jun 10 | 113 |
| | | | | Jun 10–Dec 31 | 109 |
| Pot catcher/processor | 1.5 | n/a | 1,667 | Jan 1–Jun 10 | 850 |
| | | | | Sept 1–Dec 31 | 817 |
| Pot catcher vessel ≥60 ft LOA | 8.4 | n/a | 9,334 | Jan 1–Jun 10 | 4,761 |
| | | | | Sept 1–Dec 31 | 4,574 |
| Catcher vessel <60 ft LOA using hook-and-line or pot gear | 2.0 | n/a | 2,222 | n/a | n/a |
| Trawl catcher vessel | 22.1 | 24,704 | n/a | Jan 20–Apr 1 | 18,281 |
| | | | | Apr 1–Jun 10 | 2,717 |
| | | | | Jun 10–Nov 1 | 3,706 |
| AFA trawl catcher/processor | 2.3 | 2,571 | n/a | Jan 20–Apr 1 | 1,928 |
| | | | | Apr 1–Jun 10 | 643 |
| | | | | Jun 10–Nov 1 ..... | ..... |
| Amendment 80 | 13.4 | 14,979 | n/a | Jan 20–Apr 1 | 11,234 |
| | | | | Apr 1–Jun 10 | 3,745 |
| | | | | Jun 10–Dec 31 ..... | ..... |
| Jig | 1.4 | 1,565 | n/a | Jan 1–Apr 30 | 939 |
| | | | | Apr 30–Aug 31 | 313 |

TABLE 9—FINAL 2021 SECTOR ALLOCATIONS AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC—Continued
 [Amounts are in metric tons]

| Sector | Percent | 2021 Share of total | 2021 Share of sector total | 2021 Seasonal apportionment | |
|--------|---------|---------------------|----------------------------|-----------------------------|--------|
| | | | | Season | Amount |
| | | | | Aug 31–Dec 31 | 313 |

¹ The sector allocations and seasonal allowances for BSAI Pacific cod TAC are based on the sum of the BS and AI Pacific cod TACs, after the subtraction of the reserves for the CDQ Program. If the TAC for Pacific cod in either the AI or BS is or will be reached, then directed fishing for Pacific cod in that subarea will be prohibited, even if a BSAI allowance remains (§ 679.20(d)(1)(iii)).

² The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator approves an ICA of 400 mt for 2021 based on anticipated incidental catch in these fisheries.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

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 allow for harvests that exceed the appropriate allocations for pollock, Atka mackerel, and Pacific cod in the BSAI based on the best scientific information available. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 12, 2020.

Without this inseason adjustment, NMFS could not allow the fishery for pollock, Atka mackerel, and Pacific cod in the BSAI to be harvested in an

expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until January 6, 2021.

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

Dated: December 17, 2020.

Jennifer M. Wallace,

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

[FR Doc. 2020–28190 Filed 12–21–20; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 85, No. 246

Tuesday, December 22, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 257

[EPA-HQ-OLEM-2020-0463; FRL-10015-45-OLEM]

RIN 2050-AG98

Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Reconsideration of Beneficial Use Criteria and Piles; Notification of Data Availability

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of data availability; request for comment.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of new information and data pertaining to the agency's August 14, 2019 proposed rule **Federal Register** publication. EPA is seeking public comment on whether this additional information may inform the Agency's reconsideration of the beneficial use definition and provisions for coal combustion residuals (CCR) accumulations. Moreover, the Agency will accept additional information and data from the public that may further help inform the Agency's reconsideration of these two issues. The Agency is requesting comment only on those two issues. EPA is not reopening any other aspect of the proposal, the CCR regulations, or the underlying support documents that were previously available for comment.

DATES: Comments must be received on or before February 22, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OLEM-2020-0463, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you

consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Instructions: All submissions received must include the Docket ID No. EPA-HQ-OLEM-2020-0463 for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov/> or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: For questions concerning this document, contact Rita Chow, Office of Resource Conservation and Recovery, Resource Conservation and Sustainability Division, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Mail Code 5306-P, Washington DC 20460; telephone number: (703) 308-6158; email address: Chow.Rita@epa.gov. For more information on this

action please visit <https://www.epa.gov/coalash>.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Docket

EPA has established a docket for this action under Docket ID No. EPA-HQ-OLEM-2020-0463. EPA has previously established dockets for the April 17, 2015, CCR final rule (80 FR 21302) under Docket ID No. EPA-HQ-RCRA-2009-0640; and for the August 14, 2019, CCR proposed rule (84 FR 40353) under Docket ID No. EPA-HQ-OLEM-2018-0524. All documents in the docket are listed in an index at <https://www.regulations.gov/> under Docket ID No. EPA-HQ-OLEM-2018-0524. Publicly available docket materials are available electronically at <https://www.regulations.gov/> or in hard copy at the EPA Docket Center. The EPA Docket Center hours of operation are 8:30 a.m.–4:30 p.m., Monday through Friday (except Federal Holidays). The telephone number for the EPA Docket Center is (202) 566-1742.

The EPA is suspending its Docket Center and Reading Room for public visitors, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov/> as there may be a delay in processing mail and faxes. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at <https://www.epa.gov/dockets>.

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID-19.

B. Written Comments

Submit your comments, identified by Docket ID No. EPA-HQ-OLEM-2020-0463 at <https://www.regulations.gov/> (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment

received to its public docket. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. Comments submitted on any issues other than those specifically identified in this document will be considered “late comments,” and EPA will not respond to them, nor will they be part of the administrative record.

C. Submitting CBI

Do not submit information that you consider to be CBI electronically through <https://www.regulations.gov/> or email. Send or deliver information identified as CBI to only the following address: ORCR Document Control Officer, Mail Code 5305-P, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; Attn: Docket ID No. EPA-HQ-OLEM-2020-0463.

Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or a CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. If you submit a CD-ROM or disk that does not contain CBI, mark the outside of the disk or CD-ROM clearly that it does not contain CBI. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

II. General Information

1. Does this document apply to me?

This document applies to the electric utilities and independent power producers that fall within the North

American Industry Classification System (NAICS) code 221112 that generate CCR for disposal and beneficial use, and it may affect the following entities: Electric utility facilities and independent power producers that fall under the NAICS code 221112; Concrete batch plant manufacturing facilities under NAICS codes 327320, 32733, and 327390; Cement kiln manufacturing facilities under NAICS code 327310; Highway construction projects under NAICS code 237310; and Wallboard manufacturing plants under NAICS code 327420. It also may be of interest to CCR beneficial use stakeholders such as coal ash marketers and the agricultural industry; public interest groups, and citizens potentially impacted by CCR disposal and beneficial use. This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested in this document. This list includes the types of entities that EPA is now aware could potentially be interested in this document. Other types of entities could also be interested. To determine whether your entity is potentially impacted by this document, you should carefully examine this document, as well as the applicability criteria found in § 257.50 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

2. What is the purpose of this NODA?

With this document, EPA is accepting comment on data and information EPA received during the comment period on the “Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Enhancing Public Access to Information; Reconsideration of Beneficial Use Criteria and Piles” (84 FR 40353, Aug., 14, 2019) (hereinafter referred to as “August 2019 proposed rule”) and in follow-up meetings held with stakeholders between the end of May 2020 and August 2020, which may inform the Agency’s reconsideration of the beneficial use definition in 40 CFR.257.53 and the provisions for CCR accumulations. In this document, EPA uses the phrase “CCR accumulations” to capture any and all such accumulations, including those with CCR destined for beneficial use or disposal, and those that constitute disposal (such as a “CCR pile or pile” as defined in 40 CFR 257.53).¹ In making a decision on the

¹ During the development of the 2019 proposed rule, the Agency had not considered the compliance

beneficial use definition and provisions for CCR accumulations, EPA may consider information received as part of the initial comment period for the August 2019 proposed rule, information obtained after the close of the initial comment period in stakeholder meetings and added to the docket, and future information that may be submitted to EPA as a result of this document.

Some of the information included in this document was received during the comment period for the August 2019 proposed rule, such as information about the CCR compliance websites mandated by the rule titled, “Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities,” (80 FR 21302) (“2015 CCR rule” or “CCR rule”) being a potential data source. Other information included in this document was obtained after the close of the comment period, such as information from stakeholder meetings EPA held between the end of May 2020 and August 2020. Therefore, the information about the compliance websites mandated by the 2015 CCR rule as a data source and information from stakeholder meetings was not available for public comment during the initial comment period on the August 2019 proposed rule.² EPA is placing that information in the docket for this document and making it available for public comment.

EPA is still in the process of evaluating information contained in the docket for this document as potentially relevant to the two issues that the Agency is reconsidering—the beneficial use definition and provisions for CCR accumulations destined for beneficial use or disposal. Therefore, EPA cannot definitively state whether this information will provide support in the reconsideration of the beneficial use definition or the provisions for CCR accumulations or that the Agency has determined that it is appropriate to rely on this information to inform the Agency’s decision-making process on these issues. In addition, the specific

websites mandated by the 2015 CCR rule as a potential data and information source for EPA’s reconsideration of the provisions for CCR accumulations. However, several of the public comments EPA received on the August 2019 proposed rule referred to data on the utility CCR compliance websites.

² During the development of the 2019 proposed rule, the Agency had not considered the compliance websites mandated by the 2015 CCR rule as a potential data and information source for EPA’s reconsideration of the provisions for CCR accumulations. However, several of the public comments EPA received on the August 2019 proposed rule referred to data on the utility CCR compliance websites.

information contained in the docket for this document may not necessarily reflect all potentially relevant information available to support the Agency's reconsideration of the two issues. However, the Agency's intent is to ensure that the public has had a full and complete opportunity to comment on the information contained in the docket for this document, which EPA identified has the potential to be considered by the Agency. Therefore, EPA is, in this document, accepting the public's comment on the validity and suitability of using the information and data contained in the docket for this document. Moreover, through this document the Agency will accept additional data and information from the public that may help inform the reconsideration of the beneficial use definition and provisions for CCR accumulations destined for beneficial use or disposal.

In sum, by this action, EPA is providing public notice of information the Agency received in response to the initial comment period for the August 2019 proposed rule, providing notice of information that EPA obtained after the close of the initial comment period from stakeholder meetings, and accepting additional data and information that the public has that may help inform the reconsideration of the beneficial use definition and provisions for CCR accumulations destined for beneficial use or disposal. EPA is not reopening any existing regulations through this document.

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

EPA is publishing this document under the authority of sections 1008(a), 2002(a), 4004, and 4005(a) and (d) of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) and the Water Infrastructure Improvements for the Nation (WIIN) Act of 2016, 42 U.S.C. 6907(a), 6912(a), 6944, and 6945(a) and (d).

III. Background

On April 17, 2015, in the CCR rule EPA finalized national regulations to regulate the disposal of CCR as solid waste under subtitle D of the Resource Conservation and Recovery Act (RCRA). The CCR rule established national minimum criteria for existing and new CCR landfills, existing and new CCR surface impoundments, and all lateral expansions of these types of CCR units that are codified in Subpart D of Part 257 of Title 40 of the Code of Federal

Regulations (CFR). The 2015 CCR rule also established a beneficial use definition to distinguish legitimate beneficial use from disposal. The beneficial use definition is comprised of four criteria, with criterion 4 establishing a requirement to perform an environmental demonstration to address any potential risks associated with unencapsulated uses of CCR that are in excess of 12,400 tons. See 80 FR 21351–52 (April 15, 2015). The 2015 CCR rule also provided provisions for piles and CCR that is currently being used beneficially off-site. For example, the CCR rule provided a definition of “CCR pile or pile,” as well as provided that CCR that is beneficially used off-site is not a CCR pile. However, the CCR being used off-site must be stored temporarily and comply with all of the criteria in the beneficial use definition. See 80 FR 21356. The rule also provided that a CCR landfill as defined in 40 CFR 257.53, includes CCR piles.

On August 14, 2019, EPA proposed a rule to address two provisions of the 2015 CCR rule remanded back to EPA on August 21, 2018, by the U.S. Court of Appeals for the District of Columbia Circuit: The 12,400-ton threshold in the beneficial use definition for unencapsulated uses; and the requirements for piles located on-site of a utility and off-site but destined for beneficial use. With respect to the mass-based numerical threshold, EPA proposed to eliminate the 12,400-ton numerical threshold and replace it with specific location-based criteria for CCR disposal units. In addition, EPA accepted comment on whether to retain a mass-based numerical threshold, and if so, what the appropriate threshold should be; whether a combination of the mass-based threshold and location-based criteria would be an appropriate trigger to require an environmental demonstration for unencapsulated uses; and whether the environmental demonstration required under the beneficial use definition's criterion 4 should be conducted for all unencapsulated CCR uses. For piles, EPA proposed a single approach to consistently address the potential environmental and human health issues associated with piles, regardless of the location of the pile and whether the CCR is destined for disposal or beneficial use. For more information on the history of EPA's CCR beneficial use definition and requirements for piles on-site and off-site, please refer to the August 2019 proposed rule and 2015 CCR rule.

Responding to concerns raised about the proposed rule during the public comment period by industry,

environmental groups, private citizens and states, EPA is continuing to reconsider these issues by evaluating existing data and accepting additional information.

IV. What information has EPA received to date that is potentially relevant to reconsidering the definition of beneficial use and its provisions for CCR accumulations destined for beneficial use or disposal?

EPA is considering whether to use the following additional information sources in support of the reconsideration of the beneficial use definition and provisions for CCR accumulations destined for beneficial use or disposal: Select 2019 proposed rule data and comments and information obtained in stakeholder meetings. The information that EPA is noticing for comment can be found in EPA's annotated bibliography titled, “U.S. Environmental Protection Agency Beneficial Use and Accumulations of Coal Combustion Residuals Rulemaking, Notice of Data Availability: Annotated Bibliography of Information Being Noticed,” which is in the docket supporting this document, EPA–HQ–OLEM–2020–0463. Some documents listed or referenced in the annotated bibliography are also in the docket, while others can be accessed from websites at internet addresses provided in the bibliography.

A. 2019 Proposed Rule Data and Comments Received

Several of the public comments EPA received on the August 2019 proposed rule referred to data on the utility CCR compliance websites. Other comments referred to a court case related to a CCR accumulation at the Midwest Generation Utility, LLC (Powerton Station in Tazewell County, Illinois) as well as a case study about CCR accumulations on-site at Duke Energy in Noblesville, Indiana.

1. Comments on Using Publicly Accessible Data From the Utility CCR Compliance Websites on the Management of CCR Accumulations and Potential Environmental Releases

The Agency has been and continues to be interested in obtaining information about the management of CCR accumulations and data about environmental releases from CCR accumulations. The management of CCR accumulations includes any practices which provide for the staging and storage of CCR destined for beneficial use or disposal, onsite or offsite, including the accumulation size, duration and recurrence; designs related

to placement and mounding of CCR; and practices related to dust control or minimization of releases to soil, groundwater and surface water. Data about environmental releases from CCR accumulations of different size, duration, recurrence and practices to control releases to soil, groundwater and surface water may aid the Agency in identifying the measures sufficient to protect human health and the environment. EPA intends to review and use the information on the utility compliance websites to obtain data on the management of CCR accumulations and instances of environmental releases from the CCR accumulations.

EPA has reviewed the documents posted on utility CCR compliance websites linked from the Agency's CCR compliance web page (<https://www.epa.gov/coalash/list-publicly-accessible-internet-sites-hosting-compliance-data-and-information-required>) to identify electric utilities and independent power producers that manage CCR accumulations. EPA's review focused on the following documents:

- Fugitive dust control plans;
- Annual CCR landfill inspection reports;
- CCR landfill run-on/run-off control system reports; and
- Annual groundwater monitoring and corrective action reports (sometimes power plant-wide, sometimes specific to individual CCR units at the facility).

Based on that review, EPA identified the presence of CCR accumulations at several power plants.

EPA intends to confirm the presence of CCR accumulations for staging or storing CCR on power plant sites identified on the CCR utility websites, by contacting the state environmental agencies that correspond to facility locations. Furthermore, EPA expects to review the utility website documents for information on the characteristics of identified CCR accumulations, the protective measures taken to prevent or mitigate releases, and the data about environmental releases attributable to these CCR accumulations. More specifically, the Agency intends to review available information on the characteristics of these accumulations, such as size, duration, recurrence and design; protective measures, such as dust suppression, compaction, use of liners and berms; and incidences of environmental releases. The Agency intends to use such information to analyze the incidences of environmental releases from the CCR accumulations as a function of the accumulation characteristics and protective measures used, to inform the Agency's next steps

on the remanded issues. EPA expects this analysis may indicate the conditions likely to cause environmental releases and may aid the Agency in identifying the measures/controls/practices sufficient to protect human health and the environment.

EPA is taking comment on whether the utility compliance websites should be used as a data source for information and data pertaining to the management of CCR accumulations. EPA is also seeking comment on whether environmental release data attributable to CCR accumulations at utility sites can be used to estimate environmental releases from CCR accumulations at intermediary (e.g., marketer and retailer) and beneficial use sites. EPA is also requesting approaches (e.g., surveys) the public would consider appropriate to understand environmental releases from intermediary and beneficial use sites if the public finds the data from the utility compliance websites is not applicable. EPA is also seeking comment on the Agency's approach to use the information on the utility compliance websites to identify management of CCR accumulation practices that could be part of CCR regulations to prevent a reasonable probability of adverse effects on human health and the environment. Finally, EPA is requesting comment on other approaches (e.g., surveys) to collect data on characteristics of CCR accumulations that are not publicly available.

2. Case Studies and Court Case Related to CCR Accumulations and Fill Projects

A few comments on the August 2019 proposed rule referenced several fill projects and cases of environmental releases caused by unencapsulated CCR.

In response to the August 2019 proposal to change the beneficial use definition, the Hoosier Environmental Council (Hoosier) referenced several fill projects that did not incorporate protections for groundwater and surface water. Hoosier provided these examples to illustrate that lack of oversight and regulation of CCR beneficial use can result in CCR disposal being incorrectly characterized as beneficial use, leading to environmental contamination. Among those examples, Hoosier included a possible project that, while not executed, could have resulted in environmental issues had it gone unchallenged by county officials and nearby residents, because of its proposed location. Another example that Hoosier referenced relates to the extensive use of CCR for landscaping and road embankments throughout the town of Pines, Indiana.

Furthermore, to argue that requirements are needed to prevent environmental releases from CCR accumulations, Hoosier provided an example case study of unencapsulated CCR at a Duke Energy site in Noblesville, Indiana. According to Hoosier, the presence of unencapsulated CCR in the same location results in groundwater contamination and impacts on private water wells regardless of the distance to the groundwater table. Specifically, the presence of unencapsulated CCR from the start of the facility's operation in the 1950s resulted in impacts despite the groundwater table being more than 15 feet below the surface.

Similarly, Earthjustice provided information to illustrate that even when present for a short period of time, unencapsulated CCR has the potential to result in environmental releases. Earthjustice referenced a court case involving coal ash cinders deposited directly upon the land³ at the Midwest Generation Utility, LLC (Powerton Station in Tazewell County) identified in a report⁴ prepared for Earthjustice by Mark Hutson at Geo-Hydro Inc. Specifically, the Illinois Pollution Control Board found that the coal ash cinders that were deposited directly upon the land and that were present for two to three months, contributed to exceedances of state groundwater standards.

B. Stakeholder Meetings

From the end of May 2020 to August 2020, EPA held ten stakeholder meetings with the trade associations and their members, encompassing utilities, agricultural, wallboard, cement and concrete beneficial uses; CCR marketers; state environmental and transportation agencies; environmental organizations and private citizens. EPA and stakeholders discussed technical information and data on beneficial use applications and the specific practices facilities use to manage their CCR accumulations (e.g., the specific practices facilities use to control CCR releases). These discussions were designed to inform the Agency's reconsideration of the beneficial use definition and provisions for CCR accumulations destined for beneficial use or disposal. EPA identified topics of interest which included:

³ See document, *Illinois Pollution Control Board Court Order for Midwest Generation Utility*, dated June 20, 2019, in the docket for this Notice.

⁴ See document, *Responses to EPA Solicitation for Comments Hutson Expert Report Phase II dated 10/14/2019*, at <https://beta.regulations.gov/document/EPA-HQ-OLEM-2019-0173-0197>.

- Various CCR beneficial use applications,
- CCR generation specifically for beneficial use (e.g., wallboard-grade flue-gas desulfurization (FGD) gypsum) and any associated specifications,
- CCR accumulation management throughout the CCR distribution system,
- Applicable state beneficial use and storage provisions and regulations of CCR, and
- Environmental and risk data, including documented environmental and public health impacts.

V. What information is EPA seeking?

As explained, EPA is today noticing the data and information received from the 2019 proposed rule and the stakeholder discussions held from the end of May 2020 to August 2020. The Agency will accept additional data and information that may help inform the reconsideration of the beneficial use definition and provisions for CCR accumulations destined for beneficial use or disposal.

Specifically, EPA is today seeking information about how CCR is beneficially used, including any use of particular measures to control environmental releases that can help the Agency distinguish among the different types of beneficial use applications (e.g., structural fill, flowable fill, waste stabilization and solidification, agricultural applications, snow and ice control, soil stabilization, fly ash used as a substitute for portland cement in concrete, flue-gas desulfurization (FGD) gypsum in wallboard manufacture). EPA is also seeking information on the management of CCR accumulations at each point in its distribution system, from its generation at the utility to its destination, including management at CCR retailers, distributors/marketers, beneficial use facilities/sites, and landfills. EPA is seeking information about the use of controls to prevent and minimize CCR releases from CCR accumulations and environmental data for CCR accumulations.

As part of this request, EPA is specifically interested in site-specific information that pertains to the practices used for the handling of wallboard-grade FGD gypsum. As explained in the 2015 rule preamble, some FGD gypsum has never been discarded and is treated as a valuable product throughout its entire lifecycle; when managed in this way, it is not a waste that would be regulated under part 257. See 80 FR 21348. EPA is interested in obtaining information on: The investment in special additional systems to generate wallboard-grade FGD gypsum; the investment in co-

location of wallboard manufacturing plants with utilities; the inventorying and tracking procedures for the transfer and use of wallboard-grade FGD gypsum in the intended manufacturing process; the handling of CCR accumulations to prevent the loss of valuable material; other ways of handling the wallboard-grade FGD gypsum as a product rather than something that is intended to be discarded.

Lastly, EPA is seeking specific information on federal, state and local program provisions and regulations related to CCR beneficial use applications and provisions for CCR accumulations, such as example state permits or other beneficial use approvals. EPA is particularly interested in hearing from regulated entities that comply with the different regulations and can therefore, provide the full picture of requirements with which they comply.

A. Beneficial Uses of CCR

EPA is reevaluating CCR beneficial uses that may be considered encapsulated beneficial use. In the 2015 rule preamble, the Agency defined encapsulated beneficial use as applications that bind the CCR into a solid matrix that minimizes mobilization into the surrounding environment. Examples of encapsulated uses include replacement for, or raw material used in production of, cementitious components in concrete; and raw material in wallboard production. See 80 FR at 21328. In addition, the Agency provided examples of unencapsulated uses to include: Flowable fill; structural fill; waste stabilization/solidification; and use in agriculture as a soil amendment. See 80 FR at 21353. The Agency is considering revising the designation of flowable fill and waste stabilization from unencapsulated to encapsulated uses and therefore, redefining the scope of beneficial uses that are subject to compliance with criterion 4 of the beneficial use definition which applies to unencapsulated uses. EPA is further considering whether criterion 4 should apply only to a subset of remaining unencapsulated uses. For example, as appropriate, certain uses could potentially be excluded if there are sufficient regulations at the federal, state, and local level that provide for engineering controls of the beneficial use application. Such beneficial uses may include agricultural applications. Other options the Agency is considering include developing guidance such as a best practice guide for using CCR in fill, structural fill, or other unencapsulated uses. To help inform EPA's next steps,

the Agency is seeking comments, data and information on the following:

- What are the different types of CCR?
- What are the environmental and economic tradeoffs among the CCR beneficial use and its alternatives, e.g., disposal?
- What are the typical beneficial use applications for each type of CCR?
- How much CCR is used per typical beneficial use application?
- What are the chemical and physical characteristics of the CCR that make it suitable for beneficial use application?
- What is the virgin material the CCR is replacing?
- What are the product specifications and design standards the CCR must meet?
- What are examples of measures used to control releases for CCR destined for beneficial use?
- For structural fill projects, what are the site and location characteristics and the design and construction requirements for CCR used in such projects?
- What state and local policies/regulations pertain to specific unencapsulated uses of CCR for beneficial use?
- How do state and local policies/regulations distinguish beneficial use from disposal?
- What data, documented damage cases, or other information pertaining to beneficial use applications have become available since 2010?
- What are the environmental and economic tradeoffs among CCR beneficial use applications, e.g., agricultural use vs. roadway use?

B. CCR Distribution System

EPA is seeking information on the generation and management of CCR at each point in its distribution system, from the utility, to any intermediaries or final destinations, such as CCR retailers, distributors/marketers, beneficial use facilities, sites, or landfills. EPA is considering developing a best practice guide on the appropriate environmental controls that should be utilized for various storage and staging situations. EPA is also specifically interested in site-specific information and data demonstrating how utilities and beneficial use facilities manage wallboard-grade FGD gypsum as a valuable product. The Agency is considering whether to incorporate into the regulations a specific exemption for wallboard-grade FGD gypsum that has not been discarded and is continually managed as a valuable product from the point of generation at the utility to the manufacturing of the wallboard. EPA is also considering whether to develop

additional guidance on the specific indicators to demonstrate when wallboard-grade FGD gypsum is not discarded and therefore not subject to regulation under the 2015 rule.

To help inform the Agency's reconsideration of the beneficial use definition and provisions for CCR accumulations, EPA is seeking the following information pertaining to the generation and *on-site management* of CCR accumulations at the electric utility:

- How is the CCR generated and processed if it is destined for beneficial use?
- What are the specifications to which the CCR is processed?
- What type of testing is performed on the CCR (*e.g.*, to meet the required specifications) and which entity performs the testing?
- What material safety data sheets are available for CCR destined for beneficial use?
- What are the design and engineering standards for CCR accumulations, *e.g.*, shape, slope, circumference, height?
- What controls are utilized to manage environmental releases from on-site CCR accumulations?
- How is CCR destined for beneficial use staged compared to CCR destined for disposal?
- How is CCR destined for beneficial use accumulated, *e.g.*, continuously replenished; first spent and then resupplied; etc.?
- How long does a CCR accumulation stay on the utility property before it is disposed of or transferred for beneficial use?
- What is the average size of a CCR accumulation before it is disposed of or transferred for beneficial use?
- Which entity is responsible for the transfer of CCR, either for beneficial use or disposal?
- What additional environmental monitoring data are available for on-site CCR accumulations?
- If in the past there have been on-site environmental releases that exceeded state limits, what corrective actions were implemented?

The Agency is also interested in information pertaining to the *off-site management* of CCR, such as at CCR distribution/marketer centers, beneficial use construction projects, agricultural retail facilities; wallboard, cement, and concrete manufacturing sites; and other beneficial use sites. Specifically, the Agency is seeking information on:

- What additional testing is performed by intermediaries or beneficial users on the CCR to ensure it meets the required specifications?

- What happens to deliveries rejected by beneficial users and what entity is responsible for them?

- What are the types of units used for the staging of CCR by intermediaries and beneficial users?

- What are the design and engineering standards for CCR accumulations at intermediaries and beneficial users, *e.g.*, shape, slope, circumference, height?

- What controls are utilized by intermediaries and beneficial users to manage environmental releases from CCR accumulations? How long does the CCR accumulation stay at the intermediaries before it is transferred for beneficial use?

- How is CCR accumulated at beneficial use sites, *e.g.*, continuously replenished; first spent and then resupplied; etc.?

- How long does the CCR accumulation stay at the beneficial use site before it gets beneficially used?

- What state and local policies/regulations pertain to one-time short-term storage at intermediaries and beneficial use sites?

- What state and local policies/regulations pertain to indefinite recurring storage at intermediaries and beneficial use sites?

- What environmental monitoring data are available for CCR accumulations at intermediaries and beneficial use sites?

- If in the past there have been environmental releases that exceeded state limits at intermediaries and beneficial use sites, what corrective actions were implemented?

- What material safety data sheets are available for CCR being used in the manufacturing process and the products incorporating it?

- What are the inventorying and tracking procedures for the transfer and use of CCR in the intended manufacturing process or for beneficial use?

- What additional business or financial information is available to show that the CCR is a valuable commodity for the intended manufacturing process or beneficial use?

C. Applicable and Relevant Federal, State, and Local Programs and Provisions

The Agency is reviewing federal, state and local requirements and provisions for CCR beneficial use applications and CCR accumulations to consider whether those standards could inform the Agency's reconsideration of the beneficial use definition and provisions for CCR accumulations. The Agency is

also considering whether, and which, particular beneficial use applications are sufficiently regulated at the federal, state or local levels (*e.g.*, by the United States Department of Agriculture or state departments of transportation), such that additional federal regulation under RCRA would not be required for these applications. Furthermore, the Agency is seeking detailed information on whether the management of CCR accumulations is uniformly and sufficiently regulated at all points in the CCR distribution system, by existing federal, state and local regulations (*e.g.*, Clean Air Act, Clean Water Act, etc.), such that additional provisions under RCRA would not be required. Specifically, the Agency is seeking detailed and specific information about facilities and sites to which existing regulations apply (*e.g.*, cement and concrete manufacturing plants, wallboard manufacturing plants, agricultural retail facilities and farms, or utilities). The Agency is also seeking specific examples of these regulations and requirements (*e.g.*, leachate controls, surface water runoff sampling, area groundwater monitoring in the form of permits, beneficial use determinations, or other documentation of compliance).

VI. What are the next steps EPA will take?

EPA intends to carefully review all the comments and information received in response to this document specific to the beneficial use definition and provisions for CCR accumulations destined for beneficial use or disposal. EPA may also consider any previously collected and assembled information pertaining to the two specific issues addressed in this NODA. In determining how to proceed with reconsidering the beneficial use definition and provisions for CCR accumulations destined for beneficial use or disposal, EPA may consider any relevant information and data available to the Agency. Future action with respect to the Agency's reconsideration of the 2019 proposed rule on the beneficial use definition and provisions for CCR accumulations destined for beneficial use or disposal will be made through notice-and-comment rulemaking.

List of Subjects in 40 CFR Part 257

Environmental protection, Coal combustion products, Coal combustion residuals, Coal combustion waste,

Beneficial use, Disposal, Hazardous waste, Landfill, Surface impoundment.

Peter Wright,

Assistant Administrator, Office of Land and Emergency Management.

[FR Doc. 2020-27525 Filed 12-21-20; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 270 and 271

[Docket No. FRA-2015-0122, Notice No. 1]

RIN 2130-AC54

Fatigue Risk Management Programs for Certain Passenger and Freight Railroads

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Pursuant to the Rail Safety Improvement Act of 2008, FRA proposes to issue regulations requiring certain railroads to develop and implement a Fatigue Risk Management Program, as one component of the railroads' larger railroad safety risk reduction programs.

DATES: Written comments must be received by February 22, 2021. Comments received after that date will be considered to the extent practicable without incurring additional expense or delay.

ADDRESSES: Comments related to Docket No. FRA-2015-0122 may be submitted by going to <http://www.regulations.gov> and follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name, docket name and docket number or Regulatory Identification Number (RIN) for this rulemaking (2130-AC54). 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 in the SUPPLEMENTARY INFORMATION section of this document for Privacy Act information on any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

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I. Introduction and Executive Summary

A. Purpose of Rulemaking

This proposed rule is part of FRA's efforts to improve rail safety continually and to satisfy the statutory mandate of Section 103 of the Rail Safety Improvement Act of 2008 (RSIA).¹ That section, codified at 49 U.S.C. 20156, requires Class I railroads; railroad carriers with inadequate safety performance (ISP), as determined by the Secretary; and railroad carriers that provide intercity rail passenger or

commuter rail passenger transportation to develop and implement a safety risk reduction program to improve the safety of their operations. The section further requires a railroad's safety risk reduction program to include a "fatigue management plan" meeting certain requirements.

This proposed rule, if finalized, would fulfill RSIA's mandate for railroads to include fatigue management plans in their safety risk reduction programs by requiring railroads to develop and implement Fatigue Risk Management Programs (FRMPs).² As proposed, a railroad would implement its FRMP through an FRMP plan.

Under this proposed rule, consistent with the mandate of Section 20156, an FRMP is a comprehensive, system-oriented approach to safety in which a railroad determines its fatigue risk by identifying and analyzing applicable hazards and takes action to mitigate, if not eliminate, that fatigue risk.³ As proposed, a railroad would be required to prepare a written FRMP plan and submit it to FRA for review and approval. A railroad's written FRMP plan would become part of its existing safety risk reduction program plan. A railroad would also be required to implement its FRA-approved FRMP plan, conduct an internal annual assessment of its FRMP, and consistent with Section 20156's mandate, update its FRMP plan periodically. As part of a railroad safety risk reduction program, a railroad's FRMP would also be subject to assessments by FRA.

B. Summary of Costs and Benefits

FRA estimated the costs and benefits of this proposed rule using discount rates of 3 and 7 percent over a ten-year time horizon. FRA presents monetized costs and benefits where possible and discusses those non-quantifiable elements qualitatively where data is

² Section 20156 uses the term "fatigue management plans" so sections of this preamble discussing the statutory requirements likewise use this term, as do the sections discussing the Railroad Safety Advisory Committee task statement on fatigue and Fatigue Working Group. However, because section 20156 requires fatigue to be addressed as part of a railroad's safety risk reduction program, for consistency with the terminology used in FRA's final rules governing those programs (81 FR 53849 (Aug. 12, 2016) and 85 FR 9262 (Feb. 18, 2020)), elsewhere throughout this proposed rule, FRA uses the terms "fatigue risk management program" (FRMP) and "FRMP plan."

³ Risk is defined as a combination of the probability of an adverse event occurring and the potential severity of that adverse event. Fatigue increases the likelihood of certain negative events occurring. Therefore, reducing fatigue helps reduce fatigue-related risks. See United States Department of Transportation, *Partnering in Safety: Managing Fatigue: A Significant Problem Affecting Safety, Security, and Productivity*, 1999.

¹ Section 103, Public Law 110-432, Division A, 122 Stat. 4848 *et seq.*

lacking. Details on the estimated costs and benefits of this proposed rule can be found in the rule’s economic analysis, which has been included in the docket.

In preparing the economic analysis, FRA estimated that the total costs and benefits over 10 years for the implementation of an FRMP and the fatigue training mitigation for Class I railroads and the 50 ISP railroads

subject to this proposed regulation. FRA was unable to quantify costs or benefits for passenger railroads and discusses the implementation of the proposed regulation qualitatively within the Regulatory Impact Analysis which has been placed into the docket.

FRA also estimated the total costs over 10 years to develop and monitor FRMP plans for Class I railroads,

passenger and commuter railroads, and the 50 ISP railroads subject to this proposed regulation. The proposed regulation will also impose a new economic cost on the agency over the 10-year period, to review and audit the FRMPs.

Please see Table I.B for the total costs and benefits associated with the proposed rule.

TABLE I.B—10-YEAR COSTS AND BENEFITS—TRAINING ONLY MITIGATION

| Calculation aid | Costs | Present value 7% | Present value 3% | Annualized at 7% | Annualized at 3% |
|-----------------|--|---------------------|---------------------|---------------------|---------------------|
| A | Training Only (low) | \$2.02 | \$2.04 | \$0.29 | \$0.24 |
| B | Training Only (high) | 4.13 | 4.18 | 0.59 | 0.49 |
| C | FRMP Plan Creation | 0.89 | 1.04 | 0.13 | 0.12 |
| D | Government Costs | 2.03 | 2.59 | 0.29 | 0.30 |
| A + C + D | Total Cost (low) | 4.94 | 5.68 | 0.70 | 0.67 |
| B + C + D | Total Cost (high) | 7.05 | 7.81 | 1.00 | 0.92 |
| A + C | Total Cost w/o Government Costs (low) | 2.91 | 3.08 | 0.41 | 0.36 |
| B + C | Total Cost w/o Government Costs (high) | 5.01 | 5.22 | 0.71 | 0.61 |
| | Benefits | | | | |
| | Training Only (low) | 5.41 | 6.33 | 0.77 | 0.74 |
| | Training Only (high) | 21.65 | 25.34 | 3.08 | 2.97 |

II. Rulemaking Authority and Background

A. RSIA

1. Mandate for Rulemaking on Railroad Safety Risk Reduction Programs

The RSIA requires the Secretary of Transportation (Secretary) to issue regulations requiring certain railroads to develop and implement a “railroad safety risk reduction program.”⁴ Under RSIA, as part of their railroad safety risk reduction programs, railroads must analyze the risks associated with aspects of their operations that affect railroad safety and based on that risk analysis, railroads must, through their railroad safety risk reduction programs, mitigate risks to railroad safety.⁵ Among other requirements, the RSIA requires railroads to consult with “directly affected employees” and their labor organizations on the content of their safety risk reduction programs, including the fatigue management plan component.⁶

The Secretary delegated responsibility for carrying out the mandate of Section 20156 to the FRA Administrator.⁷

Section 20156(a)(1) mandates that each of the following types of railroads would have to comply with this proposed regulation: (1) Class I railroads; (2) railroad carriers with ISP;

and (3) railroad carriers that provide intercity rail passenger or commuter rail passenger transportation. This preamble refers to the railroads that would be subject to this proposed rule as “covered railroads.”

To implement the requirements of Section 20156, FRA published the System Safety Program (SSP) final rule implementing the railroad safety risk reduction program mandate for passenger railroads on August 12, 2016.⁸ On February 18, 2020, FRA published the Risk Reduction Program (RRP) final rule implementing the mandate for Class I freight and ISP railroads.⁹

Both the SSP and RRP rules allow a railroad to tailor its program to its unique operating characteristics.¹⁰ All railroads that must develop either an RRP or an SSP would also have to develop an FRMP as a component of the RRP or the SSP.

Both RRP and SSPs reflect comprehensive, system-oriented approaches to improving safety, by which an organization formally identifies and analyzes applicable hazards and takes action to mitigate, if not eliminate, the risks associated with those hazards. RRP and SSPs provide a railroad with a framework for

processes and procedures that can help it plan, organize, direct, and control its business activities in a way that enhances safety and promotes compliance with regulatory standards. As such, risk reduction and system safety programs are a form of “safety management system,” which is a term that generally refers to a comprehensive, systematic approach to managing safety throughout an organization.

Safety management systems were developed to ensure high safety performance in various industries, including aviation, passenger railroad, nuclear, and other industries with the potential for catastrophic accidents. For ease of understanding, the elements of a safety management system are typically grouped into larger descriptive categories. These descriptive categories include: (1) An organization-wide safety policy; (2) formal methods for identifying hazards, and for prioritizing and mitigating risks associated with those hazards; (3) data collection, data analysis, and evaluation processes to determine the effectiveness of mitigation strategies and to identify emerging hazards; and (4) outreach, education, and promotion of an improved safety culture within the organization.

Effective implementation of all the elements of an RRP or SSP, including the FRMP this proposed rule would

⁴ Public Law 110–432, Div. A, sec. 103 (49 U.S.C. 20156).

⁵ Sec. 20156(d)(1).

⁶ 49 U.S.C. 20156(f) and (g)(1).

⁷ 49 CFR 1.89, 77 FR 49965 (August 17, 2012); see also 49 U.S.C. 103(g).

⁸ 81 FR 53849.

⁹ 85 FR 9262. The RRP final rule also defines “railroad carriers with inadequate safety performance” to whom this proposed rule would apply. 49 CFR 271.13, 85 FR at 9316–9317.

¹⁰ SSP Final Rule at 81 FR 53849, August 12, 2016, and RRP Final Rule at 85 FR 9262, February 18, 2020.

require, will foster continuous safety improvement.¹¹

2. Mandate for Rulemaking on Fatigue Management Plans

Sections 20156(d)(2) and (f) of the RSIA mandate that as part of a railroad's safety risk reduction program, a railroad must develop and implement a fatigue management plan "designed to reduce the fatigue experienced by safety-related railroad employees and to reduce the likelihood of accidents, incidents, injuries, and fatalities caused by fatigue."¹² The statute requires railroads to update their fatigue management plans at least once every two years, with each update subject to FRA review and approval.¹³ Section 20156(f)(2) also requires each railroad's fatigue management plan to take into account the varying circumstances of operations on different parts of its system, and to prescribe appropriate fatigue countermeasures to address the varying circumstances.

Finally, Section 20156(f)(3) requires a covered railroad to consider the need to include in its fatigue management plan elements addressing each of the following items, as applicable: (1) Employee education and training on the physiological and human factors that affect fatigue, as well as strategies to reduce or mitigate the effects of fatigue, based on the most current scientific and medical research and literature; (2) opportunities for identification, diagnosis, and treatment of any medical condition that may affect alertness or fatigue, including sleep disorders; (3) effects on employee fatigue of an employee's short-term or sustained response to emergency situations, such as derailments and natural disasters, or engagement in other intensive working conditions; (4) scheduling practices for employees, including innovative scheduling practices, on-duty call practices, work and rest cycles, increased consecutive days off for employees, changes in shift patterns, appropriate scheduling practices for varying types of work, and other aspects of employee scheduling that would reduce employee fatigue and cumulative sleep loss; (5) Methods to minimize accidents and incidents that occur as a result of working at times when scientific and medical research have shown increased fatigue disrupts employees' circadian rhythm; (6)

alertness strategies, such as policies on napping, to address acute drowsiness and fatigue while an employee is on duty; (7) opportunities to obtain restful sleep at lodging facilities, including employee sleeping quarters provided by the railroad carrier; (8) the increase of the number of consecutive hours of off-duty rest, during which an employee receives no communication from the employing railroad carrier or its managers, supervisors, officers, or agents; (9) avoidance of abrupt changes in rest cycles for employees, and (10) additional elements that the Secretary considers appropriate.

3. Authority for Rulemaking on Information Protection

Section 109 of the RSIA specifies that subject to specific exceptions, certain railroad safety risk reduction records obtained by the Secretary are exempt from the public disclosure requirements of the Freedom of Information Act (FOIA).¹⁴ Both the SSP and RRP final rules implement these authorized information protections. Further, FRA has concluded section 20118 is a FOIA Exemption 3 statute and, therefore, would exempt, as part of a railroad's safety risk reduction program, FRMP records in FRA's possession from mandatory disclosure under FOIA (unless one of two statutory exceptions apply).¹⁵

B. Fatigue and Fatigue Risk Management Plans

Humans have an approximately 24-hour sleep-wake cycle known as a "circadian rhythm." Rapid changes in the circadian pattern of sleep and wakefulness disrupt many physiological functions such as hormone releases, digestion, and temperature regulation. Such disruptions may also impair human performance, and may cause a general feeling of debility until realignment is achieved. For instance, the experience of jet lag is comparable to the experience of working schedules that vary among different duty shifts, and similar disruptions in human performance occur. Research has shown that fatigue is a multivariate condition, being either directly or secondarily affected by physiological and environmental variables such as sleep loss, workload, stress, monotony, workplace ergonomics, age, health, medications, noise, and circadian disruption. Symptoms of fatigue include, but are not limited to, falling asleep, increased reaction time, loss of attentional capacity, and decline of

short-term and working memory function which may impair performance, increase error, and increase accident risk.

The Federal Government requires railroads to manage their employees' fatigue associated with railroad operations through prescriptive hours of service (HOS) limitations and rest requirements. See 49 U.S.C. 21103, 21104, and 21105 and regulations at 49 CFR part 228, subpart F (implementing 49 U.S.C. 21102 and 21109). HOS limitations are generally based on the assumption that fatigue simply increases as time passes; therefore, the longer the time on task, the greater the risk for fatigue. However, this approach does not account for factors such as sleep loss, amount of sleep, circadian rhythms, sleep quality (which may be impacted by environmental factors or sleeping accommodations), and even the effects of the type of task being performed on the resulting level of fatigue. Furthermore, the HOS limitations and rest requirements apply only to individuals who perform certain types of work and do not cover all railroad employees (*e.g.*, ordinarily, not maintenance-of-way employees or carmen). Laws and regulations following this model, therefore, may reduce, but cannot eliminate, the conditions that contribute to fatigue.¹⁶ An FRMP, on the other hand, is intended to be a systematic program to address fatigue in a dynamic manner.

An FRMP is a form of a safety management system. Like the other elements of an RRP and an SSP, an FRMP implements organizational policies, processes, and procedures to reduce safety risk in a railroad's operations. An FRMP is a data-driven and scientifically-based process that allows for periodic review and management of safety risks associated with fatigue-related error(s). Like other safety management systems, an FRMP applies the risk management process to identify fatigue risks through the use of data-established, scientific principles. An FRMP includes collecting and analyzing fatigue-related safety data and implementing corrective actions—always encouraging continuous improvement. This proposed rule would require railroads to develop FRMPs that are consistent with these general principles.

¹¹ For a more detailed discussion of safety management systems and FRA risk reduction programs, see FRA's final RRP and SSP rules. 85 FR 9265 (RRP final rule) and 81 FR 53853–54 (SSP final rule).

¹² Sec. 20156(f)(1).

¹³ *Id.*

¹⁴ 49 U.S.C. 20118.

¹⁵ 80 FR at 10957–10958.

¹⁶ Thomas, G., Raslear, T., & Kuehn, G. (1997). *The effects of work schedule on train handling performance and sleep of locomotive engineers: A simulator study*, Report No. DOT/FRA/ORD–97–09, Washington, DC: Federal Railroad Administration; available at: <http://www.fra.dot.gov/eLib/details/L04245>.

An effective FRMP implements processes and procedures for measuring, modeling, managing, mitigating, and reassessing fatigue risk in a specific operational setting. The primary stakeholders—the main persons with the authority and/or interest to improve conditions to reduce fatigue—would implement FRMP processes. In the case of this specific rulemaking, that stakeholder group would include representation from management and labor (union representation, if applicable) and may also include scientific consultants.

By combining schedule assessment, operational data collection, continuous and systematic analysis, and both proactive and reactive fatigue mitigation techniques, guided by information provided by scientific studies of fatigue, an FRMP offers a way to conduct railroad operations more safely by offering a global, comprehensive, and specific approach that complements statutory or regulatory HOS limitations. An FRMP would provide an interactive and collaborative approach to improving operational performance and safety levels on a case-by-case basis. Therefore, an FRMP would permit a railroad to adapt policies, procedures, and practices to the specific conditions that create fatigue in a particular railroad setting. A railroad could tailor its FRMP to unique operational demands and focus on techniques for mitigating risk caused by fatigue that are practical within the specific operational environment. This flexibility would also allow a railroad to alter its FRMP based on changing needs, new research, data from an existing FRMP, comments from labor and management, and established best practices.

III. Railroad Safety Advisory Committee Process

In December 2011, FRA asked the Railroad Safety Advisory Committee (RSAC) to accept a task to address the fatigue management plan mandate of the RSIA.¹⁷ The RSAC voted to accept the task and on December 8, 2011, the RSAC formed the Fatigue Management Plans Working Group (Working Group). Members of the Working Group

included physicians, human factors psychologists, railroad schedulers, and other representatives of railroad management and labor, as well as FRA employees.

The Working Group formed three Task Forces to address particular aspects of the RSIA mandate in more detail: (1) The Education and Training Task Force; (2) the Scheduling Task Force; and (3) the Infrastructure and Environment Task Force. The Task Forces met multiple times throughout 2012 and 2013 and the Working Group itself met eight times during the same period.

After initially reaching consensus on draft rule text in June 2013, the Working Group did not reach consensus as to how its recommendations should be implemented. The Task Forces had developed a multitude of documents, which Labor representatives on the Working Group wanted published as appendices to the regulation. Railroad management members of the Working Group, on the other hand, asserted that the documents should not be published as appendices to the regulation, but instead recommended that the documents be made available on the FRA website and in the rulemaking docket for all parties to use in the required consultation process as part of developing railroads' FRMPs. As a result, in late 2013, FRA withdrew the task from the RSAC, and as the agency worked to implement other aspects of the safety risk reduction program mandate of the RSIA (*i.e.*, the RRP and SSP rules), the Agency began developing a rule specifically to address the RSIA's mandate that fatigue management plans be included as part of railroads' safety risk-reduction programs.

Although the RSAC did not make a consensus recommendation to FRA related to fatigue, FRA believes that information developed and documented during the RSAC process is informative and will be very useful to railroads required to develop FRMP plans. FRA made minor amendments to the June 2013 draft rule text to clarify it and make it more consistent with similar rule text in the SSP and RRP rules. However, the substance of this proposed rule text is the same as the draft rule text the Working Group voted to approve.

Accordingly, the proposals in this NPRM reflect FRA's consideration of the Working Group's recommended rule text and the documents developed by each of the three Task Forces. Those RSAC-developed documents are included in the rulemaking docket.

The RSIA does not mandate, and this NPRM does not propose to include,

language specifically addressing the predictability of work schedules. However, the RSIA does require railroads to consider scheduling practices, of which predictability is one factor. There is significant discussion of predictability throughout this document, particularly when describing the Task Force discussions and the complex issues addressed in the Task Force documents that will inform railroads' analysis of fatigue risks and their efforts to mitigate the identified fatigue risks in consultation with employees and labor organizations. However, the proposed rule requires railroads to consider several factors, including work schedule predictability, but does not require any particular factor to be analyzed.

The NPRM also does not propose to include the Task Force documents as appendices to this proposed rule. As FRA previously explained to the members of the Working Group, many of these documents are written informally, for the use of railroads and labor in developing FRMP plans. The documents are best practices generated by the Working Group, but are not specifically FRA guidance and, therefore, should not be in an appendix to an FRA regulation. In addition, the content of the Task Force documents is subject to change based on advances in fatigue science, changes in railroad operations, and experience with FRA's SSP and RRP rules and the development and implementation of FRMPs and FRMP plans. The Task Force documents should be easy to update as necessary so that they are most beneficial to those using them. If they were published as appendices to the regulation, changing them would require the cumbersome process of publishing them in the **Federal Register**, and the industry would be left with outdated or less useful documents until revisions could be completed. For the convenience of readers, however, the full text of each of these documents can be found in the docket for this rulemaking.

B. Task Forces

As noted above, paragraph (f)(3) of Section 20156 requires railroads to consider including 10 different elements in their fatigue management plans.

The Working Group assigned the Education and Training Task Force to address section 20156(f)(3) subparagraphs (A), (B), (E), and (F), specifically:

- Employee education and training on the physiological and human factors that affect fatigue;
- Medical and scientific research-based fatigue mitigation strategies;

¹⁷ *Railroad Safety Advisory Committee Task Statement: Fatigue Management Plans*, Task No.: 11-03, Dec. 8, 2011. The Task Statement read as follows:

Review the mandates and objectives of the [RSIA] related to the development of Fatigue Management Plans, determine how medical conditions that affect alertness and fatigue will be incorporated into Fatigue Management Plans, review available data on existing alertness strategies, consider the role of innovative scheduling practices in the reduction of employee fatigue, and review the existing data on fatigue countermeasures.

- Opportunities for identification, diagnosis, and treatment of any medical condition that may affect alertness or fatigue, including sleep disorders;
- Methods to minimize accidents and incidents during circadian low periods; and
- Alertness strategies.

The Task Force produced a document outlining existing railroad fatigue educational resources; a document outlining potential fatigue training topics; fatigue education dissemination and evaluation strategies; and a document outlining fatigue countermeasures.

The Working Group assigned the Scheduling Task Force to address subparagraphs (D), (H), and (I) of the required elements outlined in section 20156(f)(3).

The task statement specifically included:

- Innovative scheduling practices;
- On duty call practices;
- Work and rest cycles;
- Increased consecutive days off;
- Other aspects of employee scheduling that would reduce employee fatigue and cumulative sleep loss;
- The increase of the number of consecutive hours of off-duty rest; and
- Avoidance of abrupt changes in rest cycles for employees.

The Working Group assigned the Infrastructure and Environment Task Force to address subparagraphs (C) and (G) of section 20156(f)(3) including:

- Effects on employee fatigue of an employee's short term or sustained response to emergency situations;
- Opportunities to obtain restful sleep at lodging facilities; and
- Effects of environmental conditions (e.g., temperature, vibrations, etc.) on employee fatigue.

The Task Force created documents on emergency work, lodging facilities, and dispute resolution.

IV. FRMP Considerations

This proposed rule, if finalized, will fulfill the requirement of paragraph (d) of Section 20156 that a covered railroad's railroad safety risk reduction program include a fatigue management plan. This rule would amend both Parts 270 and 271, adding a subpart to both parts requiring railroads to develop and implement FRMPs. This section provides a summary of potential methods and considerations for developing and maintaining a FRMP. FRA welcomes comments on the discussion in this section, including thoughts on how to develop and maintain an effective FRMP. Unless specifically identified as a statutory or regulatory requirement, the information

and suggestions contained in this section are not meant to bind the public in any way, and is intended only to provide clarity to the public regarding this proposal and information to aid in compliance if the proposal is finalized.

A. General Overview

This proposed rule would require each covered railroad to establish and periodically update an FRMP plan, which explains the railroad's method of analysis of fatigue risks and the processes for implementing the FRMP. FRA would review and approve the FRMP plan. FRA proposes that requirements for the filing, approval, and amendment of the FRMP plan be made the same as for other components of RRP or SSP plans so those requirements are not set forth in this proposed rule. Instead, the proposed rule text cites to the sections of the SSP and RRP rules that contain those procedures.¹⁸ Because railroads will have submitted their SSP plans or RRP plans to FRA under part 270, subpart C, or part 271, subpart D before this proposed rule becomes final, railroads would need to amend their SSP plan or RRP plan to include an FRMP plan. Thus, a railroad would follow the procedures in § 270.201(c) or 271.303 to amend its SSP plan or RRP plan.

As part of their FRMP, covered railroads would be required to identify fatigue-related safety hazards, to assess the risks associated with those hazards, and to prioritize those risks for mitigation. These railroads would be required to consider certain categories of risk as part of the FRMP, and to consider the development and implementation of policies and practices to reduce risks, related specifically to the items identified in the RSIA as items railroads are required to consider.

FRA proposes that railroads be required to adopt and implement their FRMP through an FRMP plan describing the railroads' processes for conducting their fatigue-risk analysis, including the processes for the identification of fatigue-related railroad safety hazards and resulting risks, processes for the development and implementation of mitigation measures, processes for the evaluation of the FRMP and its effectiveness, and procedures for the review and update of the FRMP plan. The FRMP plan would also describe processes, milestones, and timelines for the implementation of the FRMP.

¹⁸ 49 CFR 271.301 Filing and approval, 271.303 Amendments, and 49 CFR 270.201 Filing and approval.

Finally, the proposed rule contains no express requirements on information protection or consultation, because the information protection and consultation requirements in the RRP and SSP rules would apply to the FRMP, the FRMP plan, and their related documents, just as those requirements would apply to similar documents on other aspects of the RRP or SSP. As required by the RSIA, fatigue management plans are required elements of a railroad's statutorily-mandated railroad safety risk reduction program. Therefore, the statutory requirements on information protection and consultation, implemented in the SSP and RRP final rules, would also apply to the documents required by this proposed rule to implement the required fatigue component of each railroad's RRP or SSP. Regarding information protection, as with RRP and SSP, only information compiled or collected solely for developing, implementing, or evaluating a railroad's FRMP would be protected.¹⁹

B. Roles and Responsibilities

Consistent with the program requirements of an RRP or SSP,²⁰ an FRMP is an ongoing program that supports continuous safety improvement, and requires systematic evaluation and management of risks. An FRMP is more than a document; it is a living program that is implemented by members of the organization who regularly meet to review data on fatigue indicators, analyze contributing factors to fatigue, take necessary actions (reactive and proactive) to mitigate fatigue, objectively audit the effectiveness of the system, and take corrective action continuously to improve the system. Consistent with comments made at the Working Group meetings, FRA expects most railroads will form a dedicated fatigue management committee to implement the program. The committee should include representatives of all departments and groups, including labor representatives as appropriate, that have a role in reporting, managing, and mitigating fatigue.

SSPs and RRP's require outreach to employees so that they can understand why certain actions are taken, or why certain safety procedures are introduced

¹⁹ For a detailed discussion of information protection, see the SSP final rule at 81 FR 53855–56 and 53878–82, and RRP final rule at 85 FR 9266–9272 and 9279–9282. For more information on the consultation requirements, see the SSP final rule at 81 FR 53856, 53882–87 and 49 CFR part 270 app. B, and RRP NPRM at 85 FR 9266, 9299–9303.

²⁰ 49 CFR 271.101(a), 270.101, and 270.103(p)(vii).

or changed.²¹ As this relates to an FRMP, it means that all safety-related personnel need to understand the corporate policies that underlie the FRMP; these may include policies and procedures that govern: Fatigue reporting, fitness-for-duty, absence due to fatigue, incident reporting, employee privacy, and prohibitions on coercion to perform duties while fatigued.

As provided in the RSIA, the three main stakeholders in the FRMP are railroad management, railroad employees (including nonprofit employee labor organizations), and FRA. Each of these stakeholders plays an important role in implementing an FRMP successfully. Railroad management must develop, document, and implement an FRMP, tailored to the size of the railroad, in a collaborative environment with relevant stakeholders; it must also then allocate the resources required to implement any fatigue countermeasures in a timely fashion. FRA notes that the RSIA, in multiple places, specifically requires railroads to develop and implement elements of their programs based on the latest scientific principles.²² FRA will review, and as appropriate, approve each railroad's FRMP plan, and evaluate to ensure that the railroads are complying with their plans.

These general roles and functions are not an exhaustive description of the various actions each group could take during the development and execution of the FRMP.

C. Components of an FRMP

As proposed, a railroad's FRMP must consist of actions taken by the railroad pursuant to formally documented policies, processes, and procedures intended to mitigate fatigue risk. It incorporates specific components that enable the following: (1) Identifying safety hazards associated with fatigue; (2) assessing the risks associated with identified hazards; (3) prioritizing risks for mitigation and implementing mitigation strategies for those risks; and (4) tracking the performance and

effectiveness of each mitigation strategy and reviewing and revising an FRMP based on results.

1. Identifying Safety Hazards

a. Examples of Methods of Identifying Safety Hazards

A risk-based hazard analysis²³ identifies operational processes, procedures, or activities that increase the likelihood of fatigue, and lays the foundation for subsequent assessment and mitigation of risks associated with the fatigue hazards identified. Hazards may be identified through quantitative, data-driven methods; through qualitative processes such as discussions, interviews, and brainstorming; or through a combination of both approaches. Identifying a hazard does not guarantee that it will be selected for mitigation.

In general, data-driven methods identify and record hazards through a systematic process that allows for tracking and further analysis. These methods could use various types of recorded observations, such as records of actual schedules, efficiency testing, accident/incident investigations, company audits, employee surveys, close-call or hazardous condition reports, and others. Simulations may also be used to identify potential hazards and to estimate the potential severity of outcomes.

Understanding the current conditions within a railroad is critical for a railroad's ability to identify fatigue hazards accurately. Important sources of information include current schedules, train lineups, throughput, and operating practices. Employee reports of fatigue or fatigue-related errors and incidents, and information on the work schedules that led up to them, would also be valuable. Likewise, employees may be able to provide information regarding travel assignments and random duty reports.

Comprehensive and objective accident, incident, and error analyses can also be conducted to determine when fatigue has been a potential contributing factor. The identified fatigue-sensitive situations can then be addressed to mitigate or to avoid them in the future. For example, if analyses

identify a high probability of a specific error occurring during the hours when employees are highly susceptible to fatigue, engineering or procedural safeguards could potentially be put in place to minimize or eliminate the possibility of that error recurring.

In addition to data-driven methods, qualitative methods that are often founded on expert judgment can be very effective at identifying fatigue hazards. Examples of qualitative hazard identification methods include, but are not limited to, the following:

- *Brainstorming* may be useful for identifying hazards in new or novel systems. Ideally, it involves all key stakeholders, is relatively quick and easy, and can be applied to a wide range of systems. Because brainstorming is commonly unstructured, it may not be comprehensive. The success of brainstorming depends heavily on the expertise of the participants and may be susceptible to the influence of group dynamics.

- *Checklists* are inventories of known hazards. They can be used by people who are not experts in the operation or system being analyzed, to capture a wide range of existing knowledge and experience, and help ensure that common and obvious problems are not discounted, minimized, or overlooked. However, checklists may be less useful for unusual operations or systems, may inhibit expansive thinking, or may overlook hazards that have not been previously or widely observed.

- *Failure Modes and Effects Analysis (FMEA)* is a reliability assessment technique built upon a detailed system description used to evaluate the ways in which basic system processes, components, or subcomponents can fail to perform safely. FMEA considers all the potential ways a component could fail, the effects of these failures on the system, possible causes of the failures, and how the failures might be mitigated. See Figure 1. FMEA is a systematic and rigorous evaluation approach that can yield a detailed record of the hazard identification process, and can be applied to a wide range of types of systems. However, it primarily focuses on single point-of-failure modes rather than combinations of failures, relies heavily upon individuals with detailed system knowledge, and can be both time-consuming and expensive.

²¹ 49 CFR 271.107 and 270.103(i)(4).

²² 49 U.S.C. 20156(f)(3)(A) and (E) specifically require railroads to consider scientific and medical research, in determining whether to include certain elements in their FRMP. The other elements of § 20156(f)(3) require railroads to consider various scientific concepts, such as medical conditions, cumulative fatigue, and circadian rhythms.

²³ Although the RSIA uses the term "risk analysis," FRA uses "risk-based hazard analysis" because it is more consistent with the terminology used in the SSP and RRP rules, as defined in 49 CFR 270.5 and 49 CFR 271.5.

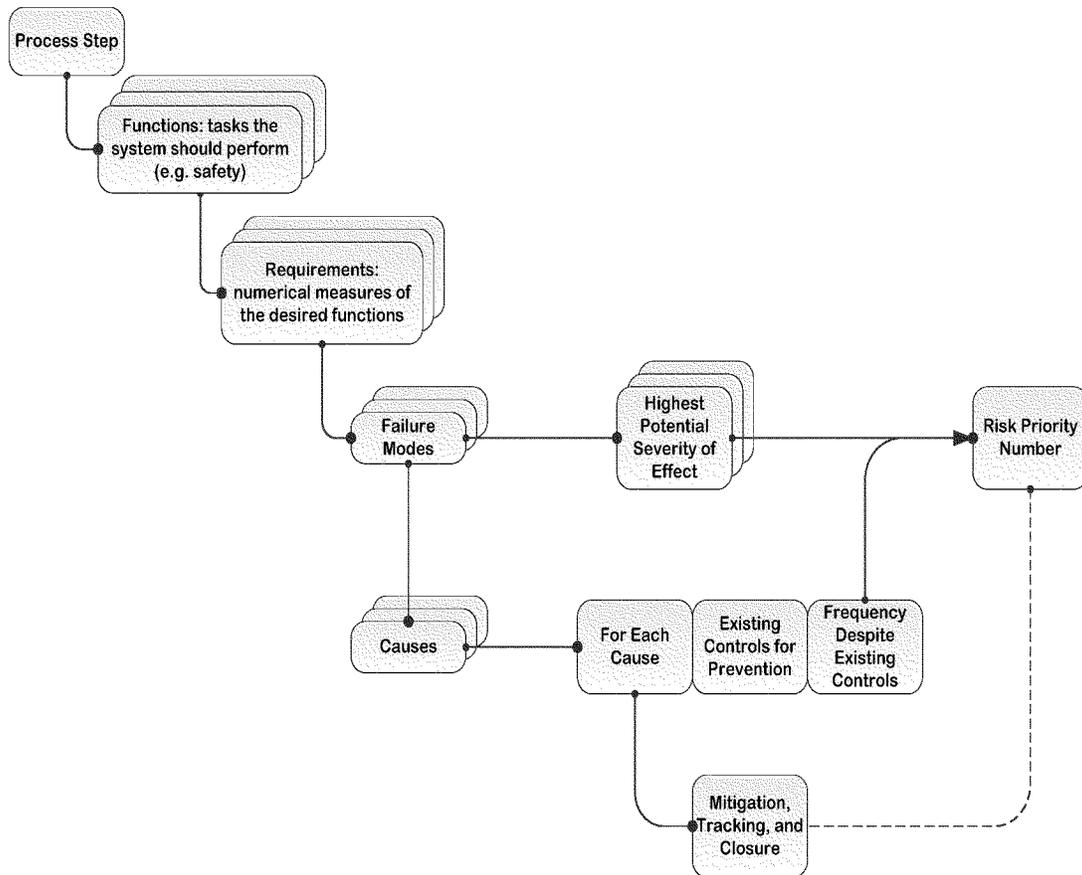


Figure 1. General Structure of Failure Modes and Effects Analysis

- *Structured What-If Technique (SWIFT)* is a form of facilitated brainstorming, typically carried out on a higher-level system description with relatively few subcomponents, involving a multidisciplinary team of experts. The facilitator uses various prompts, such as “what if,” “could someone,” or “has anyone ever” questions to initiate discussion within the group. SWIFT creates a detailed record of the hazard identification process, and can consume less time than some other methods. However, successful application requires careful preparation, relies on the expertise and experience of the team, and depends heavily on the skills of the facilitator.

- *Operating Hazard Analysis (OHA)* is when a team or individual uses various sources of information to identify hazards resulting from the operation and maintenance of a system, following a structured and formal process. In addition to the engineering design analysis at which FMEA excels, OHA is structured so that human performance and human interactions

can be included in the analysis. Information sources can include analyses of known hazards, written procedures and manuals, engineering system descriptions, and other materials to analyze detailed procedures performed during system operation.

- *Hazard identification software programs* are designed to support the identification of hazards using a systematic method. Programs are available that provide structured guidance for identifying general hazards or only fatigue-specific hazards. Such software may also offer the ability to catalog the resultant fatigue-related risks to help railroads prioritize risks.

- *Employee workshops* may be used to engage employees in the railroad’s hazard analysis. Employees can share their experiences and concerns relating to fatigue with the goal of identifying fatigue hazards, related risks, and potential solutions or mitigations.

These are just some of the methods available for identifying hazards. Each has advantages and disadvantages, and

a combination of two or more methods may minimize any shortcomings.

b. Specific Fatigue-Related Hazards To Consider

A number of individual, organizational, or environmental factors can contribute to the likelihood of fatigue. As provided in the RSIA, these factors should be among the many items considered during a hazard analysis.²⁴

- *General health and medical conditions.* According to the National Sleep Foundation,²⁵ there are several medical conditions or treatments of those conditions that may affect alertness. They include, but are not limited to, obstructive sleep apnea, insomnia, periodic limb movement disorder (restless leg syndrome), hypersomnia/narcolepsy (excessive daytime sleepiness), delayed sleep phase syndrome (circadian misalignment), depression, anxiety,

²⁴ See 49 U.S.C. 20156(c).

²⁵ <https://sleepfoundation.org/sleep-disorders-problems>.

bruxism (teeth grinding), night sweats, night terrors, nocturia (waking several times throughout the night to urinate), poor sleep efficiency, and residual effects of neurological damage (e.g., stroke).

• *Scheduling issues.* Systemic or particular scheduling and crew-calling practices and issues may affect opportunities for employees to obtain sufficient quality and quantity of sleep. Related issues that increase fatigue risks include, but are not limited to, the following:

- On-duty call practices;
- Work and rest cycles;
- Frequency and duration of days off;
- Changes in start times;
- Policies regarding napping; and
- Policies and practices regarding marking-off.

The level of predictability of work assignments, particularly those assignments that occur at night, can influence the ability of employees to anticipate work assignments and obtain necessary off-duty sleep. Note that work shift or duty tour predictability alone will not necessarily eliminate fatigue risk, and it is possible for highly predictable schedules to also have high exposure to fatigue. Other factors such as time of shift, work-to-rest ratio, and the speed and direction of shift rotation may also play a role in the employee's ability to plan for and obtain sufficient sleep.²⁶

An FRA report²⁷ found that high variability in shift start times contributes to fatigue. Furthermore, FRA research also established that the probability of rail accidents increases as fatigue increases.²⁸ Thus, reducing start time variability could potentially increase safety. In addition to examining the relationship between start time variability and fatigue, the report contains information on statistical methods, including analyzing variance of start times and calculating a hazard function, which can be used to compare work locations, types of jobs, and

changes in policies and procedures, with regard to fatigue.

Job characteristics can also be a factor, including, but not limited to, whether the work is physically demanding, whether the work requires extended travel to a reporting point, and whether the employees are called upon to respond to emergencies. In general, a railroad that effectively manages the combined effects of crew scheduling, employee rostering, additional tasks assigned to employees, schedule changes, and other factors should succeed at minimizing fatigue-inducing conditions.

2. Assessing Risks Associated With Identified Hazards

As mandated by the RSIA, a FRMP must systematically identify fatigue hazards and evaluate fatigue safety risks on the railroad system. The goal of this hazard analysis is to identify work schedules and other conditions that put employees at risk for a level of fatigue that compromises safety.

Different jobs may have different fatigue related risks. As such, it is important to examine the hazards associated with each job. A systematic assessment of risk involves: (1) Determining the severity and likelihood of potential incidents associated with the hazards identified; (2) assessing risk by evaluating the relative risk of each identified hazard and how it impacts established safety performance targets and/or by ranking hazards based on risk; and (3) systematically determining the order in which risks should be addressed. Selecting the criteria and methods for establishing priorities in advance will promote consistent decision making over time. However, flexibility is needed as risk tolerance levels or prioritizations can change over time as circumstances dictate.

One tool that railroads may want to consider using to assess their fatigue-related risk is a biomathematical model. A biomathematical model of performance and fatigue that has been properly validated and calibrated predicts accident risk based on analyzing identified periods of wakefulness and periods available for sleep. Validation of a biomathematical model of human performance and fatigue means determining that the output of the model actually measures human performance and fatigue levels. There are two dimensions to this validation. The first is that the model must be demonstrated to be consistent with currently established science in the areas of human performance, sleep, and fatigue level. The second part of the validation process involves determining

that the model output has a statistically reliable relationship with the risk of a human-factors accident caused by fatigue, and that the model output does not have such a relationship with accident risks not associated with human factors.

Calibration of the biomathematical model involves the assignment of numerical values to represent aspects of empirical observations, similar to marking degrees on a thermometer. In the case of human fatigue level and performance, the calibration of a fatigue scale would start with the assignment of values ranging from "not fatigued" to "severely fatigued." The calibration process starts during the validation process with the assignment of model output values to data bins for "not fatigued" and "severely fatigued." The next step consists of determining the fatigue threshold. Given a scale for human fatigue level and performance, and a relationship between that scale and human factors accident risk, a final calibration point would determine the value at which fatigue becomes unacceptable because the increase in accident risk at that level compromises safety; this is the fatigue threshold. Railroads choosing to use biomathematical fatigue modeling in their schedule analysis will need to establish a fatigue threshold.

Currently, FRA has validated and calibrated two commercially available biomathematical fatigue models. These are the Fatigue Avoidance Scheduling Tool (FAST) and the Fatigue Audit InterDyne (FAID). However, any validated and calibrated biomathematical fatigue model may be used in schedule analysis. An FRA-sponsored report details how any biomathematical fatigue model may be validated and calibrated.²⁹

FRA expects that new methods for measuring and assessing fatigue risk will continue to be developed. If the system provides a scientifically valid measure of fatigue risk, whether using a biomathematical modeling tool or another system, its use is acceptable for purposes of developing and implementing an FRMP.

As discussed below, there are many ways to measure fatigue risk. The system or metric a railroad ultimately chooses to measure its fatigue risk will depend on a variety of factors and will be unique to each railroad. For example, regardless of whether scheduled service

²⁶ Rosa, R.R. & Colligan, M.J., *Plain language about shiftwork* (DHHS [NIOSH] Publication No. 97-145) (1997), Cincinnati, OH: National Institute for Occupational Safety and Health, available at: <http://www.cdc.gov/niosh/docs/97-145/pdfs/97-145.pdf>.

²⁷ Raslear, T.G., *Start time variability and predictability in railroad train and engine freight and passenger service employees* (Report No. DOT/FRA/ORD-14/05) (2014), Washington, DC: U.S. Department of Transportation.

²⁸ Raslear, T.G., Hursh, S.R., & Van Dongen, H.P.A., Predicting cognitive impairment and accident risk, in H.P.A. Van Dongen & G.A. Kerkhof (Eds.), *Progress in Brain Research*, Vol. 190 (pp. 155-167), Amsterdam, The Netherlands: Elsevier B.V. (2011).

²⁹ Hursh, S.R., Raslear, T.G., Kaye, A.S., & Fanzone, J.F., *Validation and calibration of a fatigue assessment tool for railroad work schedules, summary report* (Report No. DOT/FRA/ORD-06/21) (2006), Washington, DC: U.S. Department of Transportation.

is covered under statutory HOS requirements (49 U.S.C. Ch. 211), passenger train employee HOS regulations (49 CFR part 228, subpart F), or no HOS limitations, a railroad should consider whether to include in its FRMP an analysis of at least two consecutive cycles of the work schedules (the period within which the work schedule repeats) of its safety-related railroad employees. Analyzing more than one cycle of a work schedule can provide

information about cumulative fatigue effects that would not be apparent if only one work schedule cycle were analyzed. However, railroads will need to determine how many work schedule cycles to examine based on factors such as start time variability, shift start and end time, and type of work being performed.

When looking at job tasks, some form of a Haddon matrix can be helpful in determining the risk associated with a

particular hazard. Figure 2 shows a basic Haddon risk matrix, which can be customized to represent categories of probability and severity that are meaningful and useful to the railroad. Such a matrix provides a visual representation of risks. As shown in the matrix, when the probability of an incident is low and severity is low, the risk is also low. Conversely, when the probability of an incident is high and severity is high, the risk is also high.

| RISK ASSESSMENT CHART | | | |
|-----------------------|--------------|-----------------|---------------|
| | LOW SEVERITY | MEDIUM SEVERITY | HIGH SEVERITY |
| HIGH PROBABILITY | | | |
| MEDIUM PROBABILITY | | | |
| LOW PROBABILITY | | | |

| RISK KEY | HIGH | MEDIUM | LOW |
|----------|------|--------|-----|
| | | | |

Figure 2. Haddon Risk Matrix

For example, overnight schedules will inevitably include the period identified as the Window of Circadian Low.³⁰ This low point in performance could be evaluated in relation to the duties to be performed at that time because an expected raised level of fatigue is of greater concern if it coincides with the performance of critical or difficult tasks.

Using a fatigue model can be helpful for determining both frequency and severity of fatigue risk associated with specific schedules. Modeling is extremely useful because it applies scientific principles about fatigue to

find the specific operational and employee factors that could contribute to significant performance changes due to fatigue. In general, modeling cannot consider non-duty-related causes of fatigue, individual differences related to sleep loss tolerance, and individual differences in circadian phase and amplitude. Because of these limitations, modeling should never be used to contradict an individual's reported fatigue level. However, these models can take into account the complex interactions among human physiology, work, and rest times. In the absence of such a model, the interaction of these factors would be very difficult to specify.

For example, if a fatigue model identified a particular type of work schedule that would benefit from fatigue

mitigation, the railroad may discover underlying systems issues and factors (e.g., inadequate rest facilities, lack of napping opportunities) that not only contribute to fatigue-related risks on that work schedule, but also on other schedules. The use of fatigue modeling in this way provides railroads with a method for systematically identifying and addressing the overall underlying system risks—not just the risks for a given work schedule.

3. Prioritizing Risks and Implementing Mitigation

Risk assessment processes must include a method for determining which risks most urgently require mitigation, which could be addressed at a later time, and which are minor enough that simply monitoring the hazard would be

³⁰The Window of Circadian Low is the time between 2:00 a.m. and 6:00 a.m. where individuals are normally adapted to sleep and performance of tasks during this period may be degraded. See Advisory Circular 120-100, *Basics of Aviation Fatigue*, 06/07/10, U.S. Department of Transportation.

sufficient. Methods commonly used in Safety Management Systems include, but are not limited to, ranking all risks based on their risk score, or setting a risk tolerance threshold. If the risk assessment process includes a risk tolerance threshold, hazards whose associated risk is above that threshold should be addressed; those with risk below the threshold need not be mitigated, but should be monitored for change. If a risk tolerance threshold is not used, the risks should be tackled in whatever priority order is established during the risk assessment. Once the assessment of risks associated with fatigue hazards has been completed, as part of their FRMP, railroads must develop and implement mitigations to reduce as many of those risks as possible.

Based on an analysis of the factors that lead to fatigue and practical mitigation alternatives, one or more mitigation options may be applied to reduce fatigue associated with specific schedules or situations. Risk mitigations are changes to the way things are done, or to the conditions under which things are done, that can reduce either the likelihood or the severity of a hazard. Examples of mitigations range from small actions, such as replacing a faded sign to improve visibility, to very large interventions, such as a system-wide rule change or technology implementation and associated training. The mitigations selected must be tailored to address at least one of the risks assessed. Railroads should, however, be alert to potential unintended consequences of mitigations, and be careful to select mitigations that minimize the possibility of inadvertently increasing other risks.

There are many ways railroads can mitigate the specific risk types that are required under the RSIA as part of an FRMP to be considered for mitigation. Below are some examples of how a railroad may mitigate these fatigue risks.

If the risk assessment shows that fatigue risks to the population of safety-related railroad employees associated with general health and medical conditions meet the railroad's established criteria for requiring mitigation, there are several approaches that can be taken. The railroad can establish new policies, such as those requiring periodic screening for specific medical conditions. The railroad can establish practices (e.g., exercise breaks or making healthy foods more available) that encourage greater general health and fitness to reduce the likelihood of sleep apnea. The railroad can also take steps to increase awareness of medical

conditions that affect alertness. This can be accomplished by providing information about the specific medical condition, its risk factors, prevalence, and how to recognize symptoms, or by identifying when to seek treatment, how to obtain a diagnosis, and treatment options.

Information relevant to determining when to seek treatment can include the time of onset, duration of symptoms, related health factors, comorbid conditions, and observations from the employee or family. Observation of these factors can be helpful in distinguishing a condition such as transient insomnia, which often resolves on its own, from chronic insomnia, which frequently requires medical treatment. Railroads could consider informing their safety-related employees that information from family members may provide insight into a sleep disorder of which an employee may otherwise be unaware.

Railroads can collect information regarding the medical professionals involved in diagnosis. For some disorders, this may only involve an individual's primary care physician. Other disorders may require consultation from a neurologist, sleep specialist, cognitive behavioral therapist, or other medical professionals. In addition, it may be helpful to list or describe the diagnostic tests involved and the typical time required to obtain diagnosis. For example, a diagnosis of obstructive sleep apnea may require a sleep study such as a polysomnography, which generally requires an individual to spend the night in a sleep center.

Lastly, treatment options could be discussed. For some sleep disorders, behavioral modifications or lifestyle changes, such as weight loss, may be sufficient to address the medical condition. Other medical conditions may require breathing assistance via continuous positive airway pressure, medical devices (such as night guards or mandibular advancing devices), or medication.

Sometimes scheduling issues affect the opportunities of safety-related railroad employees to obtain sufficient quality and quantity of sleep. When the risk assessment determines that the risks associated with those schedules meets the railroad's established criteria for requiring mitigation, methods for mitigating those risks could include: (1) Identifying methods to minimize accidents and incidents that occur as a result of working at times when scientific and medical research has shown that increased fatigue levels disrupt employees' circadian rhythm;

and (2) developing and implementing alertness strategies, such as policies on napping, to address acute drowsiness and fatigue while an employee is on duty.

Alertness strategies are generally classified into two broad categories: Preventative and operational. Preventative countermeasures are designed to minimize sleep loss and reduce the disruption to circadian cycles. The benefits of preventative countermeasures can be long-lasting.³¹ Operational countermeasures are designed to enhance alertness and task performance and are generally only effective for a short time.³²

Work schedule systems are typically designed to organize the timing and structure of work to maximize efficiency and productivity, and seldom are these schedules designed to minimize the safety risks associated with work schedules that are incompatible with human biological limitations, such as circadian rhythm.³³ Fatigue risk in an industry that operates 24 hours a day, 7 days per week is not just dependent on how many hours per day a person is permitted to work, or the amount of time that a person is required to be off-duty between periods of work. Other significant factors that influence the level of fatigue risk include the time of day that an employee works, the number of consecutive hours worked, direction and frequency of schedule rotation, the number of consecutive days that an employee works, amount of sleep, and sleep quality. In addition, individual factors such as sleep disorders, age, and "morningness/eveningness" as well as natural circadian rhythms and environmental and social factors may affect one's

³¹ Preventative countermeasures include: Adequate sleep/minimizing sleep loss, strategic napping at times such as before working or during an interim release period, good sleep habits/environment to maximize opportunities for good quality sleep, limiting work schedule modification/maximizing schedule predictability, diet, exercise, fatigue education, model-based schedule optimization/innovative scheduling and staffing practices, and opportunities to identify, diagnose, and treat sleep disorders.

³² Operational countermeasures include: Alertness aids including, workplace napping, split sleep, rest breaks, self and peer monitoring, mental stimulation, worker status alerting or monitoring technologies, strategies for shifting an employee's biological clock, bursts of physical activity, increasing the number of consecutive hours of off-duty rest, during which an employee receives no communication from the employing railroad's managers, supervisors, officers, or agents, and avoiding abrupt changes in rest cycles for employees by improving schedule predictability.

³³ Raslear, T.G., Gertler, J., & DiFiore, A., *Work schedules, sleep, fatigue, and accidents in the US railroad industry*, Fatigue: Biomedicine, Health & Behavior, 1, 99–115 (2013), available at: <http://www.fra.dot.gov/eLib/details/L04272>.

fatigue level and alertness.³⁴ Developing work schedules that reduce the risks of fatigue as part of a systematic FRMP may help a railroad balance its productivity and safety needs.

4. Summary of the Work of the FRMP Working Group's Task Forces

The FRMP Working Group's Task Forces extensively discussed mitigation of identified fatigue risks in the areas set forth in the RSIA.

a. The Education and Training Task Force

The Education and Training Task Force focused on the content and dissemination of training on the fatigue issues specific to the railroad industry. The Education and Training Task Force began by preparing a document summarizing existing fatigue training and education materials and highlighting the diversity of the materials and some of the major topics they covered. The document also includes information on other fatigue educational resources, including The Railroaders' Guide to Healthy Sleep website, existing FRA fatigue-related publications, other rail-related fatigue training and educational resources, and general fatigue resources.

The Education and Training Task Force also created the "Training Topics" document, which identifies appropriate fatigue-related training topics. The "Training Topics" document covers four major categories: Introductory fatigue training, off-duty fatigue issues, preventative strategies, and operational strategies. The Task Force members agreed on the content of most of the sections and subsections. A few topics represented major areas of concern for both railroad labor and railroad management.

Both labor and management members of the Task Force asked that a section on the role of individual differences in fatigue related to vulnerability, countermeasure efficacy, and performance be included in the "Training Topics" document as a topic for introductory fatigue training.

The Education and Training Task Force thoroughly discussed the "Training Topics" section on shiftwork as a cause of fatigue. Much of this discussion centered on predictability issues inherent in this type of work schedule and differing perspectives on how to address predictability.

³⁴ Horne, J.A., & Östberg, O., *A self-assessment questionnaire to determine morningness-eveningness in human circadian rhythms*, *International Journal of Chronobiology*, 4, 97–110 (1976).

Members of the Education and Training Task Force representing labor organizations also expressed major concerns with the "Training Topics" section on commuting. Specifically, labor did not feel the commuting section adequately captured the extended commuting requirements of some employees (e.g., maintenance-of-way), and the concern that extended commuting is a required activity that contributes to employee fatigue, even though it occurs during off-duty hours.

In 2019, FRA released a report examining the relationship between accidents and incidents involving maintenance-of-way employees and their work schedules to determine the role of fatigue in such accidents and incidents.³⁵ This report may help address some of the concerns raised by the Education and Training Task Force regarding fatigue issues experienced by these employees.

The section of the Training Topics document on scheduling had the most areas of concern and protracted discussion, particularly on the issue of schedule predictability.

The Task Force discussed that a fatigue education and training program must have the following characteristics to be effective: (1) The program must be technically correct, reflecting current scientific understanding of the issue being addressed; (2) information must be meaningful and useful to the intended audience; (3) the materials must be disseminated appropriately; and (4) the program's impact must be evaluated. Furthermore, the Task Force discussed the following basic elements of any fatigue training and education program.

(1) Fatigue definitions: Fatigue is a complex state that is characterized by a lack of alertness and reduced mental and physical performance, often accompanied by drowsiness.³⁶ Railroads may also wish to provide other definitions that will be used throughout the training and education program, including those that are unique to the railroad.

(2) Signs and symptoms of fatigue: Although signs and symptoms of fatigue can vary among individuals in both their presence and magnitude, it is useful to review common signs and symptoms of fatigue. These should not

be limited to physiological symptoms such as excessive blinking, yawning, or physiological discomfort, but also should include fatigue-related performance decrements such as increased reaction time.

(3) Causes of fatigue: Although individual differences play a significant role in how an individual will react to different causes of or risk factors for fatigue, some of the main causes of fatigue should be highlighted. These include: Amount of sleep, quality of sleep, amount of time since last sleep (i.e., number of continuous hours awake), time of day (circadian rhythm), workload and time on task, amount of recuperative time between wakeful episodes, sleep disorders and co-morbid conditions (e.g., stress, depression, anxiety, post-traumatic stress disorder), general health, and family factors (including caregiver responsibilities). In addition, employees may provide anecdotal information of fatigue factors for a particular job and a railroad may consider this information in addressing causes of fatigue in its training program.

(4) Circadian rhythm: An individual's circadian rhythm dictates when he or she will be most alert and at what times he or she will feel the most fatigued. Employees should have a general understanding of the circadian rhythm, how it affects fatigue levels, how it is impacted by the light-dark cycle, and its role in such processes as body temperature, brain wave activity, and other biological functions.

(5) Individual differences: As part of a fatigue training and education program, the role individual differences play in fatigue should be understood. For example, there is a great deal of variability of sleep requirements among individuals. Some individuals may feel rested and alert after as few as 5 hours of sleep, while others may require 10 or more hours of sleep to feel rested and alert. These sleep requirements vary due to such factors as the exact phase and amplitude of an individual's circadian rhythm, activity level, age, fatigue sensitivity, and health. Furthermore, some individuals may be more sensitive to the effects of fatigue, and efficacy of countermeasures may vary depending on the individual.

(6) Fatigue misconceptions: There are some misconceptions associated with fatigue. Individuals are often poor judges of both their own fatigue level and the efficacy of fatigue countermeasures. This is an opportunity to debunk certain ineffective countermeasure myths and also to discuss the limitations associated with effective countermeasures. Certain stereotypes regarding fatigue can be

³⁵ Kumagai, J.K. & Harnett, M., *Data analysis for maintenance-of-way worker fatigue*, Washington, DC: Federal Railroad Administration (2019), retrieved from: <https://www.fra.dot.gov/eLib/Details/L1984.3>.

³⁶ United States Department of Transportation, *Partnering in Safety: Managing Fatigue: A Significant Problem Affecting Safety, Security, and Productivity*, p. 5 (1999).

addressed as well. For example, experiencing fatigue does not automatically indicate weakness or a lack of motivation.

(7) Shiftwork: Many railroads operate 24 hours a day, 7 days a week, 365 days a year. This operational schedule requires employees to work different shifts. Passenger and freight operations, different railroad classes, and different jobs will all have different shiftwork needs. Some jobs will work a dedicated shift, while other jobs can be unpredictable and be based on a variety of factors including train schedules, employee availability, and other needs. When discussing shiftwork, training content will be influenced by a particular railroad's operations and collective bargaining agreements. However, discussions of shiftwork should provide information on the fatigue risks associated with night work, split shifts, consecutive shifts worked, and working different shifts throughout the week. This information should include strategies to cope with those shifts occurring during circadian lows.

(8) Illnesses and stress: Although it would be impractical to discuss the impact of every possible illness and stressor on fatigue, it nevertheless is worthwhile to discuss how illnesses and stress in general can impact sleep quality. Furthermore, some stressors and illnesses can lead to sensitization to fatigue-inducing factors.

(9) Consequences of fatigue: The potential consequences of fatigue are numerous and varied. However, from a training perspective, the key information to convey is the relationship between fatigue and performance. Although individual differences will influence how fatigue affects performance, in general, as fatigue levels increase, task performance decreases, and this decrease in performance increases accident risk.

(10) Introduction to FRA FRMP regulations: A railroad may choose to provide an overview of FRA regulations regarding the requirements for FRMPs. This overview can highlight any changes to operations as a result of the promulgation of the FRMP regulation as well as highlight the key requirements that all FRMPs must contain.

(11) Railroad FRMP: Following information on FRA FRMP regulations, a railroad may wish to take time to familiarize its employees with its own FRMP. Railroads should highlight any new policies or procedures associated with the creation of the FRMP as well as detail any changes or benefits that have resulted from its implementation. A railroad may also wish to provide employees with a mechanism to provide

feedback about the FRMP as part of the railroad's own periodic review process. In addition, a railroad should familiarize its employees with its procedures and processes for reporting fatigue levels and fatigue mark-off policies.

As provided in the RSIA, any training and education program should be based on a foundation of the most current medical and scientific research;³⁷ FRA interprets this to include relevant statistical information, to the extent possible. FRA notes that resources that provide information on the prevalence of sleep disorders, the number of Americans not obtaining adequate sleep, and the mental and physical implications that result are available and updated annually.³⁸ Sleep research collected from and related to railroad employees of various crafts is also available.

The Education and Training Task Force also identified training topics addressing off-duty fatigue issues and preventative strategies. These included common sleep disorders, physiological versus subjective assessments of fatigue, lifestyle factors, nutrition and hydration, exercise, substance use, the home environment, and commuting.

The Task Force also created a "Dissemination Strategies" document outlining steps railroads should

consider when choosing delivery approaches for fatigue education and training, and suggesting methods railroads could use for successful evaluation of a fatigue education and training program. The "Dissemination Strategies" document identifies and discusses the following ten elements of an effective dissemination and evaluation plan listed below.

1. *Goals*: The first step in an effective dissemination and evaluation plan is determining and documenting the goals for the training and education program. The primary question to ask at this step is: What is the desired outcome of the training and education program? Different railroads may have different training goals and these goals will help shape how information is presented to employees.

2. *Objectives*: When considering objectives of a fatigue training and education program, determine specific areas of accomplishment for each goal. Once those areas have been established, the next step is to determine what will be required to measure success.

3. *Measuring Success*: There is no single "correct" way to measure success. However, any measure of success should indicate if the material reached the intended audience, was understood, and had a positive effect. Evaluation strategies may be direct, such as administering a quiz to test knowledge of a particular topic, or indirect, such as looking at safety culture change as a result of training. Neither method is superior to the other, but multiple evaluation strategies may provide a more comprehensive understanding of program efficacy.

4. *Employees Covered*: An effective dissemination and evaluation plan should identify the employees covered by the different elements of a training and education program. There may be some elements of a program that apply to all railroad employees, while other elements may only apply to a particular craft, shift, or schedule type. At this stage, thought should also be given to any special needs a covered group may have. For example, if a large percentage of a covered group does not have email access, disseminating information via email would be neither practical nor effective.

5. *Content*: Perhaps the most important element to consider when developing a dissemination and evaluation plan is the content to be presented. At this step, proposed fatigue training and education content should be reviewed to make sure it is accurate and relevant to the covered groups.

6. *Source*: Care should be given to ensure that information presented

³⁷ 49 U.S.C. 20156(f)(3)(A).

³⁸ Example resources include:

Calabrese, C., Mejia, B., McInnis, C.A., France, M., Nadler, E., & Raslear, T.G., Time of day effects on railroad roadway worker injury risk, *Journal of Safety Research*, 61, pp. 53–64 (2017).

Dorrian, J., Baulk, S.D., & Dawson, D., Work hours, workload, sleep and fatigue in Australian Rail Industry employees, *Applied Ergonomics*, 42(2), pp. 202–209 (2011).

Dorrian, J., Hussey, F., & Dawson, D., Train driving efficiency and safety: Examining the cost of fatigue, *Journal of Sleep Research*, 16, pp. 1–11 (2007).

Gertler, J., DiFiore, A., & Raslear, T., *Fatigue Status of the U.S. Railroad Industry*, Washington, DC: U.S. Department of Transportation, Federal Railroad Administration (2013).

Gertler, J., & Viale, A., *Work Schedules and Sleep Patterns of Railroad Maintenance of Way Workers*, Washington, DC: U.S. Department of Transportation, Federal Railroad Administration (2006).

Kumagai, J. & Harnett, M. Data Analysis for Maintenance-of-Way Worker Fatigue (2019), available at: https://www.fra.dot.gov/eLib/details/L19843#p1_z50_gD_IRT.

Sussman, D., & Coplen, M., Fatigue and Alertness in the United States Railroad Industry Part 1: The Nature of the Problem, *Transportation Research Part F: Traffic Psychology and Behaviour*, 3(4), pp. 211–220 (2000).

Raslear, T.G., Gertler, J., & DiFiore, A., Work schedules, sleep, fatigue, and accidents in the US railroad industry, *Fatigue: Biomedicine, Health & Behavior*, 1, pp. 99–115 (2013), available at: <http://www.fra.dot.gov/eLib/details/L04272>.

<https://www.cdc.gov/sleep/index.html> and <https://www.sleepfoundation.org/>

comes from credible and trusted sources.

7. *Presentation Medium:* At this stage in the process, the program designer should determine the most effective methods to present different elements of the fatigue training and education program. Some information may be best suited for in-person training while other information might be best conveyed through publications. Some presentation media to consider include in-class training, informational videos, handouts, peer-to-peer efforts, job briefings, and conferences or other meetings. Depending on the covered group's access to the internet, Web resources such as Web-based training, emails, websites, blogs, and social media could also be used. The preceding examples are not an exhaustive list, and each railroad will need to tailor its presentation media based on the identified goals, objectives, and employees to be covered.

8. *Access:* Fatigue training and education should be an ongoing process. Therefore, it is important that employees have easy access to information. Employees should have a way to revisit information that was previously presented. Examples of making information accessible could include providing access to fatigue presentations on the company Intranet after an initial classroom presentation, handouts after a one-time job briefing, or posters that highlight key points.

9. *Availability:* At this step, a railroad developing a fatigue training and education program should consider strategies for promoting awareness of the availability of training and educational materials.

10. *Challenges:* The challenges related to effectively disseminating and evaluating information as part of a fatigue training and education program will vary greatly. These challenges could include a variety of issues, such as difficulty reaching a particular group, lack of resources to present a topic as originally planned, or even glitches in Web technology. Determining how best to deliver information in a manner that is understandable, appropriate, and engaging to different employee groups will present its own set of challenges. At this stage, potential challenges should be identified as well as solutions for overcoming or mitigating these challenges.

Finally, the Education and Training Task Force created a document that highlights and explains two general categories of fatigue countermeasures (preventative and operational), and provides examples of each. Preventative countermeasures, as the name suggests,

are countermeasures designed to minimize sleep loss and reduce the disruption of circadian cycles and the benefits of preventative countermeasures can be long-lasting. Operational countermeasures are designed to enhance alertness and task performance while on duty and are generally only effective for a short time.

b. Scheduling Task Force

The FRMP Working Group's Scheduling Task Force discussed the scheduling issues that affect fatigue. However, several issues prevented agreement on scheduling including: (1) The need to differentiate between employees covered by HOS limitations (covered service employees) and employees not covered by such requirements; (2) the need for waivers and/or pilot projects to implement scheduling practices that might conflict with existing HOS limitations; (3) disagreement on whether using biomathematical fatigue models is appropriate for freight operations; (4) potential conflict with existing collective bargaining agreements; and (5) how much emphasis should be placed on an employee's work schedule predictability. The Scheduling Task Force did not produce a document.

c. Infrastructure and Environment Task Force

The Infrastructure and Environment Task Force provided guidelines it suggested railroads should consider to mitigate fatigue when employees are involved in emergency work. The Task Force interpreted an emergency based on the nonapplication language in the HOS laws at 49 U.S.C. 21102(a). Specifically, the "Emergency Work" document provides that an emergency for purposes of the guidelines is defined in 49 U.S.C. 21102(a)(1)–(4), which states that the HOS requirements do not apply to situations involving a casualty, an unavoidable accident, an act of God, or a delay resulting from a cause unknown and unforeseeable to a railroad carrier or its officer or agent in charge of the employee when the employee left a terminal.

This definition incorporates a wide variety of emergency situations, including those referred to in section 20156(f)(3)(C), "derailments and natural disasters, or engagement in other intensive working conditions." The employees responsible for responding to these emergency situations may include employees performing functions not covered by HOS requirements, and the "Emergency Work" document makes clear that the Infrastructure and Environment Task Force intended it to

apply to these employees as well. For example, the "Emergency Work" document includes provisions such as relief assignments when an emergency is anticipated to extend more than 16 hours, and provisions to offer relief lodging for employees both between shifts of extended work at an emergency location, and, if necessary, for an employee to rest before commuting home after an extended period of emergency service. Such provisions would provide some protection against fatigue for those employees not subject to HOS requirements and, if the emergency situation resulted in the nonapplication of the HOS laws, for employees performing service normally covered by the HOS limitations.

The Task Force also created two documents; "Accommodations" and "Dispute Resolutions," focused on mitigating fatigue related to issues at lodging facilities. The first document, "Accommodations," includes guidelines for accommodations where employees rest during off-duty periods, and the second document, "Dispute Resolutions," provides dispute resolution procedures for issues arising with lodging facilities that interfere with an employee's ability to rest.³⁹ The Task Force made clear that the "Accommodations" and "Dispute Resolution" documents were intended to apply to all employee lodging, even lodging that is not "railroad provided" (e.g., commercial hotels).

The Task Force indicated that the accommodations guidelines are intended to provide elements for discussion during the required consultation between management and labor about a railroad's FRMP, rather than to provide minimum standards for lodging facilities. The Task Force did not expect every lodging facility would meet all of the listed criteria. The Task Force agreed that while the listed elements were desirable, they may not be possible at all locations, and, in some cases, collective bargaining agreements might provide for other arrangements. For example, while the guidelines recommend a single occupancy room, some existing labor agreements may provide for four employees to a room. Similarly, while a full or double bed

³⁹ Under 49 U.S.C. 21106, a railroad may provide sleeping quarters for employees, and any individuals employed to maintain the right-of-way of a railroad carrier, only if the sleeping quarters are clean, safe, and sanitary, give those employees and individuals an opportunity for rest free from the interruptions caused by noise under the control of the carrier, and provide indoor toilet facilities, potable water, and other features to protect the health of employees. Further, 49 CFR part 228, subpart C, provides additional requirements for railroad-provided sleeping quarters.

may be preferred, there may be locations where this is not an option and only single beds are available at the only available lodging facility.

The “Dispute Resolution” document recognizes that employees will first seek to resolve issues at lodging facilities with on-site staff, such as the front desk at a hotel. The “Dispute Resolution” document recommends that FRMP plans include a railroad contact with authority over lodging decisions and require that contact to make a good faith effort to resolve lodging issues in a timely manner so the employee can obtain adequate rest before returning to duty. For example, if the heat is not working in a given room, the lodging facility will likely move the employee to a different room. However, if there were no other rooms available, or if the issue were something like electric power being out at an entire facility, the railroad contact should become involved to assist the employee in finding alternate lodging.

The “Dispute Resolution” document provides that FRMP plans should contain a dispute resolution process covering sleeping accommodations provided by or through the railroad. It should be noted that this process is not intended to supplant or modify the requirements established by 49 CFR 228.333, *Remedial action*, as part of the Camp Car regulation. The Task Force suggested that any FRMP dispute resolution process should be designed to address problems associated with the sleeping accommodations that would interfere with an employee obtaining adequate rest. As part of the FRMP plan, the Task Force recommended that railroads identify a protocol for contacting a railroad representative should resolution with a lodging facility fail.

The Task Force identified parameters it recommended employer-provided lodging should meet to the extent practicable. FRA notes that interim rest facilities provided by passenger train operators under 49 CFR 228.409, *Requirements for railroad-provided employee sleeping quarters during interim releases and other periods available for rest within a duty tour*, are subject to the requirements of that section. As such, the Task Force’s suggested parameters are not applicable to interim rest facilities under § 228.409. In addition, local labor agreements may supersede or supplement some of the elements of these parameters. The parameters the “Dispute Resolution” document identifies include structural factors, availability of meal accommodations, building safety and

security, and personal hygiene and sanitation.

The Task Force “Dispute Resolution” document does not define “adequate rest,” nor does it specify the conditions at a lodging facility that would prevent an employee from obtaining adequate rest. Employees covered by HOS laws or regulations would be required to receive the amount of off-duty time provided under the relevant laws or regulations. For other employees, rest requirements may depend on the situation, or may be provided by a collective bargaining agreement or other mechanism. However, the Task Force “Dispute Resolution” document suggests that if an issue arises at a lodging facility that interferes with an employee’s ability to obtain rest, the employee should receive the amount of rest he or she would have had if the lodging issue had not occurred. For example, if there are no towels in the room when an employee arrives, but the front desk promptly brings towels upon request, this should not hinder the employee’s ability to get adequate rest. On the other hand, if an employee is provided a room with a broken bed, and it takes five hours to locate another room or bed, the railroad may need to adjust the time an employee is required to return to duty so the employee can obtain adequate rest.

Lastly, as part of its discussions, the Task Force identified circumstances when employees may have to work under excessive fatigue conditions. In these instances, when, despite best efforts, employees must work under conditions identified as having an excessive risk for fatigue, the Task Force discussed that the specific risks and hazards associated with operations under excessive fatigue should be identified. Once identified, an excessive fatigue protocol can be implemented for employees at risk. The Task Force suggested that railroads may wish to consider formalizing these protocols into a Workplace Fatigue Policy. They also suggested that a fatigue policy may be an effective way to communicate how operations will be handled when employees are working under fatigued conditions. This policy could be system-wide or site or craft specific. A fatigue policy may include information about: (1) Roles and responsibilities of employees and supervisors when working under excessive fatigue conditions; (2) maximum shift length; (3) control measures for specific jobs, tasks, or operations; (4) fatigue self-assessment checklists; (5) identification of errors that are more likely to happen when fatigued and procedures to reduce the likelihood of these errors; (6)

procedures for managing employees working under excessive fatigue conditions; (7) procedures for reporting potential hazards and risks; and (8) procedures for when an employee is too fatigued to continue work (e.g., temporary work assignment).

5. Tracking Performance

As required in 49 CFR 270.103(p)(1)(viii) and 49 CFR 271.105(c)(3), FRA proposes that each railroad must develop a system to track identified risks and mitigation strategies within the FRMP. Railroads must continually monitor all identified risks, not just risks that are currently being targeted for mitigation. As a railroad’s FRMP matures, mitigation strategies are implemented, and operations change, risks will also change. A railroad may find that certain risks have been essentially eliminated, while others may have been significantly reduced, and previously undetected risks may emerge. As risks develop, the system must be able to incorporate these newly identified risks into their processes.

Evaluation of fatigue-related information might show that some mitigation strategies do not meet expectations for effectively reducing fatigue. It could also show that changes in schedules, the addition of new technologies, turnover in the workforce, added demands for service, and other operational changes could present new fatigue hazards or change the risks associated with hazards already known. When either of these circumstances arises, the fatigue risk landscape is altered, and the railroad should again use the risk factor analysis processes to address those changes.

For risks being mitigated, the railroad should note the date the mitigation strategy was implemented and track the progress and success of the mitigation strategy over time. Risks that are not mitigated or have not been mitigated to the extent desired should be evaluated for changes in mitigation strategies, as appropriate. Risks that have been successfully eliminated should be noted, and new risks that have emerged should be assessed for probability and severity and incorporated into the railroad’s risk assessment catalog. Existing risks should also be reviewed for changes in probability and severity. As a railroad reviews its fatigue-related risks and risk tolerance, the risks to be mitigated and the types of mitigation strategy to be used may change over time. Evaluation might also show that some portion of the FRMP is not being implemented as designed. It could also identify aspects of the program that, even though they are working as

designed, are not effective. In any of these instances, the evaluation could lead to program improvements.

Finally, consistent with 49 CFR 271.107, an effective FRMP includes feedback mechanisms and regular information updates about the system to all affected employees to encourage cooperative participation in the FRMP.

V. Section-by-Section Analysis

FRA proposes to amend 49 CFR part 270 (SSP) by adding a new subpart E, and to amend 49 CFR part 271 (RRP) by adding new subpart G. As proposed, each of these new subparts would be titled “Fatigue Risk Management Programs;” substantively identical; and set forth the requirements for railroads to develop and implement FRMPs as part of their SSPs or RRP. FRA also proposes to amend: § 270.103(a)(1) to ensure a railroad’s SSP plan includes subpart E, by replacing the word “section” with the word “part”; § 271.101(a) by adding an FRMP to the list of required elements of an RRP; and § 271.201, to include an FRMP plan as a required component of an RRP plan.

The new subparts would require each railroad subject to part 270 or part 271 (covered railroads) to establish and implement an FRMP that is supported by an FRA-approved written FRMP plan, as a component of a railroad’s SSP or RRP. This proposed rule would also require covered railroads to review their FRMP annually, and if necessary, make FRA-approved updates to their plans. FRA is proposing this rule in its effort to improve rail safety continually and to satisfy the statutory mandate in 49 U.S.C. 20156. FRA seeks comments on all aspects of the proposed rule.

Sections 270.401 and 271.601—Definitions

Proposed §§ 270.401 and 271.601 contain definitions for terms used in this NPRM. The sections include proposed definitions for the terms: Contributing factor, fatigue, fatigue-risk analysis, FRMP, FRMP plan, and safety-related railroad employee. The proposed definitions are intended to clarify the meaning of important terms used in this proposed rule and to minimize potential misinterpretation of the regulations. FRA is proposing to define “contributing factor” as a circumstance or condition that helps cause a result (*i.e.*, fatigue). Contributing factors do not necessarily cause fatigue by themselves, but they can increase the likelihood fatigue will occur, or can increase the severity of fatigue when it does occur. Eliminating or mitigating contributing factors may not eliminate fatigue and associated risk, but doing so can

moderate the frequency with which it occurs, or reduce the severity of fatigue consequences.

While the RSIA did not define “fatigue,” FRA is proposing to define “fatigue” consistent with the DOT operational definition⁴⁰ of the term, as “a complex state characterized by a lack of alertness and reduced mental and physical performance, often accompanied by drowsiness.”

FRA proposes to define “fatigue risk analysis” as a risk-based analysis that is focused on the hazards and risks associated with fatigue. In 49 CFR 271.103(b), a covered railroad is required to conduct a risk-based hazard analysis of its operations that includes: (1) Identification of hazards; and (2) a calculation of risk by determining and analyzing the likelihood and severity of potential events associated with those hazards. *See also* 49 CFR 270.5, definition of risk based hazard management. FRA proposes to define FRMP as fatigue risk management program, and the FRMP plan is the documentation that describes the processes and procedures a railroad uses to implement its FRMP.

Section 20156(f)(1) requires a railroad to have a fatigue management plan designed to reduce the fatigue experienced by “safety-related employees.” FRA proposes to define “safety-related railroad employee” consistent with the definition of the term in 49 U.S.C. 20102. As proposed, “safety-related railroad employee” would mean a person: (1) Subject to 49 U.S.C. 21103, 21104, or 21105 or 49 CFR part 228 subpart F (the hours of service laws and regulations); (2) involved in railroad operations, but not subject to the hours of service laws and regulations; (3) who inspects, installs, repairs or maintains track, roadbed, signal and communication systems, and electric traction systems including a roadway or railroad bridge worker; (4) who is a hazmat employee as defined in 49 U.S.C. 5102(3); (5) who inspects, repairs, or maintains locomotives, passenger cars, or freight cars; or (6) who is the employee of any person who enters into a contractual relationship with the railroad either to perform significant safety-related services on the railroad’s behalf or to utilize significant safety-related services provided by the railroad for railroad operations purposes, if the person performs one of the functions identified in paragraphs (1) through (5).

⁴⁰ United States Department of Transportation, *Partnering in Safety: Managing Fatigue: A Significant Problem Affecting Safety, Security, and Productivity*, 1999; p. 5.

The SSP and RRP rules do not use the term “safety-related employee” because the RSIA does not limit the railroad safety risk reduction requirement to these employees. *See* 49 U.S.C. 20156(a)–(e). FRA requests comment on whether the proposed definition of “safety-related employee” captures the intended scope of Congress’s mandate for fatigue management plans in Section 20156.

FRA requests public comment on these proposed definitions and whether other terms used in this proposal should be defined.

Sections 270.403 and 271.603—Purpose and Scope of a FRMP

Proposed §§ 270.403 and 271.603 explain the purpose and scope of the proposed rule. As proposed, paragraph (a) of each section states that the purpose of the subparts is to require railroads to develop and implement FRMPs to improve railroad safety through structured, proactive processes and procedures to identify and mitigate the risks associated with fatigue on their employees.

Proposed paragraph (b) of these sections address the scope of the proposed rule and would require railroads to develop their FRMPs to reduce the fatigue of their safety-related railroad employees and to reduce the risk of railroad accidents, incidents, injuries, and fatalities where the fatigue of any of these employees is a contributing factor.⁴¹ Proposed paragraph (b) further requires each railroad, in developing its FRMP, to identify and evaluate, systematically, the fatigue-related railroad safety hazards and risks on its system, determine the degree of risk associated with each hazard, and manage those risks to reduce the fatigue that its safety-related railroad employees experience. This system-wide fatigue risk identification and evaluation process must account for the varying circumstances of railroad operations on different parts of its system. The railroad would then be required to employ in its FRMP the appropriately identified fatigue risk mitigation

⁴¹ The RSIA requires railroads “to reduce the likelihood of accidents, incidents, injuries, and fatalities caused by fatigue.” Fatigue is a complex and multifaceted condition with varying effects among individuals; however, it is not always the primary cause of an accident or incident. The presence of fatigue can increase the likelihood of an accident happening, or it can make the consequences of an accident more severe. FRA uses the term “contributing factor” to make clear that railroads may choose mitigations that address either the likelihood or the severity of an accident, incident, injury, or fatality caused in part by fatigue.

strategies to address those varying circumstances.⁴²

Sections 270.405 and 271.605—General Requirements; Procedure

These proposed sections set forth the rule's general requirements. Paragraph (a) in each of these sections would require each railroad subject to either RRP or SSP to establish and implement an FRMP fully as part of its SSP or RRP. As proposed, these paragraphs would also require each railroad to develop and implement an FRMP plan to support its FRMP. A railroad's FRMP plan would be required to meet the requirements of proposed § 270.409 or 271.609, and be approved by FRA under the processes in subpart C of part 270 or subpart D of part 271. Consistent with Section 20156's mandate for railroads to update their fatigue mitigation plans periodically, proposed paragraph (a) would also require railroads to update their FRMP plans as necessary as part of the annual, internal assessment of the railroad's SSP or RRP already required by existing §§ 270.303 and 271.401. FRA believes the annual internal assessment should be sufficient for a railroad to determine whether any aspect of its FRMP plan requires updating. FRA requests comments on whether the annual internal assessment provides an appropriate mechanism and timing for evaluating and updating railroads' FRMP plans.

Proposed paragraph (b) of these sections would require a railroad to explain in its FRMP plan its method for analyzing fatigue risks and its process(es) for implementing its FRMP.

Proposed paragraphs (c) of these sections would require railroads to submit their FRMP plans to FRA for approval either within six months of publication of a final rule in this proceeding or within the applicable existing timelines in parts 270 and 271 for filing SSP or RRP plans. These paragraphs would also require railroads to follow the existing processes in parts 270 and 271 for submitting updates of their FRMP plans to FRA for approval.

Proposed paragraph (d) would require FRA to approve or disapprove railroads' FRMP plans (and any updates) under the existing approval processes in parts 270 and 271 applicable to FRA approval of railroad SSP plans and RRP plans.

Sections 270.407 and 271.607—Requirements for an FRMP

Proposed §§ 270.407 and 271.607 set forth the proposed requirements for railroads' FRMPs. As proposed, paragraph (a) of these sections sets forth

the general requirement that a railroad subject to part 270 or 271 would have to establish and implement an FRMP that meets certain requirements.

Proposed paragraph (b) of these sections contains the minimum requirements for the fatigue-risk analysis part of a railroad's FRMP. These paragraphs specify that a railroad's fatigue-risk analysis must include identification of fatigue-related railroad safety hazards, assessment of the risks associated with those hazards, and prioritization of those risks for mitigation. The proposed paragraph also requires that the fatigue risk analysis consider, at a minimum, three categories of risk factors:

(1) General health and medical conditions that can affect the fatigue levels of safety-related railroad employees;

(2) scheduling issues that can affect the opportunities of safety-related railroad employees to obtain sufficient quality and quantity of sleep; and

(3) characteristics of each job category worked by safety-related railroad employees that can affect the fatigue levels and risk for fatigue of safety-related railroad employees.

Railroads are not limited to consideration of these three types of risk factors in their FRMPs and FRA encourages railroads to consider other relevant factors based on developments in fatigue science. The types of principles and processes that inform a fatigue-risk analysis are well-established and, as discussed in detail above and in the preamble of the SSP and RRP proposed rules, have been adopted into industry standards and described in detail in other written resources. See 77 FR 55375 and 80 FR 10953. For example, as discussed in those preambles, MIL-STD-882,⁴³ APTA's *Manual for the Development of System Safety Program Plans for Commuter Railroads*,⁴⁴ and FRA's *Collision Hazard Analysis Guide: Commuter and Intercity Passenger Rail Service* discuss how to conduct risk analyses in detail.⁴⁵ A railroad subject to this part could use any of these resources when developing and conducting a fatigue-risk analysis. FRA requests public comment as to whether additional resources are necessary to help railroads comply with

the requirements of this proposed section and if so, what type of additional resources would be necessary.

Paragraph (c) of these sections would require a railroad as part of its FRMP to develop and implement mitigation strategies that improve safety by reducing the risk of railroad accidents, incidents, injuries, and fatalities where fatigue of any of its safety-related railroad employees is a contributing factor. These paragraphs state that as a railroad develops and implements mitigation strategies, it would be required to consider, at a minimum, the railroad's policies, practices, and communication. Paragraphs (c)(1)–(3) describe each of these three areas of consideration in more detail.

Paragraph (c)(1) would require railroads to consider developing and implementing policies to reduce the risk of the exposure of its safety-related railroad employees to fatigue-related railroad safety hazards on its system.

Paragraph (c)(2) would require railroads to consider developing and implementing operational practices to reduce the risk of the exposure of its safety-related railroad employees to fatigue-related railroad safety hazards on its system.

Paragraph (c)(3) would require railroads to consider developing and implementing training, education, and outreach methods to deliver fatigue-related information effectively to its safety-related railroad employees. At a minimum, a railroad must consider the need to include employee education and training on the physiological and human factors that affect fatigue and strategies to reduce or mitigate the effects of fatigue based on the most current scientific and medical research and literature. If a railroad chooses to include these subjects in its training, this training would supplement the requirement in 49 CFR part 243 to develop minimum training standards for each occupational category that includes a list of the Federal railroad safety laws, regulations, and orders that an employee is required to comply with by adding employee fatigue education and training topics that relate to employee safety independent of any regulatory or statutory requirements.

Paragraph (d) proposes requirements for a railroad to develop and implement procedures and processes for monitoring and evaluating its FRMP. Monitoring and evaluation are necessary parts of a railroad's FRMP; they enable a railroad to determine whether the FRMP is effectively reducing the numbers and rates of railroad accidents,

⁴³ Department of Defense, *Standard practice system safety*, (MIL-STD-882E) (2012), retrieved from <https://www.dau.edu/cop/armyeshoh/DAU%20Sponsored%20Documents/MIL-STD-882E.pdf> (last accessed on July 27, 2020).

⁴⁴ <https://www.trbts.org/wp-content/uploads/2016/03/APTA-Safety-Management-System-Manual.pdf> (last accessed on July 27, 2020).

⁴⁵ <https://www.fra.dot.gov/eLib/Details/L03191> (last accessed on July 27, 2020).

⁴² See 49 CFR 270.407(c) and 271.607(c).

incidents, injuries, and fatalities where fatigue is a contributing factor.

*Sections 270.409 and 271.609—
Requirements for a FRMP Plan*

Proposed §§ 270.409 and 271.609 would require a railroad to adopt and implement its FRMP through an FRMP plan that meets certain requirements. As proposed, paragraph (a) of these sections would require railroads to develop their FRMP plans in consultation with directly-affected employees and FRA would have to approve a railroad's FRMP. The existing consultation and approval processes of parts 270 and 271 would apply.

Proposed paragraph (b) would require the FRMP plan to describe specific, fatigue-related goals of the FRMP and clear strategies for attaining those goals.

Proposed paragraph (c) addresses the methods a railroad uses to develop its FRMP plan. Proposed paragraph (c)(1) would require an FRMP plan to describe the railroad's method(s) for conducting the fatigue-risk analysis as part of its FRMP.⁴⁶ While FRA understands that railroads subject to a final FRMP rule would likely need to develop processes unique to their own operations, FRA expects that railroads' fatigue-risk analysis processes will use techniques similar to those currently used in other safety management systems. This section also specifies information railroads must include in an FRMP plan's description of a railroad's fatigue-risk analysis. FRA requests comment on whether additional resources are necessary to help railroads comply with the requirements of this proposed section and if so, what type of resources would be helpful.

Proposed paragraph (c)(2) would require an FRMP plan to describe the railroad's processes for identifying and selecting mitigation strategies, and for monitoring identified hazards while the risk associated with the hazard is being mitigated.

Proposed paragraph (c)(3) would require an FRMP plan to describe a railroad's processes for monitoring and evaluating the overall effectiveness of the FRMP and the mitigation strategies, along with procedures for reviewing and updating the FRMP. As noted above, FRA anticipates this review will be the same as for the overall SSP or RRP.

Proposed paragraph (d) of this section would require an FRMP plan to describe

how the railroad will implement its FRMP. As proposed, a railroad may implement its FRMP in stages, provided the FRMP is fully implemented and operational within 36 months of FRA's approval of the plan. This implementation plan would cover the entire implementation period and contain a timeline (beginning with the date FRA approves the railroad's FRMP plan) describing when the railroad will achieve specific and measurable implementation milestones.

Consistent with 49 CFR 270.103(p)(2)(i) and 49 CFR 271.203(b)(3), as part of the implementation description, proposed paragraph (d)(1) would require a railroad to include a description of the roles and responsibilities of each position or job function with significant responsibility for implementing the railroad's FRMP (including any positions or job functions held by an entity or contractor that provides significant FRMP services for the railroad).

Consistent with 49 CFR 271.225(b)(2), proposed paragraph (d)(2) would require a railroad to include a description of the planned timeline for meeting the milestones required for the FRMP plan to be fully implemented. Proposed paragraphs (d)(3) and (d)(4) would require a railroad to describe how it will make significant changes to the FRMP, and procedures for consultation with directly affected employees on substantive amendments to the FRMP plan.

Proposed paragraph (e) would require that a railroad submit its FRMP plan to FRA by amending its SSP plan or RRP plan. Since this proposed rule would be published as a final rule after the SSP and RRP final rules are in effect and railroads have submitted their SSP plans or RRP plans to FRA under part 270, subpart C, or part 271, subpart D, railroads would need to amend their SSP plans or RRP plans to include an FRMP plan. Thus, as proposed, a railroad would follow the procedures in § 270.201(c) or 271.303 to amend its SSP plan or RRP plan. FRA proposes that an FRMP plan is not considered a safety-critical amendment of an SSP plan for the purposes of § 270.201(c)(1)(ii), so a railroad should be able to submit the FRMP plan to FRA as an amendment to its SSP plan or RRP plan 60 days before the proposed effective date of the FRMP plan. If a railroad is initially not required to submit an SSP plan or RRP plan, but is later required to, the railroad must include an FRMP plan as part of its SSP plan or RRP plan submission to FRA, or submit the FRMP plan by August 19, 2021, whichever is

later. FRA will review the railroads' FRMP plans under the amendment process in § 270.201(c)(2) or 271.303(c).

VI. Regulatory Impact and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is a non-significant regulatory action within the meaning of Executive Order 12866 (E.O. 12866) and DOT's Administrative Rulemaking, Guidance, and Enforcement Procedures in 49 CFR part 5.

FRA has prepared and placed a Regulatory Evaluation addressing the economic impact of this proposed rule in the docket (Docket No. FRA-2015-0122). The Regulatory Evaluation contains estimates of the costs and benefits of this proposed rule that are likely to be incurred over a ten-year period. FRA estimated the costs and benefits of this proposed rule using discount rates of 3 and 7 percent. FRA was unable to quantify the costs and benefits for all the elements within the proposed regulation for both passenger and freight railroads. FRA presents monetized costs and benefits where possible and discusses those non-quantified elements qualitatively where data was lacking.

Section 103 of the RSIA mandates that FRA (as delegated by the Secretary) require certain railroads to establish a railroad safety risk reduction program, of which an FRMP is a required component. This proposed rule is part of FRA's efforts to improve rail safety continually and to satisfy the statutory mandate in the RSIA.

FRA anticipates railroads will develop and implement mitigation strategies that are either cost-beneficial or cost-neutral to the railroad. FRA requests public comment on this assumption. FRA is particularly interested in the experience of railroads that have already utilized mitigation strategies to reduce the risk of the exposure of safety-related railroad employees to fatigue-related railroad safety hazards on their systems; specifically, whether the railroads have realized costs and benefits from the development and implementation of such mitigation strategies, and how much those strategies cost the railroads to implement.

The Regulatory Evaluation analyzes two mitigation strategies to quantify potential costs and benefits that railroads may achieve through the proposed regulation: Training and screening for sleep conditions. However, since the proposed regulation gives railroads the flexibility to select

⁴⁶ As previously discussed, railroads could look to well-established safety management systems which describe processes for conducting a fatigue-risk analysis, such as MIL-STD-882, APTA's *Manual for the Development of System Safety Program Plans for Commuter Railroads*, and FRA's *Collision Hazard Analysis Guide: Commuter and Intercity Passenger Rail Service*.

the mitigation strategies that would work best for them rather than prescribing standards, there is a high amount of uncertainty in FRA’s costs

and benefit estimates, specifically pertaining to the training mitigation, as FRA is unsure how railroads will implement the various mitigations.

The costs and benefits⁴⁷ associated with the proposed rule are presented in Table VI–1 below:

TABLE VI–1—SUMMARY OF TOTAL 10-YEAR IMPACT (2018 Dollars)
[In millions]

| Calculation aid | Costs | Present value 7% | Present value 3% | Annualized at 7% | Annualized at 3% |
|-----------------|--|---------------------|---------------------|---------------------|---------------------|
| A | Training Only (low) | \$2.02 | \$2.04 | \$0.29 | \$0.24 |
| B | Training Only (high) | 4.13 | 4.18 | 0.59 | 0.49 |
| C | FRMP Plan Creation | 0.89 | 1.04 | 0.13 | 0.12 |
| D | Government Costs | 2.03 | 2.59 | 0.29 | 0.30 |
| A + C + D | Total Cost (low) | 4.94 | 5.68 | 0.70 | 0.67 |
| B + C + D | Total Cost (high) | 7.05 | 7.81 | 1.00 | 0.92 |
| A + C | Total Cost w/o Government Costs (low). | 2.91 | 3.08 | 0.41 | 0.36 |
| B + C | Total Cost w/o Government Costs (high). | 5.01 | 5.22 | 0.71 | 0.61 |
| | Benefits | | | | |
| | Training Only (low) | 5.41 | 6.33 | 0.77 | 0.74 |
| | Training Only (high) | 21.65 | 25.34 | 3.08 | 2.97 |

FRA is interested in comments addressing the Regulatory Evaluation’s methodology for establishing the accident pool used to calculate benefits as well as establish the effectiveness rates of mitigations. Specifically, FRA seeks public input on the studies used to establish the effectiveness rates and the use of all human factor accidents within the benefit pool. As the proposed regulation does not specifically require railroads to implement specific mitigations, but rather allows railroads to implement the mitigation that best addresses their specific fatigue risks, FRA requests comments on any costs and benefits that might be associated with the elements that FRA was unable to quantify.

FRA’s analysis shows there are many factors that are difficult to quantify both for passenger and freight railroads. Where possible, FRA’s Regulatory Evaluation estimates costs and benefits for each element within the proposed regulation. FRA also requests comments on the elements that are qualitatively discussed. Given current railroad business and operational practices, this analysis demonstrates the fatigue training element, an element that all railroads will most likely implement, may be cost effective. FRA also believes the napping mitigation presented within the Regulatory Evaluation’s alternative analysis could be cost beneficial. However, given the uncertainty surrounding the use of alertness as a measure of reduced fatigue, in an effort to not overestimate the benefits associated with the proposed regulation,

FRA does not present the findings regarding napping in the main analysis of the Regulatory Evaluation. Despite the uncertainty, FRA believes that there could be significant reduction in fatigue with the implementation of a napping mitigation. Not only do various studies support the idea that napping reduces fatigue, but a large number of Class I railroads already have policies supporting napping, which suggests that the benefits outweigh the costs for those railroads.

B. Regulatory Flexibility Act and Executive Order 13272; Initial Regulatory Flexibility Assessment

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461, Aug. 16, 2002) require agency review of proposed and final rules to assess their impacts on small entities. An agency must prepare an Initial Regulatory Flexibility Analysis (IRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. FRA is publishing this IRFA to aid the public in commenting on the potential small business impacts of the requirements in this NPRM. FRA invites all interested parties to submit data and information regarding the potential economic impact on small entities that would result from the adoption of the proposals in this NPRM. FRA will consider all information, including comments received in the public comment process, to determine whether

the rule will have a significant economic impact on small entities.

1. Reasons FRA Is Considering the Proposed Rule

FRA is initiating this NPRM pursuant to 49 U.S.C. 20156, which provides that FRA, by delegation from the Secretary, shall require certain railroads to develop and implement an FRMP as part of either their SSP or RRP.

2. Objectives and the Legal Basis for the Proposed Rule

This NPRM proposes to implement the FRMP element of the statutory mandate by requiring each Class I freight railroad, each railroad that provides intercity rail passenger transportation or commuter rail passenger transportation, and each ISP railroad to develop and implement an FRMP as one component of a larger railroad safety RRP or SSP. A detailed discussion of the objectives and legal basis for the proposed rule is provided in Section III of the preamble.

3. Description and Estimate of the Number of Small Entities Affected

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small entities. “Small entity” is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated, and is not dominant in its

⁴⁷ Unless otherwise noted, costs and benefits are presented in 2018 dollars.

field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a “small entity” in the railroad industry is a for-profit “line-haul railroad” that has fewer than 1,500 employees, a “short line railroad” with fewer than 500 employees, or a “commuter rail system” with annual receipts of less than seven million dollars. See “Size Eligibility Provisions and Standards,” 13 CFR part 121, subpart A. In addition, section 601(5) of the Small Business Act defines “small entities” as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000 that operate railroads.

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Thus, in consultation with SBA, FRA has published a final statement of agency policy that formally establishes “small entities” or “small businesses” as railroads, contractors, and shippers that meet the revenue requirements of a Class III railroad⁴⁸—\$20 million or less in inflation-adjusted annual revenue—and commuter railroads or small government jurisdictions that serve populations of 50,000 or less.⁴⁹

The universe of entities this NPRM would affect includes only those small entities that can reasonably be expected to be directly affected by the provisions of this rule. In this case, the universe consists of railroads that would be subject to the requirements under 49 CFR part 270 and under the RRP rule. For the purposes of this analysis, 736 railroads would be considered “small entities,” since they are Class III freight railroads. Of the 736 small entities, 695 are on the general system and could be potentially impacted by the proposed regulation.⁵⁰ Since FRA does not currently know which railroads will be considered ISP railroads, but an ISP railroad could be either a Class II or Class III railroad, FRA is unable to provide a more accurate impact that the proposed regulation would have on small entities.

For purposes of this analysis, this proposed rule will apply to 35 commuter or other short-haul passenger railroads and two intercity passenger railroads, the National Railroad Passenger Corporation (Amtrak) and the

Alaska Railroad Corporation (ARC).⁵¹ Neither of the intercity passenger railroads is considered a small entity. Amtrak serves populations well in excess of 50,000, and the ARC is owned by the State of Alaska, which has a population well in excess of 50,000.

Based on the definition of “small entity,” only one commuter or other short-haul passenger railroad is considered a small entity: The Hawkeye Express (operated by the Iowa Northern Railway Company).

The impact of the proposed regulation on these small entities is unknown, since FRA is allowing the railroads to decide their fatigue mitigations based on their specific needs instead of mandating that railroads adopt specific mitigation programs. Furthermore, FRA estimates that only 50 ISP railroads would be impacted by the proposed regulation, which is approximately 7 percent of small entities, assuming all the 50 ISP railroads are considered small entities. FRA estimates that the 50 ISP railroads would be impacted over the course of 10 years, at a rate of approximately 5 ISPs per year. This estimate is consistent with the RRP final rule that FRA has published. Therefore, because of the uncertainty surrounding both the number of ISP railroads that would be considered small entities as well as the impact that the proposed regulation would have on those small entities, the impact that the NPRM would have on small entities is unclear. FRA requests comments about the impact that the proposed regulation would have on both freight and passenger rail small entities.

4. Description of the Projected Reporting, Recordkeeping, and Other Requirements

The rule will require an ISP railroad to develop and implement an FRMP under an RRP or SSP plan that FRA has reviewed and approved. There are several reporting and recordkeeping costs associated with the proposed regulation. Since the railroads have the flexibility to adjust their FRMPs to their specific risks, these costs will vary based on the respective risks as well as the size of the ISP railroad. While FRA is unable to estimate the burden that the proposed regulation would have on small entities, FRA expects that the impact will be proportional to the number of employees as well as the mitigation strategy that is implemented. Other mitigation strategies such as

screening for sleep disorders could include costs that are higher.

While FRA is unable to identify the specific railroads that would be considered ISPs, to estimate the potential impact that developing an FRMP would have on an ISP railroad, FRA used the average Class III revenue to estimate the impact.⁵² Per the American Short Line and Regional Railroad Association (ASLRRA), the average Class III railroad has an annual average revenue of \$4.75 million. FRA estimated the annual cost to ISP railroads at \$60,052, with approximately five ISP railroads incurring this cost per year. The \$60,052 cost consists of an annual average of \$53,228⁵³ for FRMP program development and \$7,274 for employee training.⁵⁴ The total 10-year cost that would impact a single ISP railroad would be \$121,004.⁵⁵ The annual cost represents approximately 2.5 percent of the average Class III railroad’s revenue.⁵⁶ However, as this estimate is based off of the average annual Class III railroad revenue, and there could be a large variance in the revenue of Class III railroads, FRA requests comments regarding the annual revenue of Class III railroads as well as the impact the proposed regulation would have on Class III railroads.

FRA has identified several possible reporting and recordkeeping costs associated with the proposed regulation such as:

- (1) Development, submission to FRA, and recordkeeping of the FRMP plan;
- (2) identification of the specific fatigue risks that impact the specific ISP; and
- (3) recordkeeping associated with fatigue training.

More information about the burden and associated costs for each of the projected reporting, recordkeeping, and other requirements can be found in the information collection request FRA will be submitting to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.* FRA requests comments regarding the recordkeeping

⁵² The Class II and Class III average costs per railroad come from the 2015 Edition of the ASLRRA Facts and Figures.

⁵³ An average is used to better account for the impact as the cost schedule varies as the number of ISP railroads increases. See the RIA in the docket for more information on the cost structure for ISP railroads.

⁵⁴ Calculation: \$53,228 (program development cost) + \$7,274 (ISP employee training costs) = \$60,052 (Annual cost for 5 ISP railroads).

⁵⁵ Calculation: $(\{ \$60,052 / 5 \text{ (ISP railroads)} \} \times 10 \text{ (number of years)}) = \$121,004$ (10-year cost to single ISP railroad).

⁵⁶ Calculation: $\{ \$121,004 \text{ (annual cost to ISP)} / \$4,750,000 \text{ (average annual Class III revenue)} \} = 0.025$ or 2.5 percent.

⁴⁸ See 49 CFR 1201.1.

⁴⁹ See 68 FR 24891 (May 9, 2003) (codified at Appendix C to 49 CFR part 209).

⁵⁰ Both the SSP rule and RRP rule exempts railroads not on the general system. See 49 CFR 270.3(b) and 49 CFR 271.3(b).

⁵¹ There are State-sponsored intercity passenger rail services, the majority of which will be part of Amtrak’s SSP.

burden that the proposed regulation would have on ISP railroads to ensure that all cost elements of recordkeeping and how those elements would impact Class III railroads are captured.

5. Identification of Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

While the proposed FRMP rule would be a component of the RRP and SSP rules, the proposed FRMP would specifically address fatigue-related risks and is aimed at mitigating those risks specifically. As such, there will be some coordination needed to ensure that a railroad's FRMP is developed and worked into the railroad's RRP or SSP. Regardless, considering that the proposed FRMP is a subpart within both RRP and SSP, neither RRP nor SSP provide any elements, outside of the proposed regulation, that are designed to mitigate fatigue related risk specifically. As such, FRA does not expect there to be any relevant Federal rules that would duplicate, overlap with, or conflict with the proposed regulations in this NPRM.

6. Significant Regulatory Alternatives

Within the preamble above, FRA outlines the various fatigue risks that railroads need to address. FRA does not specifically state, however, in what manner the railroads must address those risks. One alternative is for railroads to not create an FRMP and to continue to address their fatigue risks as they have currently been doing. This would result in the railroads violating the RSIA mandate. In addition, if railroads continue to address their fatigue risks as they have in the past, FRA expects that safety would continue to be negatively impacted because the fatigue risks are not adequately addressed currently. Since railroads have some flexibility in how they design their FRMPs, it is expected that the impact of each FRMP on a railroad will be minimal as the flexibility in implementing mitigations will most likely be done in a cost effective manner. FRA expects that railroads will consider the cost of the mitigation as well as the fatigue risks when creating their FRMPs.

FRA invites all interested parties to submit data and information regarding the potential economic impact that

would result from adoption of the proposals in this NPRM. FRA will consider all comments received in the public comment process when making a determination.

C. Federalism

Executive Order 13132, "Federalism" (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." The Executive Order defines "policies that have federalism implications" to include regulations that 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." Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA analyzed this NPRM consistent with the principles and criteria contained in Executive Order 13132. FRA has determined the proposed rule would not have substantial direct effects on States, on the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. In addition, FRA has determined this proposed rule would not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

This NPRM proposes to add subpart E, Fatigue Management Plans, to 49 CFR part 270 and subpart G, Fatigue Management Plans, to 49 CFR part 271.

FRA is not aware of any State with regulations similar to this proposed rule. However, FRA notes that this part could have preemptive effect by the operation of law under 49 U.S.C. 20106. Section 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters), unless the State law, regulation, or order (1) qualifies under the "essentially local safety or security hazard" exception to sec. 20106; (2) is not incompatible with a law, regulation, or order of the U.S. Government; and (3) does not unreasonably burden interstate commerce.

In sum, FRA analyzed this proposed rule consistent with the principles and criteria in Executive Order 13132. FRA has determined this proposed rule has no federalism implications and has determined it is not required to prepare a federalism summary impact statement for this proposed rule.

D. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The Act also requires consideration of international standards, and, where appropriate, that they be the basis for U.S. standards. This rulemaking is purely domestic in nature and will not affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

E. Paperwork Reduction Act

The information collection requirements in this proposed rule are being submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.* The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

| CFR section/subject | Respondent universe | Total annual responses | Average time per response (hours) | Total annual burden hours | Total annual dollar cost equivalent ⁵⁷ |
|--|-------------------------------|---|-----------------------------------|---------------------------|---|
| 270.409—Fatigue Risk Management Program Plan (FRMP Plan) as part of its SSP—Comprehensive FRMP plan meeting all of this section’s requirements and under Part 270 subpart C. | 35 passenger railroads .. | 12 plans | 60 | 720 | \$63,144 |
| —(c)(3)(ii)—Annual internal FRMP Plan assessments/reports conducted by RRs. | 35 passenger railroads .. | 12 evaluations/reports ... | 2 | 24 | 1,824 |
| —FRMP plans found deficient by FRA and requiring amendment. | 35 passenger railroads .. | 4 amended plans | 30 | 120 | 9,588 |
| —Review of amended FRMP plans found deficient and requiring further amendment by RRs. | 35 passenger railroads .. | 1 further amended plan | 15 | 15 | 1,199 |
| —Consultation requirements—RR consultation with its directly affected employees on FRMP Plan. | 35 passenger railroads .. | 12 consultations (w/labor union reps.). | 1.5 | 18 | 1,368 |
| 271.609—Fatigue Risk Management Program Plan (FRMP Plan) as part of its RRP—Comprehensive written FRMP Plan meeting all of this section’s requirements and under Part 271 subpart d. | 7 Class I railroads | 2 plans | 90 | 180 | 15,786 |
| | 15 ISP railroads | 5 plans | 50 | 250 | 21,925 |
| —(c)(3)(ii)—Annual internal FRMP Plan assessments/reports conducted by RRs. | 7 Class I + 15 ISP railroads. | 7 evaluations/reports | 2 | 14 | 1,064 |
| —Consultation requirements—RR consultation with its directly affected employees on FRMP Plan. | 7 Class I railroads | 2 consultations (w/labor union reps.). | 1.5 | 3 | 228 |
| | 15 ISP railroads | 5 consultations (w/labor union reps.). | 1 | 5 | 380 |
| —FRMP plans found deficient by FRA and requiring amendment. | 7 Class I railroads | 1 amended plan | 40 | 40 | 3,196 |
| | 15 ISP railroads | 3 amended plans | 20 | 60 | 4,794 |
| —Review of amended FRMP plans found deficient and requiring further amendment by RRs. | 7 Class I railroads | 1 further amended plan | 20 | 20 | 1,598 |
| | 15 ISP railroads | 2 further amended plans | 10 | 20 | 1,598 |
| Totals | 35 railroads | 69 responses | N/A | 1,489 | 127,692 |

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: Whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA’s estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For

information or a copy of the paperwork package submitted to OMB, contact Ms. Hodan Wells, Information Collection Clearance Officer, Federal Railroad Administration, at 202–493–0440.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Ms. Hodan Wells via email at Hodan.Wells@dot.gov.

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB

control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

F. Environmental Assessment

FRA has evaluated this proposed rule consistent with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321, *et seq.*), the Council of Environmental Quality’s NEPA implementing regulations at 40 CFR parts 1500–1508, and FRA’s NEPA implementing regulations at 23 CFR part 771 and determined that it is categorically excluded from environmental review and therefore does not require the preparation of an environmental assessment (EA) or environmental impact statement (EIS). Categorical exclusions (CEs) are actions

⁵⁷ The dollar equivalent cost is derived from the 2018 Surface Transportation Board’s Full Year Wage A&B data series using the appropriate employee group hourly wage rate that includes 75-percent overhead charges.

identified in an agency's NEPA implementing regulations that do not normally have a significant impact on the environment and therefore do not require either an EA or EIS. See 40 CFR 1508.4. Specifically, FRA has determined that this proposed rule is categorically excluded from detailed environmental review pursuant to 23 CFR 771.116(c)(15), "[p]romulgation of rules, the issuance of policy statements, the waiver or modification of existing regulatory requirements, or discretionary approvals that do not result in significantly increased emissions of air or water pollutants or noise."

The purpose of this rulemaking is to propose requirements for certain railroads to develop and implement an FRMP, as one component of the railroads' larger railroad safety risk reduction programs. This rule does not directly or indirectly impact any environmental resources and will not result in significantly increased emissions of air or water pollutants or noise. Instead, the proposed rule is likely to result in safety benefits. In analyzing the applicability of a CE, FRA must also consider whether unusual circumstances are present that would warrant a more detailed environmental review. See 23 CFR 771.116(b). FRA has concluded that no such unusual circumstances exist with respect to this proposed regulation and the proposal meets the requirements for categorical exclusion under 23 CFR 771.116(c)(15).

Pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations, FRA has determined this undertaking has no potential to affect historic properties. See 16 U.S.C. 470. FRA has also determined that this rulemaking does not approve a project resulting in a use of a resource protected by Section 4(f). See Department of Transportation Act of 1966, as amended (Pub. L. 89-670, 80 Stat. 931); 49 U.S.C. 303.

G. Executive Order 12898 (Environmental Justice)

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and DOT Order 5610.2B⁵⁸ require DOT agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects,

including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations. The DOT Order instructs DOT agencies to address compliance with Executive Order 12898 and requirements within the DOT Order in rulemaking activities, as appropriate, and also requires consideration of the benefits of transportation programs, policies, and other activities where minority populations and low-income populations benefit, at a minimum, to the same level as the general population as a whole when determining impacts on minority and low-income populations. FRA has evaluated this proposed rule under Executive Order 12898 and the DOT Order and has determined it would not cause disproportionately high and adverse human health and environmental effects on minority populations or low-income populations.

H. Unfunded Mandates Reform Act of 1995

Under Section 201 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531), each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 202 of the Act (2 U.S.C. 1532) further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement" detailing the effect on State, local, and tribal governments and the private sector. This proposed rule will not result in the expenditure, in the aggregate, of \$100,000,000 or more (as adjusted annually for inflation), in any one year, and thus preparation of such a statement is not required.

I. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." 66 FR 28355, May 22, 2001. FRA evaluated this NPRM under Executive Order 13211, and determined this NPRM is not a "significant energy

action" under the Executive Order 13211.

J. Privacy Act Statement

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

List of Subjects

49 CFR Part 270

Fatigue, Penalties, Railroad safety, Reporting and recordkeeping requirements, System safety.

49 CFR Part 271

Fatigue, Penalties, Railroad safety, Reporting and recordkeeping requirements, Risk reduction.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

PART 270—SYSTEM SAFETY PROGRAM

■ 1. The authority citation for part 270 continues to read as follows:

Authority: 49 U.S.C. 20103, 20106–20107, 20118–20119, 20156, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

■ 2. Section 270.103(a)(1) is revised to read as follows:

§ 270.103 System safety program plan.

(a) *General.* (1) Each railroad subject to this part shall adopt and fully implement a system safety program through a written SSP plan that, at a minimum, contains the elements in this section and in subpart E of this part. This SSP plan shall be approved by FRA under the process specified in § 270.201.

■ 3. Add subpart E to read as follows:

Subpart E—Fatigue Risk Management Programs

Sec.

⁵⁸ Available at: <https://www.transportation.gov/regulations/dot-order-56102b-department-transportation-actions-address-environmental-justice>.

- 270.401 Definitions.
 270.403 Purpose and scope of a Fatigue Risk Management Program (FRMP).
 270.405 General requirements; procedure.
 270.407 Requirements for an FRMP.
 270.409 Requirements for a FRMP plan.

Subpart E—Fatigue Risk Management Programs

§ 270.401 Definitions.

As used in this subpart—

Contributing factor means a circumstance or condition that helps cause a result.

Fatigue means a complex state characterized by a lack of alertness and reduced mental and physical performance, often accompanied by drowsiness.

Fatigue-risk analysis means a railroad's analysis of its operations that:

(1) Identifies and evaluates the fatigue-related railroad safety hazards on its system(s); and

(2) Determines the degree of risk associated with each of those hazards.

FRMP means a Fatigue Risk Management Program.

FRMP plan means a Fatigue Risk Management Program plan.

Safety-related railroad employee means:

(1) A person subject to 49 U.S.C. 21103, 21104, or 21105;

(2) Another person involved in railroad operations not subject to 49 U.S.C. 21103, 21104, or 21105;

(3) A person who inspects, installs, repairs or maintains track, roadbed, signal and communication systems, and electric traction systems including a roadway worker or railroad bridge worker;

(4) A hazmat employee defined under 49 U.S.C. 5102(3);

(5) A person who inspects, repairs, or maintains locomotives, passenger cars, or freight cars; or

(6) An employee of any person who utilizes or performs significant railroad safety-related services, as described in § 270.103(d)(2), if that employee performs a function identified in paragraphs (1) through (5) of this definition.

§ 270.403 Purpose and scope of a Fatigue Risk Management Program (FRMP).

(a) *Purpose.* The purpose of an FRMP is to improve railroad safety through structured, systematic, proactive processes and procedures that a railroad subject to this part develops and implements to identify and mitigate the effects of fatigue on its employees.

(b) *Scope.* A railroad shall:

(1) Design its FRMP to reduce the fatigue its safety-related railroad employees experience and to reduce the

risk of railroad accidents, incidents, injuries, and fatalities where the fatigue of any of these employees is a contributing factor;

(2) Develop its FRMP by systematically identifying and evaluating the fatigue-related railroad safety hazards on its system, determining the degree of risk associated with each hazard, and managing those risks to reduce the fatigue that its safety-related railroad employees experience. This system-wide fatigue risk identification and evaluation process must account for the varying circumstances of a railroad's operations on different parts of its system; and

(3) Employ in its FRMP the fatigue risk mitigation strategies a railroad identifies as appropriate to address those varying circumstances.

§ 270.405 General requirements; procedure.

(a) Each railroad subject to this part shall:

(1) Establish and implement an FRMP as part of its SSP; and

(2) Establish an FRA-approved FRMP plan as a component of a railroad's FRA-approved SSP plan and then update its FRMP plan as necessary as part of the annual internal assessment of its SSP under § 270.303.

(b) A railroad's FRMP plan must explain the railroad's method of analysis of fatigue risks and the railroad's process(es) for implementing its FRMP.

(c)(1) A railroad shall submit an FRMP plan to FRA for approval no later than either the applicable timeline in § 270.201(a) for filing its SSP plan or [date six months after publication of the final rule in the **Federal Register**].

(2) A railroad shall submit updates to its FRMP plan under the process for amending its SSP plan in § 270.201(c).

(d) FRA shall review and approve or disapprove a railroad's FRMP plan and amendments to that plan under the process for reviewing SSP plans and amendments in § 270.201(b) and (c), respectively.

§ 270.407 Requirements for an FRMP.

(a) *In general.* An FRMP shall include an analysis of fatigue risks and mitigation strategies, as described in paragraphs (b) and (c) of this section.

(b) *Analysis of fatigue risks.* A railroad shall conduct a fatigue-risk analysis as part of its FRA-approved FRMP, which includes identification of fatigue-related railroad safety hazards, assessment of the risks associated with those hazards, and prioritization of risks for mitigation. At a minimum, a railroad

must consider the following categories of risk factors:

(1) General health and medical conditions that can affect the fatigue levels among the population of safety-related railroad employees;

(2) Scheduling issues that can affect the opportunities of safety-related railroad employees to obtain sufficient quality and quantity of sleep; and

(3) Characteristics of each job category of safety-related railroad employees work that can affect fatigue levels and risk for fatigue of those employees.

(c) *Mitigation strategies.* A railroad shall develop and implement mitigation strategies to reduce the risk of railroad accidents, incidents, injuries, and fatalities where fatigue of any of its safety-related employees is a contributing factor. At a minimum, in developing and implementing these mitigation strategies, a railroad shall consider the railroad's policies, practices, and communication related to its safety-related railroad employees.

(1) *Policies.* A railroad shall consider developing and implementing policies to reduce the risk of the exposure of its safety-related railroad employees to fatigue-related railroad safety hazards on its system. At a minimum, a railroad shall consider these policies:

(i) Providing opportunities for identification, diagnosis, and treatment of any medical condition that may affect alertness or fatigue, including sleep disorders;

(ii) Identifying methods to minimize accidents and incidents that occur as a result of working at times when scientific and medical research have shown increased fatigue disrupts employees' circadian rhythms;

(iii) Developing and implementing alertness strategies, such as policies on napping, to address acute drowsiness and fatigue while an employee is on duty;

(iv) Increasing the number of consecutive hours of off-duty rest, during which an employee receives no communication from the employing railroad or its managers, supervisors, officers, or agents; and

(v) Avoiding abrupt changes in rest cycles for employees.

(2) *Practices.* A railroad shall consider developing and implementing operational practices to reduce the risk of exposure of its safety-related railroad employees to fatigue-related railroad safety hazards on its system. At a minimum, a railroad shall consider these practices:

(i) Minimizing the effects on employee fatigue of an employee's short-term or sustained response to emergency situations, such as

derailments and natural disasters, or engagement in other intensive working conditions;

(ii) Developing and implementing scheduling practices for employees, including innovative scheduling practices, on-duty call practices, work and rest cycles, increased consecutive days off for employees, changes in shift patterns, appropriate scheduling practices for varying types of work, and other aspects of employee scheduling to reduce employee fatigue and cumulative sleep loss; and

(iii) Providing opportunities to obtain restful sleep at lodging facilities, including employee sleeping quarters provided by the railroad carrier.

(3) *Communications.* A railroad shall consider developing and implementing training, education, and outreach methods to deliver fatigue-related information effectively to its safety-related railroad employees. At a minimum, a railroad shall consider including in its employee education and training information on the physiological and human factors that affect fatigue, as well as strategies to reduce or mitigate the effects of fatigue, based on the most current scientific and medical research and literature.

(d) *Evaluation.* A railroad shall develop and implement procedures and processes for monitoring and evaluating its FRMP to assess whether the FRMP effectively meets the goals its FRMP plan describes, as required under § 270.409(b).

(1) The evaluation shall include, at a minimum:

(i) Periodic monitoring of the railroad's operational environment to detect changes that may generate new hazards;

(ii) Analysis of the risks associated with any identified hazards; and

(iii) Periodic safety assessments to determine the need for changes to its mitigation strategies.

(2) A railroad shall evaluate newly-identified hazards, and hazards associated with ineffective mitigation strategies, through processes for analyzing fatigue risks described in the railroad's FRMP plan.

(3) Any necessary changes not addressed prior to a railroad's annual internal assessment must be included in the internal assessment improvement plans required under § 270.303.

§ 270.409 Requirements for a FRMP plan.

(a) *In general.* A railroad shall adopt and implement its FRMP through an FRA-approved FRMP plan, developed in consultation with directly affected employees as described under § 270.107. A railroad FRMP plan must

contain the elements described in this section. A railroad must submit the plan to FRA for approval under the criteria of subpart C.

(b) *Goals.* An FRMP plan must contain a statement that defines the specific fatigue-related goals of the FRMP and describes strategies for reaching those goals.

(c) *Methods*—(1) *Analysis of fatigue risk.* An FRMP plan shall describe a railroad's method(s) for conducting its fatigue-risk analysis as part of its FRMP. The description shall specify:

(i) The scope of the analysis, which is the covered population of safety-related railroad employees;

(ii) The processes a railroad will use to identify fatigue-related railroad safety hazards on its system and determine the degree of risk associated with each fatigue-related hazard identified;

(iii) The processes a railroad will use to compare and prioritize identified fatigue-related risks for mitigation purposes; and

(iv) The information sources a railroad will use to support ongoing identification of fatigue-related railroad safety hazards and determine the degree of risk associated with those hazards.

(2) *Mitigation strategies.* An FRMP plan shall describe a railroad's processes for:

(i) Identifying and selecting fatigue risk mitigation strategies; and

(ii) Monitoring identified fatigue-related railroad safety hazards.

(3) *Evaluation.* An FRMP plan shall describe:

(i) A railroad's processes for monitoring and evaluating the overall effectiveness of its FRMP and the effectiveness of fatigue-related mitigation strategies the railroad uses under § 270.407; and

(ii) A railroad's procedures for reviewing the FRMP as part of the annual internal assessment of its SSP under § 270.303 and for updating the FRMP plan under the process for amending its SSP plan under § 270.201(c).

(d) *FRMP implementation plan.* A railroad shall describe in its FRMP plan how it will implement its FRMP. This description must cover an implementation period not to exceed 36 months, and shall include:

(1) A description of the roles and responsibilities of each position or job function with significant responsibility for implementing the FRMP, including those held by employees, contractors who provide significant FRMP-related services, and other entities or persons that provide significant FRMP services;

(2) A timeline describing when certain milestones that must be met to

implement the FRMP fully will be achieved. Implementation milestones shall be specific and measurable;

(3) A description of how a railroad may make significant changes to the FRMP plan under the process for amending its SSP plan in § 270.201(c); and

(4) The procedures for consultation with directly affected employees on any subsequent substantive amendments to the railroad's FRMP plan. The requirements of this section do not apply to non-substantive amendments (e.g., amendments that update names and addresses of railroad personnel).

(e) *Submittal.* A railroad shall amend its SSP plan submitted under subpart C of this part to include its FRMP plan that meets the requirements of this section no later than August 19, 2021.

(1) A railroad shall follow the procedures in § 270.201(c) to amend its SSP plan.

(2) An FRMP plan is not considered a safety critical amendment for the purposes of § 270.201(c)(ii).

(3) If a railroad was not required to submit an SSP plan initially, but is required to do so at a later date, the railroad shall either include an FRMP plan as part of its SSP plan submission under § 270.201(a), or submit its FRMP plan in accordance with the procedures for amending its SSP plan under § 270.201(c) no later than August 19, 2021, whichever is later.

PART 271—RISK REDUCTION PROGRAM

■ 4. The authority citation for part 271 continues to read as follows:

Authority: 49 U.S.C. 20103, 20106–20107, 20118–20119, 20156, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

■ 5. Amend § 271.101 by revising paragraph (a) to read as follows:

§ 271.101 Risk reduction programs.

(a) *Program required.* Each railroad shall establish and fully implement an RRP meeting the requirements of this part. An RRP shall systematically evaluate railroad safety hazards on a railroad's system and manage the resulting risks to reduce the number and rates of railroad accidents/incidents, injuries, and fatalities. An RRP is an ongoing program that supports continuous safety improvement. A railroad shall design its RRP so that it promotes and supports a positive safety culture at the railroad. An RRP shall include the following:

(1) A risk-based hazard management program, as described in § 271.103;

(2) A safety performance evaluation component, as described in § 271.105;

(3) A safety outreach component, as described in § 271.107;

(4) A technology analysis and technology implementation plan, as described in § 271.109;

(5) RRP implementation and support training, as described in § 271.111;

(6) Involvement of railroad employees in the establishment and implementation of an RRP, as described in § 271.113; and

(7) An FRMP as described in § 271.607.

■ 6. Section 271.201 is revised to read as follows:

§ 271.201 General.

A railroad shall adopt and implement its RRP through a written RRP plan containing the elements described in this subpart and in § 271.609. A railroad's RRP plan shall be approved by FRA according to the requirements contained in subpart D of this part.

■ 7. Add subpart G to read as follows:

Subpart G—Fatigue Risk Management Programs

Sec.

271.601 Definitions.

271.603 Purpose and scope of a Fatigue Risk Management Program (FRMP).

271.605 General requirements; procedure.

271.607 Requirements for an FRMP.

271.609 Requirements for a FRMP plan.

Subpart G—Fatigue Risk Management Programs

§ 271.601 Definitions.

As used in this subpart—

Contributing factor means a circumstance or condition that helps cause a result.

Fatigue means a complex state characterized by a lack of alertness and reduced mental and physical performance, often accompanied by drowsiness.

Fatigue-risk analysis means a railroad's analysis of its operations that:

(1) Identifies and evaluates the fatigue-related railroad safety hazards on its system(s) and;

(2) Determines the degree of risk associated with each of those hazards.

FRMP means a Fatigue Risk Management Program.

FRMP plan means a Fatigue Risk Management Program plan.

Safety-related railroad employee means:

(1) A person subject to 49 U.S.C. 21103, 21104, or 21105;

(2) Another person involved in railroad operations not subject to 49 U.S.C. 21103, 21104, or 21105;

(3) A person who inspects, installs, repairs or maintains track, roadbed,

signal and communication systems, and electric traction systems including a roadway worker or railroad bridge worker;

(4) A hazmat employee defined under 49 U.S.C. 5102(3);

(5) A person who inspects, repairs, or maintains locomotives, passenger cars, or freight cars; or

(6) An employee of any person who utilizes or performs significant railroad safety-related services, as described in § 271.205(a)(3), if that employee performs a function identified in paragraphs (1) through (5) of this definition.

§ 271.603 Purpose and scope of a Fatigue Risk Management Program (FRMP).

(a) *Purpose.* The purpose of an FRMP is to improve railroad safety through structured, proactive processes and procedures a railroad subject to this part develops and implements. A railroad's FRMP shall systematically identify and evaluate the fatigue-related railroad safety hazards on its system, determine the degree of risk associated with each hazard, and manage those risks to reduce the fatigue that its safety-related railroad employees experience and to reduce the risk of railroad accidents, incidents, injuries, and fatalities where the fatigue of any of these employees is a contributing factor.

(b) *Scope.* A railroad shall:

(1) Design its FRMP to reduce the fatigue its safety-related railroad employees experience and to reduce the risk of railroad accidents, incidents, injuries, and fatalities where the fatigue of any of these employees is a contributing factor;

(2) Develop its FRMP by conducting a system-wide fatigue-risk analysis that accounts for the varying circumstances of its operations on different parts of its system; and

(3) Employ in its FRMP the fatigue risk mitigation strategies the railroad identifies as appropriate to address those varying circumstances.

§ 271.605 General requirements; procedure.

(a) Each railroad subject to this part shall:

(1) Establish and implement an FRMP as part of its RRP; and

(2) Establish an FRA-approved FRMP plan as a component of a railroad's FRA-approved RRP plan and then update the FRMP plan as necessary as part of the annual internal assessment of its RRP under § 271.401.

(b) A railroad's FRMP plan must explain the railroad's method of analysis of fatigue risks and the railroad's process(es) for implementing its FRMP.

(c)(1) A railroad shall submit an FRMP plan to FRA for approval no later than either the applicable timeline in § 271.301(b) for filing its RRP plan or [date six months after publication of the final rule in the **Federal Register**], whichever is later; and

(2) A railroad shall submit updates to its FRMP plan under the process for amending its RRP plan in § 271.303.

(d) FRA shall review and approve or disapprove a railroad's FRMP plan under the process for reviewing RRP plans in § 271.301(d) and updates to the railroad's FRMP plan under the process for reviewing amendments to an RRP plan in § 271.303(c).

§ 271.607 Requirements for an FRMP.

(a) *In general.* An FRMP shall include an analysis of fatigue risks and mitigation strategies described in paragraphs (b) and (c) of this section.

(b) *Analysis of fatigue risks.* A railroad shall conduct a fatigue-risk analysis as part of its FRA-approved FRMP, which includes identification of fatigue-related railroad safety hazards, assessment of the risks associated with those hazards, and prioritization of risks for mitigation. At a minimum, railroads must consider the following categories of risk factors, as applicable:

(1) General health and medical conditions that can affect the fatigue levels among the population of safety-related railroad employees;

(2) Scheduling issues that can affect the opportunities of safety-related railroad employees to obtain sufficient quality and quantity of sleep; and

(3) Characteristics of each job category safety-related railroad employees work that can affect fatigue levels and risk for fatigue of those employees.

(c) *Mitigation strategies.* A railroad shall develop and implement mitigation strategies to reduce the risk of railroad accidents, incidents, injuries, and fatalities where fatigue of any of its safety-related employees is a contributing factor. At a minimum, in developing and implementing these mitigation strategies, a railroad shall consider the railroad's policies, practices, and communications related to its safety-related railroad employees.

(1) *Policies.* A railroad shall consider developing and implementing policies to reduce the risk of the exposure of its safety-related railroad employees to fatigue-related railroad safety hazards on its system. At a minimum, a railroad shall consider these policies:

(i) Providing opportunities for identification, diagnosis, and treatment of any medical condition that may affect alertness or fatigue, including sleep disorders;

(ii) Identifying methods to minimize accidents and incidents that occur as a result of working at times when scientific and medical research have shown increased fatigue disrupts employees' circadian rhythms;

(iii) Developing and implementing alertness strategies, such as policies on napping, to address acute drowsiness and fatigue while an employee is on duty;

(iv) Increasing the number of consecutive hours of off-duty rest, during which an employee receives no communication from the employing railroad or its managers, supervisors, officers, or agents; and

(v) Avoiding abrupt changes in rest cycles for employees.

(2) *Practices.* A railroad shall consider developing and implementing operational practices to reduce the risk of exposure of its safety-related railroad employees to fatigue-related railroad safety hazards on its system. At a minimum, a railroad shall consider these practices:

(i) Minimizing the effects on employee fatigue of an employee's short-term or sustained response to emergency situations, such as derailments and natural disasters, or engagement in other intensive working conditions;

(ii) Developing and implementing scheduling practices for employees, including innovative scheduling practices, on-duty call practices, work and rest cycles, increased consecutive days off for employees, changes in shift patterns, appropriate scheduling practices for varying types of work, and other aspects of employee scheduling to reduce employee fatigue and cumulative sleep loss; and

(iii) Providing opportunities to obtain restful sleep at lodging facilities, including employee sleeping quarters provided by the railroad carrier.

(3) *Communication.* A railroad shall consider developing and implementing training, education, and outreach methods to deliver fatigue-related information effectively to its safety-related railroad employees. At a minimum, a railroad shall consider communications regarding employee education and training on the physiological and human factors that affect fatigue, as well as strategies to reduce or mitigate the effects of fatigue, based on the most current scientific and medical research and literature.

(d) *Evaluation.* A railroad shall develop and implement procedures and processes for monitoring and evaluating its FRMP to assess whether the FRMP effectively meets the goals its FRMP plan describes under § 271.609(b).

(1) The evaluation shall include, at a minimum:

(i) Periodic monitoring of the railroad's operational environment to detect changes that may generate new hazards;

(ii) Analysis of the risks associated with any identified hazards; and

(iii) Periodic safety assessments to determine the need for changes to its mitigation strategies.

(2) A railroad shall evaluate newly-identified hazards, and hazards associated with ineffective mitigation strategies, through processes for analyzing fatigue risks described in the railroad's FRMP plan.

(3) Any necessary changes not addressed prior to a railroad's annual internal assessment must be included in the internal assessment improvement plans required under § 271.403.

§ 271.609 Requirements for a FRMP plan.

(a) *In general.* A railroad shall adopt and implement its FRMP through an FRA-approved FRMP plan, developed in consultation with directly affected employees as described under § 271.207. A railroad FRMP plan must contain the elements described in this section. The railroad must submit the plan to FRA for approval under the criteria of subpart D.

(b) *Goals.* An FRMP plan must contain a statement that defines the specific fatigue-related goals of the FRMP and describes strategies for reaching those goals.

(c) *Methods—(1) Analysis of fatigue risk.* An FRMP plan shall describe a railroad's method(s) for conducting its fatigue-risk analysis as part of its FRMP. The description shall specify:

(i) The scope of the analysis, which is the covered population of safety-related railroad employees;

(ii) The processes a railroad will use to identify fatigue-related railroad safety hazards on its system and determine the degree of risk associated with each fatigue-related hazard identified;

(iii) The processes a railroad will use to compare and prioritize identified fatigue-related risks for mitigation purposes; and

(iv) The information sources a railroad will use to support ongoing identification of fatigue-related railroad safety hazards and determine the degree of risk associated with those hazards.

(2) *Mitigation strategies.* An FRMP plan shall describe a railroad's processes for:

(i) Identifying and selecting fatigue risk mitigation strategies; and

(ii) Monitoring identified fatigue-related railroad safety hazards.

(3) *Evaluation.* An FRMP plan shall describe:

(i) A railroad's processes for monitoring and evaluating the overall effectiveness of its FRMP and the effectiveness of fatigue-related mitigation strategies the railroad uses under § 271.607; and

(ii) A railroad's procedures for reviewing the FRMP as part of the annual assessment of its RRP under § 271.401 and for updating the FRMP plan under the process for amending its RRP plan under § 271.303.

(d) *FRMP implementation plan.* A railroad shall describe in its FRMP plan how it will implement its FRMP. This description must cover an implementation period not to exceed 36 months, and shall include:

(1) A description of the roles and responsibilities of each position or job function with significant responsibility for implementing the FRMP, including those held by employees, contractors who provide significant FRMP-related services, and other entities or persons that provide significant FRMP services;

(2) A timeline describing when certain milestones that must be met to implement the FRMP fully will be achieved. Implementation milestones shall be specific and measurable;

(3) A description of how the railroad may make significant changes to the FRMP plan under the process for amending its RRP plan in § 271.303; and

(4) The procedures for consultation with directly affected employees on any subsequent substantive amendments to the railroad's FRMP plan. The requirements of this section do not apply to non-substantive amendments (e.g., amendments that update names and addresses of railroad personnel).

(e) *Submittal.* A railroad shall amend its RRP plan submitted under subpart D of this part to include its FRMP plan that meets the requirements of this section no later than August 19, 2021.

(1) A railroad shall follow the procedures in § 271.303 to amend its RRP plan.

(2) If a railroad was not required to submit an RRP plan initially, but is required to do so at a later date, the railroad shall either include an FRMP plan as part of its RRP plan submission under § 271.301 or submit its FRMP plan in accordance with the procedures for amending its RRP plan under § 271.303 no later than August 19, 2021, whichever is later.

Issued in Washington, DC.

Quintin C. Kendall,
Deputy Administrator.

[FR Doc. 2020-27085 Filed 12-21-20; 8:45 am]

BILLING CODE 4910-06-P

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

Agricultural Marketing Service

[Document No. AMS-ST-20-0099]

Plant Variety Protection Board; Open Teleconference Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), the Agricultural Marketing Service (AMS) is announcing a meeting of the Plant Variety Protection Board (Board). The meeting is being held to discuss a variety of topics including, but not limited to, regulation updates, subcommittee activities, and program activities. The meeting is open to the public. This notice sets forth the schedule and location for the meeting.

DATES: Wednesday, March 31, 2021; 2 p.m. to 4 p.m.

ADDRESSES: The meeting will be conducted through teleconference.

FOR FURTHER INFORMATION CONTACT: Jeffery Haynes, Commissioner, Plant Variety Protection Office, USDA, AMS, Science and Technology Programs; Telephone: (202) 720-1066; or Email: Jeffery.Haynes@usda.gov.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of section 10(a) of the FACA (5 U.S.C., Appendix 2), this notice informs the public that the Plant Variety Protection Office (PVPO) is sponsoring a meeting of the Board on March 31, 2021. The Plant Variety Protection Act (PVPA) (7 U.S.C. 2321 *et seq.*) provides legal protection in the form of intellectual property rights to developers of new varieties of plants. A certificate of Plant Variety Protection is awarded to an owner of a crop variety after an examination shows that it is new, distinct from other varieties, genetically uniform, and stable through successive generations. The term of

protection is 20 years for most crops and 25 years for trees, shrubs, and vines. The PVPA also provides for a statutory Board (7 U.S.C. 2327). The Board is composed of 14 individuals who are experts in various areas of development and represent the seed industry sector, academia, and government. The duties of the Board are to: (1) Advise the Secretary concerning the adoption of rules and regulations to facilitate the proper administration of the FACA; (2) provide advisory counsel to the Secretary on appeals concerning decisions on applications by the PVP Office and on requests for emergency public-interest compulsory licenses; and (3) advise the Secretary on any other matters under the Regulations and Rules of Practice and on all questions under Section 44 of the FACA, "Public Interest in Wide Usage" (7 U.S.C. 2404).

Meeting Agenda: The purpose of the meeting will be to discuss the PVPO 2021 program activities, the electronic application system, and the working group update. The Board plans to discuss program activities that encourage the development of new plant varieties and address appeals to the Secretary. The meeting will be open to the public. Those wishing to participate are encouraged to pre-register by March 12, 2021, by contacting Jeffery Haynes, acting commissioner, at Telephone: (202) 720-1066; or Email: Jeffery.Haynes@usda.gov.

Meeting Accommodation: The meeting at USDA will provide reasonable accommodation to individuals with disabilities where appropriate. If you need reasonable accommodation to participate in this public meeting, please notify Jeffery Haynes at: Telephone: (202) 720-1066; or Email: Jeffery.Haynes@usda.gov.

Determinations for reasonable accommodation will be made on a case-by-case basis. Minutes of the meeting will be available for public review 30 days following the meeting on the internet at <http://www.ams.usda.gov/PVPO>.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020-28176 Filed 12-21-20; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket No. RHS-20-MFH-0029]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of the program of the Agency's use of Supervised Bank Accounts (SBA).

DATES: Comments on this Notice must be received by February 22, 2021 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT:

Barbara Chism, Finance and Loan Analyst, Multi-Family Housing Asset Management Division, Policy and Budget Branch, STOP 0782-Room 1263S, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250-0782. Telephone: (202) 690-1436.

SUPPLEMENTARY INFORMATION: The OMB regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an existing information collection that the Agency is submitting to OMB for extension. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology. Comments may be sent through the Federal eRulemaking Portal: Go to <http://www.regulations.gov> and, in the "Search" box, enter the Docket ID No. "RHS-20-MFH-0029" to submit or view public comments and to view supporting and related materials available electronically. Information on using [Regulations.gov](http://www.regulations.gov), including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "Help" button at the top of the page.

Title: 7 CFR 1902-A, Supervised Bank Accounts.

OMB Number: 0575-0158.

Expiration Date of Approval: February 28, 2021.

Type of Request: Extension of a Currently Approved Information Collection.

Abstract: The Agency extends financial assistance to applicants that do not qualify for loans under commercial rates and terms. The Agency use SBAs as a mechanism to (1) ensure correct disbursement and expenditure of all funds designated for a project; (2) help a borrower properly manage its financial affairs; (3) ensure that the Government's security is protected adequately from fraud, waste and abuse. SBAs are mandatory for Multi-Family Housing (MFH) reserve accounts. The MFH funds must be kept in the SBA for the full term of a loan. Any funds withdrawn for disbursement for an authorized purpose require a countersignature from an Agency official. This regulation prescribes the policies and responsibilities for the use of SBAs. In carrying out the mission as a supervised credit Agency, this regulation authorizes the use of supervised accounts for the disbursement of funds. The use may be necessitated to disburse Government funds consistent with the various stages of any development (construction) work actually achieved. On limited occasions, a supervised account is used to provide temporary credit counseling and oversight of those being assisted who demonstrate an inability to handle their financial affairs responsibly. Another use is for depositing MFH reserve account funds in a manner requiring Agency co-signature for withdrawals. MFH reserve account funds are held in a reserve account for the future capital improvement needs for apartment properties. Supervised accounts are established to ensure Government security is adequately protected against fraud, waste and abuse. The legislative authority for requiring the use of

supervised accounts is contained in section 510 of the Housing Act of 1949, as amended (42 U.S.C. 1480). These provisions authorize the Secretary of Agriculture to make such rules and regulations as deemed necessary to carry out the responsibilities and duties the Government is charged with administering.

Estimate of Burden: Public reporting burden for this information collection is estimated to average .43 hours per response.

Respondents: Small Business.

Estimated Average Number of

Respondents: 13,500.

Estimated Total Annual Responses: 54,292.

Estimated Number of Responses per Respondent: 4.02.

Estimated Total Number of Man Hours: 23,636.

Copies of this information collection can be obtained from Lynn Gilbert, Rural Development Innovation Center—Regulations Management Division, at (202) 690-2682.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Elizabeth Walker Green,

Acting Administrator, Rural Housing Service.

[FR Doc. 2020-28213 Filed 12-21-20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; School District Review Program

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment on the proposed extension of the School District Review Program prior to the submission of the information collection request (ICR) to OMB for approval.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before February 22, 2021.

ADDRESSES: Interested persons are invited to submit written comments by email to robin.a.pennington@census.gov. Please reference "School District Review Program" in the subject line of your comments. You may also submit comments, identified by Docket Number USBC-2020-0033, to the Federal e-Rulemaking Portal: <http://www.regulations.gov>. All comments received are part of the public record. No comments will be posted to <http://www.regulations.gov> for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or specific questions related to collection activities should be directed to Robin A. Pennington, Decennial Census Management Division, Program Management Office, by phone 301-763-8132 or by email robin.a.pennington@census.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The School District Review Program (SDRP) is one of many voluntary geographic partnership programs. The SDRP collects school district information and boundaries to update the U.S. Census Bureau's geographic database of addresses, streets, and boundaries. The Census Bureau uses its geographic database to tie demographic data from surveys and the decennial census to locations and areas, such as cities, school districts, and counties. To tabulate statistics by localities, the Census Bureau must have accurate addresses and boundaries.

While the geographic programs differ in requirements, timeframe, and participants, SDRP and the other geographic programs all follow the same basic process:

- The Census Bureau invites eligible participants to the program. For SDRP, the sponsor, the National Center for Education Statistics invites the state departments of education/state Title I

coordinators to designate mapping coordinators.

- If they elect to participate in the program, participants receive a copy of the boundaries the Census Bureau has on file. SDRP participants receive free customized mapping software.
- Participants review the boundaries in the Census Bureau provided digital maps and update them if needed. For SDRP, participants reach out to contacts in their state to collect updates.
- Participants return their updates to the Census Bureau.
- The Census Bureau updates its geographic database with boundary updates from participants.
- The Census Bureau uses the newly updated boundaries to tabulate statistics.

The Census Bureau requests state officials to review and update the school district information the Census Bureau has on file, through the SDRP. The school district information obtained through this program will assist in forming the Census Bureau's estimates of the number of children age five through seventeen, in families and living in poverty, for each school district.

State officials will provide the Census Bureau with updates and corrections to the federal School District Local Education Agency (SDLEA) identification numbers, school district boundaries, school names, grade ranges, and levels for which each school district is financially responsible.

These Census Bureau estimates are the basis of the Title I allocation for each school district. The SDRP is of vital importance for each state's allocation under Title I of the Elementary and Secondary Education Act (ESEA) as amended by Every Student Succeeds Act of 2015, Public Law 114–95. The U.S. Department of Education uses these estimates to allocate more than \$14 billion in Title I funding annually.

The National Center for Education Statistics (NCES) sponsors the SDRP. The NCES invites the state departments of education/Title I coordinators to designate a mapping coordinator for each state and the District of Columbia. The mapping coordinator collects updates from local school districts, state education officials, county planners, and state data centers, and ensures completion of submissions within the SDRP's timeframe. The respondents for the SDRP are the Title I coordinators and mapping coordinators from the fifty states and the District of Columbia.

The SDRP encompasses Type 1 and Type 2 school districts as defined by the NCES. Type 1 is a local school district

that is not a component of a supervisory union. Type 2 is a local school district component of a supervisory union sharing a superintendent and administrative services with other local school districts.

The SDRP consists of two phases—the Annotation and Verification Phases. In the Annotation Phase, the Census Bureau provides mapping coordinators with materials containing the most current school district boundaries and information the Census Bureau has on file for their state. Mapping coordinators review the data and submit changes to the school district boundaries or associated information to the Census Bureau. The Census Bureau reviews and processes the information submitted by mapping coordinators, and the Census Bureau updates all verified changes into the Master Address File/Topologically Integrated Geographic Encoding and Referencing (MAF/TIGER) database. In the Verification Phase, mapping coordinators verify that the Census Bureau accurately and completely updated the MAF/TIGER database with updates submitted during the Annotation Phase.

II. Method of Collection

Annotation Phase

In the Annotation Phase, mapping coordinators gather school district updates from school district superintendents and other state officials and use Census Bureau-provided materials to review and update school district boundaries, names, codes, and geographic relationships. The Census Bureau provides mapping coordinators with school district listings, spatial data in Esri shapefile format, blank submission logs, and Geographic Update Partnership Software (GUPS). The school district listings consist of school district inventories, school names, levels, grade ranges, and other data about school districts within their state. If the mapping coordinator has non-spatial updates (e.g., name changes, simple consolidations, simple dissolutions, and others), the mapping coordinator updates the Census Bureau provided submission log with those changes. If a mapping coordinator needs to perform spatial updates to a school district boundary, the mapping coordinator uses Census Bureau provided GUPS and spatial data to make updates. GUPS, SDRP version, is a Census Bureau-created, user-friendly, free digital mapping tool for mapping coordinators. It contains all the functionality necessary for mapping coordinators to spatially make and validate their school district updates.

Once mapping coordinators have reviewed and updated the school district information for their state, the mapping coordinator sends it to the Census Bureau, using Secure Web Incoming Module (SWIM), a web portal for uploading SDRP submissions. The Census Bureau will update the MAF/TIGER database with the updates sent by the mapping coordinator.

Schedule

- Annotation Phase begins for the SDRP—August/September of each year.
- Deadline to submit SDRP Annotation Phase to Census Bureau—last workday in December of each year.

Verification Phase

In the Verification Phase, the Census Bureau sends mapping coordinators newly created listings and digital files, and mapping coordinators use the SDRP verification module in GUPS to review these files and verify that the Census Bureau correctly captured their submitted information. The mapping coordinator can tag the area of issue and send the information to the Census Bureau to make corrections if the Census Bureau did not incorporate their boundary changes or other updates correctly.

Schedule

- Verification Phase begins and ends for the SDRP—March/April of each year.

III. Data

OMB Control Number: 0607–0987.

Form Number(s): None.

Type of Review: Regular submission, Request for an Extension, without change of a currently approved collection.

Affected Public: All fifty states and the District of Columbia.

Estimated Number of Respondents:

- Annotation Phase: 51.
- Verification Phase: 51.

Estimated Time per Response:

- Annotation Phase: 30 hours.
- Verification Phase: 10 hours.

Estimated Total Annual Burden Hours: 2,040.

- Annotation Phase: 1,530 hours.
- Verification Phase: 510 hours.

Estimated Total Annual Cost to Public: \$0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. Section 16, 141, and 193.

NCES Legal Authority: Title I, Part A of the Elementary and Secondary Education Act as amended by the Every Student Succeeds Act of 2015, Public Law (Pub. L.) 114–95.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. Summarization of comments submitted in response to this notice will be included in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–28143 Filed 12–21–20; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Longitudinal Employer-Household Dynamics (LEHD)

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general

public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on September 25, 2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau.

Title: Longitudinal Employer-Household Dynamics (LEHD).

OMB Control Number: 0607–1001.

Form Number(s): None.

Type of Request: Regular submission, Request for an Extension, without Change, of a Currently Approved Collection.

Number of Respondents: 54.

Average Hours per Response: No more than 8 hours required to identify and send/post required data sets.

Burden Hours: 1,728 hours.

Needs and Uses: The data products developed by the LEHD program provide statistics on employment, earnings, and job flows at detailed levels of geography and industry and for different demographic groups. The potential and realized uses of these data products and their supporting dissemination tools are far-reaching, both for unraveling many important questions in economic research and for the provision of new statistical products. Over the first five months of 2017, the Census Bureau received more than 105,000 visits to its LEHD dissemination tools. Just some examples of novel use of LEHD data include:

- The New Jersey State Data Center used OnTheMap for Emergency Management to quickly learn the impact of hurricane Sandy with regards to identification of Federal Disaster Declaration Areas and its effects on communities (*i.e.*, population and workforce).

- The state of Nevada has used the Job-to-Job Flows data product to understand the migration of its workforce that supports the hotel industry.

- The Philadelphia Center City District used LEHD data to understand the details of the area's workforce and economy in order to monitor the effectiveness of economic programs and policy initiatives.

Additional examples of how the LEHD data products and supporting dissemination tools have been used can be found at the LEHD website: https://lehd.ces.census.gov/led_in_action/.

Affected Public: State, Local, or Tribal government.

Frequency: Quarterly.

Respondent's Obligation: Voluntary via a Memorandum of Understanding (MOU).

Legal Authority: The authority to conduct the LEHD program is 13 U.S.C. Section 6. Confidentiality of all collected data is assured by 13 U.S.C. Section 9.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function and entering either the title of the collection or the OMB Control Number 0607–1001.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–28139 Filed 12–21–20; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Reporting Process for Complaint of Employment Discrimination Used by Permanent Employees and Applicants for Employment at DOC and Complaint of Employment Discrimination for the Decennial Census

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on October 1, 2020 during a 60-day comment period. We received public comments. This notice allows for an additional 30 days for public comments.

Agency: Office of the Secretary, Office of Civil Rights, Commerce.

Title: Complaint of Employment Discrimination against the Department of Commerce.

OMB Control Number: 0690-0015.

Form Number(s): CD-498, 498-A.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 600.

Average Hours per Response: 30.

Burden Hours: 300.

Needs and Uses: The Equal Employment Opportunity Commission (EEOC) regulations at 29 CFR 1614.106 require that a Federal employee or applicant for Federal employment alleging discrimination based on race, color, sex, national origin, religion, age, disability, or reprisal for protected activity must submit a signed statement that is sufficiently precise to identify the actions or practices that form the bases of the complaint. The individual completing the form is asked to identify the bureau at which the alleged discrimination took place, and whether the individual worked at that bureau at the time of the alleged discrimination. The individual completing the form is also asked to describe the alleged discriminatory action(s) as clearly as possible and include the date(s) and to articulate the basis or bases of the complaint (race, color, sex, etc.). Further, the individual completing the form is asked to identify the remedy(ies) sought for the alleged discrimination. Although complainants are not required to use the proposed form to file their complaints, the Office of Civil Rights strongly encourages its use to ensure efficient case processing and trend analyses of complaint activity.

The notice requesting public comment was published in the **Federal Register** on October 1, 2020, 85 FR 61923. Public comment was received from Lisa Schnall, Senior Attorney Advisor, Office of Legal Counsel, Equal Employment Opportunity Commission on November 30, 2020.

With respect to the CD-498 and CD-498A forms specifically, Ms. Schnall recommended that the Department of Commerce update information on Form CD-498A regarding the processing of sexual orientation discrimination complaints and ensure that Forms CD-498 and 498A include comprehensive lists of the protected bases under federal employment discrimination laws. Ms. Schnall also suggested that the Department of Commerce add the legal citation for 42 U.S.C. 2000ff and “genetic information” (or “genetic information (such as family medical history)”) to the Privacy Act Statement. Ms. Schnall also suggested that the Department of Commerce (3) ensure that

the disclosure provisions applicable to Forms CD-498 and CD-498A are consistent with the confidentiality requirements of the Rehabilitation Act of 1973, as amended (Rehabilitation Act) and Title II of the Genetic Information Nondiscrimination Act (GINA). Ms. Schnall further recommended that the Department of Commerce provide options for agency applicants and employees to submit employment discrimination complaint forms and related information safely and expeditiously during the pandemic.

In response to the public comment received, the Department of Commerce has updated information on Form CD-498A regarding the processing of sexual orientation discrimination complaints and has included comprehensive lists of the protected bases under federal employment discrimination laws to both forms CD-498 and CD-498A. Additionally, the Department of Commerce has added the legal citation for 42 U.S.C. 2000ff and “genetic information” (or “genetic information (such as family medical history)”) to the Privacy Act Statement in form CD-498A. Further, the Department of Commerce has added language to help ensure that the disclosure provisions applicable to Forms CD-498 and CD-498A are consistent with the confidentiality requirements of the Rehabilitation Act of 1973, as amended (Rehabilitation Act) and Title II of the Genetic Information Nondiscrimination Act (GINA). Last, with respect to the recommendation regarding the Department of Commerce providing options for agency applicants and employees to submit employment discrimination complaint forms and related information safely and expeditiously during the pandemic, the Department of Commerce currently has an effective procedure in place which addresses this concern (*i.e.*, the option to submit complaint forms by email to the Office of Civil Rights or to the applicable Bureau EEO Officer is noted on the Notice of Right to File which is issued to complainants and which accompanies the CD-498 or CD-498A).

Affected Public: Individuals and households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

Legal Authority: 29 CFR 1614.106.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the

publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function and entering either the title of the collection or the OMB Control Number 0690-0015.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020-28171 Filed 12-21-20; 8:45 am]

BILLING CODE 3510-BP-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2108]

Reorganization of Foreign-Trade Zone 208 Under Alternative Site Framework; New London, Connecticut

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for “. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,” and authorizes the Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR Sec. 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the New London Foreign Trade Zone Commission, grantee of Foreign-Trade Zone 208, submitted an application to the Board (FTZ Docket B-44-2020, docketed July 13, 2020) for authority to reorganize under the ASF with a service area of New London County, Connecticut, adjacent to the New London Customs and Border Protection port of entry, and FTZ 208's existing Site1 would be categorized as a magnet site;

Whereas, notice inviting public comment was given in the **Federal Register** (85 FR 44040, July 21, 2020) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the

requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 208 under the ASF is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the zone, and to an ASF sunset provision for magnet sites that would terminate authority for Site 1 if not activated within five years from the month of approval.

Dated: December 17, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2020-28206 Filed 12-21-20; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S-196-2020]

Approval of Subzone Status; MANE USA, Wayne and Parsippany, New Jersey

On November 2, 2020, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the State of New Jersey Department of State, grantee of FTZ 44, requesting subzone status subject to the existing activation limit of FTZ 44, on behalf of MANE USA, in Wayne and Parsippany, New Jersey.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (85 FR 70581, November 5, 2020). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR Sec. 400.36(f)), the application to establish Subzone 44M was approved on December 17, 2020, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 44's 407.5-acre activation limit.

Dated: December 17, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020-28210 Filed 12-21-20; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-557-813]

Polyethylene Retail Carrier Bags From Malaysia: Preliminary Results of Antidumping Duty Administrative Review; 2018-2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that sales of polyethylene retail carrier bags (PRCBs) were not made at less than normal value (NV) during the August 1, 2018 through July 31, 2019, period of review (POR). Interested parties are invited to comment on these preliminary results.

DATES: Applicable December 22, 2020.

FOR FURTHER INFORMATION CONTACT: Kyle Clahane, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-5449.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 2019, Commerce published a notice initiating an administrative review of the antidumping duty (AD) order on PRCBs from Malaysia, covering one company: Euro SME.¹

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.² On June 9, 2020, we extended the deadline for preliminary results of this review from June 22, 2020 until October 16, 2020.³ Subsequently, on July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.⁴ The deadline for the preliminary results of this review is now December 15, 2020.

For a complete description of the events that followed the initiation of this administrative review, see the Preliminary Decision Memorandum.⁵

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 53411 (October 7, 2019) (*Initiation Notice*).

² See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020.

³ See Memorandum, "Polyethylene Retail Carrier Bags from Malaysia: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated June 9, 2020.

⁴ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

⁵ See Memorandum, "Decision Memorandum for the Preliminary Results of the Antidumping Duty

Scope of the Order

The merchandise covered by this order is PRCBs from Malaysia, which also may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. Imports of merchandise included within the scope of this antidumping duty order are currently classifiable under statistical category 3923.21.0085 of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading may also cover products that are outside the scope of this antidumping duty order. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this antidumping duty order is dispositive. For a full description of the scope of the order, see the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Export price was calculated in accordance with section 772 of the Act. Normal value was calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum. A list of topics included in the Preliminary Decision Memorandum is included as an Appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of the Review

As a result of this review, we preliminarily determine the following weighted-average dumping margin for the period August 1, 2018 through July 31, 2019:

Administrative Review: Polyethylene Retail Carrier Bags: 2018-2019," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

| Producer/exporter | Weighted-average dumping margin (percent) |
|--|---|
| Euro SME Sdn. Bhd.; and Euro Nature Green Sdn. Bhd | 0.00 |

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.⁶ Interested parties may submit case briefs no later than 30 days after the date of publication of this notice.⁷ Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the time limit for filing case briefs.⁸ 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.⁹ Executive summaries should be limited to five pages total, including footnotes. Case and rebuttal briefs should be filed using ACCESS¹⁰ and must be served on interested parties.¹¹ Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.¹²

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.¹³ 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.¹³ If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm

by telephone the date, time, and location of the hearing two days before the scheduled date.

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, not later than 120 days after the date of publication of these preliminary results of review, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.¹⁴ The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.¹⁵

For any individually examined respondent whose weighted-average dumping margin is above *de minimis* (i.e., 0.50 percent) in the final results of this review, we intend to calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).¹⁶ We intend to instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is not zero or *de minimis*. If a respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis*, we intend to instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For entries of subject merchandise during the POR for which a respondent did not know that its merchandise was destined for the United States, we intend to instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate company (or companies) involved in the transaction.

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the companies listed above, will be the rate established in the final results of the review (except, if the rate is zero or *de minimis*, no cash deposit will be required); (2) for previously investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 84.94 percent, the all-others rate established in the LTFV investigation.¹⁷

These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h)(1).

¹⁷ See *Antidumping Duty Order: Polyethylene Retail Carrier Bags from Malaysia*, 69 FR 48203 (August 9, 2004).

⁶ See 19 CFR 351.224(b).

⁷ See 19 CFR 351.309(c)(1)(ii).

⁸ See 19 CFR 351.309(d)(1); see also *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

⁹ See 19 CFR 351.309(c)(2) and (d)(2) and 19 CFR 351.303 (for general filing requirements).

¹⁰ See 19 CFR 351.303.

¹¹ See 19 CFR 351.303(f).

¹² See *Temporary Rule*.

¹³ See 19 CFR 351.310(c).

¹⁴ See 19 CFR 351.212(b).

¹⁵ See section 751(a)(2)(C) of the Act.

¹⁶ In these preliminary results, Commerce applied the assessment rate calculation methodology adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012).

Dated: December 15, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Discussion of the Methodology
- V. Recommendation

[FR Doc. 2020–28168 Filed 12–21–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; West Coast Region Groundfish Trawl Fishery Monitoring and Catch Accounting Program

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before February 22, 2021.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at Adrienne.thomas@noaa.gov. Please reference OMB Control Number 0648–0619 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Matt Dunlap, Fishery Policy Analyst, West Coast Regional Office, 7600 Sand Point

Way NE, Seattle, WA 98115, (206) 526–6119, or matthew.dunlap@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This submission is a renewal of an existing collection. In January 2011, the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) implemented a trawl rationalization program, a catch share program, for the Pacific coast groundfish fishery's trawl fleet. The program was developed through Amendment 20 to the Groundfish Fishery Management Plan (FMP), under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and consists of an individual fishing quota (IFQ) program for the shorebased trawl fleet (including whiting and non-whiting fisheries); and cooperative (coop) programs for the at-sea mothership (MS) and catcher/processor (C/P) trawl fleets (whiting only). As part of its fishery management responsibilities, the National Marine Fisheries Service (NMFS) collects information to determine the amount and type of catch taken by fishing vessels. This collection supports monitoring requirements including scale test requirements for first receivers in the Pacific Coast groundfish fishery's shorebased individual fishery quota (IFQ) program; and mothership and catcher/processors in the at-sea whiting fisheries. The collection also supports permits for businesses that provide certified observer and certified catch monitor services. The respondents are principally shore-based first receivers, catch monitor and observer service providers, mothership processors, and catcher/processors which are companies/partnerships.

II. Method of Collection

This collection utilizes both electronic and paper forms, depending on the specific item. Methods of submittal include email of electronic forms, and mail and facsimile transmission of paper forms. Additionally, this collection utilizes interviews for some information collection and phone calls for transmission of other information.

III. Data

OMB Control Number: 0648–0619.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 153.

Estimated Time per Response: For the existing observer providers: 2 hours for preparation and submission of the annual observer provider permit renewal application. For a new observer provider: 10 hours for observer provider permit application preparation and submission. For a new observer provider: 4 hours for a written response and submission of an appeal if an observer provider permit is denied. For existing catch monitors: 1 hour for submission of qualifications to work as a catch monitor. For new catch monitors: 4 hours for a written response and submission of an appeal if a catch monitor permit is denied. For existing vessels in the Mothership or Catcher/Processor fleet, 30 minutes or less for satisfying requirements for use of at-sea scales, including daily testing reports (30 minutes), daily catch and cumulative weight reports (10 minutes), audit trail (1 minute), calibration log (2 minutes), and fault log (3 minutes).

Estimated Total Annual Burden Hours: 447 hours.

Estimated Total Annual Cost to Public: \$3,678.

Respondent's Obligation: Mandatory.

Legal Authority: The regulations at §§ 660.140 (h), 660.150 (j), and 660.160 (g), specify observer coverage requirements for trawl vessels and define the responsibilities for observer providers, including reporting requirements. Regulations at § 660.140 (i) specify requirements for catch monitor coverage for first receivers. Regulations at § 660.15 specify equipment, performance and technical requirements for scales used to weigh catch at sea.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request

to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–28175 Filed 12–21–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Alaska License Limitation Program for Groundfish, Crab, and Scallops

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on September 3, 2020 (85 FR 54999), during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Alaska License Limitation Program for Groundfish, Crab, and Scallops.

OMB Control Number: 0648–0334.

Form Number(s): None.

Type of Request: Regular submission, extension of a current information collection.

Number of Respondents: 105.

Average Hours per Response: 1 hour each for Application for Transfer License Limitation Program Groundfish/ Crab License and Application for

Transfer of Scallop LLP License; 4 hours for transfer appeals.

Total Annual Burden Hours: 56 hours.

Needs and Uses: The National Marine Fisheries Service (NMFS), Alaska Regional Office, is requesting renewal of the currently approved information collection for the Alaska License Limitation Program (LLP) for Groundfish, Crab, and Scallops.

The License Limitation Program (LLP) restricts access to the commercial groundfish, crab, and scallop fisheries in the exclusive economic zone off Alaska, except for certain areas where alternative programs exist. The intended effect of the LLP is to limit the number of participants and reduce fishing capacity in fisheries off Alaska. More information on the LLP can be found on the NMFS Alaska Region website and at 50 CFR 692, 679.4(g) and (k), and 679.7(i).

An LLP license is required for vessels participating in directed fishing for LLP groundfish species in the Bering Sea and Aleutian Islands (BSAI) or Gulf of Alaska (GOA), or fishing in any BSAI LLP crab fisheries. An LLP license is also required for any vessel deployed in scallop fisheries in Federal waters off Alaska (except for some diving operations).

Vessels participating in directed fishing for LLP groundfish species in the GOA or BSAI, or fishing in any BSAI LLP crab fisheries, must be named on a valid copy of the LLP license that is on board the vessel, with some exceptions. An LLP groundfish or crab license authorizes the license holder to deploy the vessel in fisheries in accordance with the specific area and species endorsements, the vessel and gear designations, the maximum length overall (MLOA) specified on the license, and any exemption from the MLOA specified on the license.

An LLP scallop license authorizes the person named on the license to catch and retain scallops in compliance with State of Alaska regulations using a vessel that does not exceed the MLOA specified on the license and the gear designation specified on the license. Unlike the LLP groundfish license, the scallop license is not vessel specific. A valid copy of the LLP scallop license must be on board the vessel.

The LLP originally collected basic information so that NMFS could determine which owners of vessels were issued LLP licenses. To receive an LLP license, an eligible applicant needed to apply during the application periods established when the program was implemented. As the application periods and selection process for the

LLP licenses have ended, an LLP license may now only be obtained through transfer.

This information collection collects information necessary for transfer of LLP licenses for groundfish, crabs, and scallops. This collection contains the two applications used for those transfers and the transfer appeals process.

An LLP license holder uses a transfer application to transfer an LLP license to a person who meets the eligibility requirements. The transfer applications collect information on the transferor, the transferee, and the LLP license to be transferred. The groundfish and crab transfer application also collects information on the rockfish quota share to be transferred, the vessel currently named on the LLP license, the vessel to be named on the LLP license, and ownership interest and transaction data.

Affected Public: Individuals or households; Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0334.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–28173 Filed 12–21–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Greater Atlantic Region Logbook Family of Forms**

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Information Collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before February 22, 2021.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at Adrienne.thomas@noaa.gov. Please reference OMB Control Number 0648-0212 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to James StCyr, Greater Atlantic Regional Office, Analysis & Program Support Division, Data Processing & Quality Branch, 55 Great Republic Dr, Gloucester, MA 01930, (978) 281-9369 or james.stcyr@noaa.gov.

SUPPLEMENTARY INFORMATION**I. Abstract**

This request is for the revision of a current information collection. Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) is responsible for management of the nation's marine fisheries. Fishing vessels permitted to participate in federally permitted fisheries in the

Greater Atlantic Region are required to submit logbooks containing catch and effort information about their fishing trips. Participants in the tilefish and open access herring fisheries are also required to make reports on the catch, which are currently submitted via an Interactive Voice Response (IVR) system. In addition, vessels fishing under the Exempted Fishing Permit (EFP) or Mid-Atlantic Research Set-Aside (RSA) programs are required to submit research catch information through the IVR system. The IVR system will be taken offline in 2021 and reports will need to be submitted using our web based system, Fish Online. The information submitted is used by several offices of the NOAA Fisheries Service, the U.S. Coast Guard, the Councils, and state fishery enforcement agencies under contract to the NOAA Fisheries Service in order to develop, implement, and monitor fishery management strategies. This action seeks to revise Paperwork Reduction Act clearance for the impacted requirements.

II. Method of Collection

Information is collected through an Interactive Voice Response (IVR) system.

III. Data

OMB Control Number: 0648-0212.

Form Number(s): 80-30, 80-140.

Type of Review: Regular submission [revision of a current information collection].

Affected Public: Individuals or households; business or other for-profit organizations.

Estimated Number of Respondents: 2,299.

Estimated Time per Response: 5 minutes for VTRs; 12.5 minutes for the Shellfish Log; 3 minutes standardized response time for the 6 web forms—Soawning Blocks, Monkfish DAS, EFP, Herring, RSA, and Tilefish).

Estimated Total Annual Burden Hours: 10,487.

Estimated Total Annual Cost to Public: \$58,653.

Respondent's Obligation: Mandatory.
Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and

cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020-28217 Filed 12-21-20; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648-XA718]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice; availability of a proposed evaluation and pending determination and permit application for public comment.

SUMMARY: Notice is hereby given that a proposed evaluation and pending determination (PEPD) is available for public comment on a hatchery and genetic management plan (HGMP) for Skykomish River steelhead submitted under limit 6 of the Endangered Species Act (ESA) 4(d) Rule. NMFS is also making an ESA section 10(a)(1)(A) permit application available for public comment. The permit application is for a trap and haul operation at Sunset Falls, also on the Skykomish River in Washington State.

DATES: Comments must be received at the appropriate address (see **ADDRESSES**)

no later than 5 p.m. Pacific time on January 21, 2021. Comments received after this date may not be considered.

ADDRESSES: Written comments on the PEPD and/or permit application should be addressed to Emi Melton; NMFS, West Coast Regional Office; 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232. Comments may be submitted by email. The mailbox address for providing email comments is: hatcheries.public.comment@noaa.gov. Include in the subject line of the email comment the following identifier: Comments on Skykomish River PEPD and/or permit application.

The documents are available on the internet at: <https://www.fisheries.noaa.gov/action/skykomish-summer-steelhead-hatchery-program-and-sunset-falls-trap-and-haul-program>.

FOR FURTHER INFORMATION CONTACT: Emi Melton at (503) 736-4739 or by email at emi.melton@noaa.gov.

SUPPLEMENTARY INFORMATION

ESA-Listed Species Covered in This Notice

- Puget Sound Chinook Salmon (*Oncorhynchus tshawytscha*): threatened, naturally and artificially propagated
- Puget Sound Steelhead (*Oncorhynchus mykiss*): threatened, naturally and artificially propagated

Background

The Tulalip Tribes and Washington Department of Fish and Wildlife (collectively the co-managers) have submitted an HGMP to NMFS pursuant to limit 6 of the ESA 4(d) Rule for a summer steelhead hatchery program in the Skykomish River basin. The hatchery program is intended to contribute to fulfilling Federal tribal trust responsibilities and treaty rights guaranteed through treaties and affirmed in *U.S. v. Washington* (1974). It is also designed to contribute to the survival and recovery of Puget Sound steelhead and produce summer steelhead for sustainable fisheries.

Washington Department of Fish and Wildlife has also submitted an ESA section 10(a)(1)(A) permit application for a trap and haul program in the Skykomish River basin. The trap and haul program traps various species of salmon, steelhead, and trout, and hauls them above Sunset Falls to provide better habitat for these species.

Authority

16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; § 222.303 also issued under 16 U.S.C. 1361 *et seq.*

Dated: December 17, 2020.

Angela Somma,

Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020-28229 Filed 12-21-20; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XA700]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Erickson Residence Marine Access Project in Juneau, Alaska

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

ACTION: Notice; issuance of Incidental Harassment Authorization (IHA).

SUMMARY: NMFS has received a request from Jim Erickson for the re-issuance of a previously issued incidental harassment authorization with the only change being effective dates. The initial IHA authorized take of seven species of marine mammals, by Level A and Level B harassment, incidental to construction associated with the Erickson Residence Marine Access Project in Juneau, Alaska. The project has been delayed and none of the work covered in the initial IHA has been conducted. The initial IHA was effective from January 1, 2020 through December 31, 2020. Mr. Erickson has requested re-issuance with new effective dates of January 1, 2021 through December 31, 2021. The scope of the activities and anticipated effects remain the same, authorized take numbers are not changed, and the required mitigation, monitoring, and reporting remains the same as included in the initial IHA. NMFS is, therefore, issuing a second identical IHA to cover the incidental take analyzed and authorized in the initial IHA.

DATES: This authorization is effective from January 1, 2021 through December 31, 2021.

ADDRESSES: An electronic copy of the final 2020 IHA previously issued to Mr. Erickson, Mr. Erickson's application, and the **Federal Register** notices proposing and issuing the initial IHA may be obtained by visiting <https://www.fisheries.noaa.gov/action/incidental-take-authorization-erickson-residence-marine-access-project-auge-bay-alaska>. In case of problems accessing these documents, please call

the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Amy Fowler, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term "take" means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On November 27, 2019, NMFS published final notice of our issuance of an IHA authorizing take of marine mammals incidental to the Erickson Residence Marine Access Project (84 FR 65360). The effective dates of that IHA

were January 1, 2020 through December 31, 2020. On December 2, 2020, Mr. Erickson informed NMFS that the project was delayed. None of the work identified in the initial IHA (e.g., pile driving and removal) has occurred. Mr. Erickson submitted a request for a new identical IHA that would be effective from January 1, 2021 through December 31, 2021, in order to conduct the construction work that was analyzed and authorized through the previously issued IHA. Therefore, re-issuance of the IHA is appropriate.

Summary of Specified Activity and Anticipated Impacts

The planned activities (including mitigation, monitoring, and reporting), authorized incidental take, and anticipated impacts on the affected stocks are the same as those analyzed and authorized through the previously issued IHA.

Mr. Erickson plans to replace his private moorage facility in Auke Bay in Juneau, Alaska to provide a safer, more accessible and secure dock. Six 12- to 16-inch (in) timber piles will be removed using a vibratory hammer, and six steel pipe piles (four 12.75-in steel pipe piles and two 20-in steel pipe piles) will be installed using vibratory and impact hammers over the course of up to eight days. Of those eight days, impact pile driving may occur on up to four days and vibratory pile removal and installation may occur on up to six days. Drilling may be required to install the larger diameter steel piles. If required, drilling may occur on up to two days. Vibratory pile removal and installation, impact pile installation, and drilling would introduce underwater sounds at levels that may result in take, by Level A and Level B harassment, of marine mammals in Auke Bay. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the initial IHA. The mitigation and monitoring are also as prescribed in the initial IHA.

Species that are expected to be taken by the planned activity include harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*), harbor seal (*Phoca vitulina*), Steller sea lion (*Eumetopias jubatus*), California sea lion (*Zalophus californianus*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), and killer whale (*Orcinus orca*). A description of the methods and inputs used to estimate take anticipated to occur and, ultimately, the take that was authorized is found in the previous documents referenced above. The data inputs and

methods of estimating take are identical to those used in the initial IHA. NMFS has reviewed recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts or take estimate under the initial IHA.

We refer to the documents related to the previously issued IHA, which include the **Federal Register** notice of the issuance of the initial 2020 IHA for Mr. Erickson's construction work (84 FR 65360; November 27, 2019), Mr. Erickson's application, the **Federal Register** notice of the proposed IHA (84 FR 50387; September 25, 2019), and all associated references and documents.

Determinations

Mr. Erickson will conduct activities as analyzed in the initial 2020 IHA. As described above, the number of authorized takes of the same species and stocks of marine mammals are identical to the numbers that were found to meet the negligible impact and small numbers standards and authorized under the initial IHA and no new information has emerged that would change those findings. The re-issued 2021 IHA includes identical required mitigation, monitoring, and reporting measures as the initial IHA, and there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) Mr. Erickson's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action with respect to environmental consequences on the human environment.

Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review. This action is consistent

with categories of activities identified in CE B4 of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the Alaska Regional Office, whenever we propose to authorize take for endangered or threatened species.

The effects of this proposed Federal action were adequately analyzed in NMFS' Biological Opinion for the Erickson Residence Marine Access Project, dated November 15, 2019, which concluded that the take NMFS proposed to authorize through this IHA would not jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify any designated critical habitat.

Authorization

NMFS has issued an IHA to Jim Erickson for in-water construction activities associated with the specified activity from January 1, 2021 through December 31, 2021. All previously described mitigation, monitoring, and reporting requirements from the initial 2020 IHA are incorporated.

Dated: December 16, 2020.

Donna S. Wieting,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2020-28170 Filed 12-21-20; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Non-Commercial Permit and Reporting Requirements in the Main Hawaiian Islands Bottomfish Fishery**

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on August 24, 2020, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: NOAA National Marine Fisheries Service.

Title: Non-commercial Permit and Reporting Requirements in the Main Hawaiian Islands Bottomfish Fishery.

OMB Control Number: 0648-0577.

Form Number(s): None.

Type of Request: Regular submission (extension of a currently approved collection).

Number of Respondents: 100.

Average Hours per Response: 15 minutes per permit application; 2 hours per appeal of denied permit; 20 minutes per logbook form.

Total Annual Burden Hours: 69.

Needs and Uses: Each boat-based non-commercial fisherman and vessel owner who fishes for bottomfish management unit and ecosystem component species in the federal waters of the main Hawaiian Islands must obtain a non-commercial bottomfish fishing permit from the NMFS or hold a State of Hawaii Commercial Marine License. Each permitted vessel owner or operator must submit a logsheet report after the conclusion of every fishing trip. The permit is required for all vessel owners, operators, and fishermen. The information from the permit and logsheet are used by NMFS, the Western Pacific Fishery Management Council, and federal enforcement agencies to monitor and manage the fishery.

Affected Public: Individuals or households; business or other for-profit organizations.

Frequency: As required.

Respondent's Obligation: Mandatory.

Legal Authority: 50 CFR 665.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website <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 and entering either the title of the collection or the OMB Control Number 0648-0577.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020-28174 Filed 12-21-20; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648-XA721]

Endangered Species; File No. 23861

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that NMFS has issued an Incidental Take Permit (ITP) (No. 23861) to Midwest Biodiversity Institute (MBI), pursuant to the Endangered Species Act (ESA) of 1973, as amended, for the incidental take of shortnose sturgeon (*Acipenser brevirostrum*), Gulf of Main Distinct population segment (GOM DPS) Atlantic sturgeon, or the New York Bight (NYB DPS) of Atlantic sturgeon. (*A. oxyrinchus*) and the GOM DPS Atlantic salmon (*Salmo salar*) associated with the otherwise lawful sampling of non-ESA listed fish in the Lower Kennebec River. The permit is issued for a duration of 10 years.

ADDRESSES: The incidental take permit, final environmental assessment, and other related documents are available on the NMFS Office of Protected Resources website at <https://www.fisheries.noaa.gov/action/incidental-take-permit-midwest-biodiversity-institute>.

FOR FURTHER INFORMATION CONTACT:

Celeste Stout, phone: (301) 427-8436 or email: celeste.stout@noaa.gov.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the 'taking' of a species listed as endangered or threatened. The ESA defines "take" to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances to take listed species incidental to, and not the purpose of, otherwise lawful activities. Section 10(a)(1)(B) of the ESA provides for authorizing incidental take of listed species. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Background

NMFS received a permit application from MBI on January 31, 2020. Based on our initial review of the application and conservation plan, we requested further information and clarification. On March 30, 2020, MBI submitted a revised and complete application for the take of ESA-listed shortnose sturgeon, Atlantic sturgeon and Atlantic salmon due to the sampling of non-ESA listed fish in the Lower Kennebec River. MBI proposes to continue an 18 yearlong (2002-19) systematic assessment of the fish assemblages at seven sites in an approximate 17.5 mile (28.2 km) reach of the Lower Kennebec River and three sites in a 6 mile (9.7 km) reach of the Sebasticook River. MBI will conduct boat electrofishing where electric current is generated by a Smith-Root Generator Powered Pulsator and transmitted into the water by an electrode array suspended from the bow of 16-18 foot long (25-29 km) jon boats or a 16 foot long inflatable Wing raft. NMFS determined that the application contained sufficient information for review and consideration under section 10(a)(1)(B) of the ESA. NMFS then provided an opportunity for public review of MBI's application and Conservation Plan. On April 17, 2020, NMFS published a notice of receipt (NOR) of the MBI application in the **Federal Register** (85 FR 21413). The comment period ended on May 18, 2020 and six comments were received. Two of these comments did not pertain to the notice and four were considered relevant. Two of these comments consisted of uploaded letters. The first was from the Maine Council of the Atlantic Salmon Federation and the Maine Council of Trout Unlimited and the second was from The Nature

Conservancy in Maine. In these letters these organizations expressed their support of MBI's application for an ITP. Of the two additional comments one commenter was opposed to the killing of any fish. This is not consistent with the ESA, which allows for the incidental take of listed species if certain criteria are met and a permit is issued by NMFS. Additionally, lethal take is not authorized for this permit. The other commenter seemed confused regarding the requirements of the ESA and the ITP process. NMFS and MBI held further discussions regarding information that would be incorporated in the Conservation Plan and a final application and Conservation Plan was submitted on July 6, 2020.

Conservation Plan

Section 10 of the ESA specifies that no permit may be issued unless an applicant submits an adequate conservation plan. The conservation plan prepared by MBI describes measures designed to minimize and mitigate the impacts of any incidental take of ESA-listed shortnose sturgeon, Atlantic sturgeon and Atlantic salmon. To avoid and minimize take of ESA listed species MBI is required to implement the following minimization measures: (a) Conduct sampling between mid-September and mid-October to minimize any encounters with early life stage or juvenile fish. (b) MBI will request any recent acoustic detections of ESA listed species in the study area and take steps to avoid any congregations of listed species. (c) Only trained and qualified MBI crew leaders and either MBI or Maine Department of Marine Resources (DMR) agency technicians will be allowed to carry out the sampling activities. The MBI crew leader will review the ESA listed species minimization and avoidance procedures with the sampling crew at the beginning of each sampling day. In addition Maine DMR procedures (Bruchs et al. 2016) for electrofishing will be included in the training and instructions. (d) Sampling and the operation of the electrofishing gear will be done in a manner that minimizes the potential for injury to the listed species. The pulse frequency will be reduced to 30–60Hz when sampling in areas of prior interaction with ESA listed species to minimize the risk of injury. (e) Electric current and sampling activity will cease upon an encounter where a listed species is observed to be affected by the electric field. Affected sturgeon, if immobilized and/or in apparent distress, may be netted or otherwise handled in order to ascertain any injury and to revive if necessary, but the

individual will not be removed from the water. Otherwise, affected fish that leave the electric field under their own power and appear to be uninjured will not be pursued and netted. In such cases, the species identification and estimation of length will be made visually. (f) Sampling will not be conducted when ambient water temperature is >22 °C per Maine DMR specifications (Bruchs et al. 2016). Temperature will be routinely measured at the start of each electrofishing site, but will be more frequently monitored (every 2 hours) when temperatures are between 20–22 °C. (g) When there is any interaction with a listed species all sampling activities will cease and the electric current will be shut off for a period of 5 minutes and/or until the individual fish are released and determined to have departed the area. Notation will be made about the physical condition of the individual in terms of the reaction to the electric field and if it was able to leave the area under its own power. Photographs will be taken of each interaction to document occurrence and any evidence of injury.

At present, the project is funded by MBI research and development funds, but MBI continues to seek external funding. This project has been ongoing for 18 years and is one of the longest running biological monitoring projects in New England and the only sustained effort that focuses on large river fish assemblages.

Permit 23861

NMFS authorizes the following non-lethal incidental takes:

- Four (adult/subadult) Gulf of Maine & New York Bight DPS Atlantic sturgeon;
- Four (adult/subadult) Shortnose sturgeon; and
- Five (adult/subadult) Gulf of Maine DPS Atlantic salmon.

National Environmental Policy Act

Issuing an ESA section 10(a)(1)(B) permit constitutes a Federal action requiring NMFS to comply with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) as implemented by 40 CFR parts 1500–1508 and NOAA Administrative Order 216–6, Environmental Review Procedures for Implementing the National Policy Act (1999). NMFS has determined that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement. This action falls within the B3 category— Issuance of, and amendments to, “low effect” Incidental Take Permits and

their supporting “low effect” Habitat Conservation Plans under section 10(a)(1)(B) of the ESA. Additionally there are no extraordinary circumstances with the potential for significant environmental effects that would preclude the issuance of this permit type from being categorically excluded.

Dated: December 17, 2020.

Angela Somma,

Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–28228 Filed 12–21–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Weather Modification Activities Reports

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before February 22, 2021.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at Adrienne.thomas@noaa.gov. Please reference OMB Control Number 0648–0025 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to OAR Weather Program Office at Weather.Modification@noaa.gov.

SUPPLEMENTARY INFORMATION

I. Abstract

This is a request for extension of a currently approved information collection. The National Oceanic & Atmospheric Administration's Office of Atmospheric Research (OAR)/Weather Program Office is conducting this information collection pursuant to Section 6(b) of Public Law 92-205. This law requires that all non-federal weather modification activities (*e.g.*, cloud seeding) in the United States (U.S.) and its territories be reported to the Secretary of Commerce through NOAA. This reporting is critical for gauging the scope of these activities, for determining the possibility of duplicative operations or of interference with another project, for providing a database for checking atmospheric changes against the reported activities, and for providing a single source of information on the safety and environmental factors used in weather modification activities in the U.S. Two forms are collected under this OMB Control Number: One prior to and one after the activity. The requirements are detailed in 15 CFR part 908. This data is used for scientific research, historical statistics, international reports and other purposes.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include email of electronic forms, mail and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648-0025.

Form Number(s): NOAA Forms 17-4 and 17-4A.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time per Response: 60 minutes per initial report; 30 minutes per final report.

Estimated Total Annual Burden Hours: 75 hours.

Estimated Total Annual Cost to Public: \$0.

Respondent's Obligation: Mandatory.
Legal Authority: Public Law 92-205, Weather Modification Reporting Act of 1972.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time.

While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020-28216 Filed 12-21-20; 8:45 am]

BILLING CODE 3510-KD-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 20-86]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

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 20-86 with attached Policy Justification and Sensitivity of Technology.

Dated: December 17, 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

December 1, 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. 20-86 concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Republic of Korea for defense articles and services estimated to cost \$39 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. 20-86

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:* Republic of Korea

(ii) *Total Estimated Value:*

| | |
|------------------------------|--------------|
| Major Defense Equipment * .. | \$30 million |
| Other | \$ 9 million |

Total \$39 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):
Two (2) MK 15 MOD 25 Phalanx Close-In Weapons System (CIWS) Block 1B Baseline 2 (1B2) Systems
Four thousand (4,000) Rounds, 20MM Cartridge API Linked
Non-MDE: Also included are spare parts; other support equipment;

ammunition; books and other publications; software; training; engineering technical assistance and other technical assistance; and other related elements of program and logistical support.

(iv) *Military Department:* Navy (KS-P-LRH)

(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*: December 1, 2020

*As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Republic of Korea—MK 15 MOD 25 Phalanx Close-In Weapons System (CIWS) Block 1B Baseline 2 (1B2) System

The Republic of Korea has requested to buy two (2) MK 15 MOD 25 Phalanx Close-In Weapons System (CIWS) Block 1B Baseline 2 (1B2) systems; and four thousand (4,000) rounds, 20MM cartridge API linked. Also included are spare parts; other support equipment; ammunition; books and other publications; software; training; engineering technical assistance and other technical assistance; and other related elements of program and logistical support. The estimated total cost is \$39 million.

This proposed sale will support the foreign policy goals and national security objectives of the United States by improving the security of a Major Non-NATO Ally that is a force for political stability and economic progress in the Pacific region.

The proposed sale will improve the Republic of Korea's capability to meet current and future threats. Korea will use the systems aboard its first KDX III Batch II Class ship to provide it with effective means of detecting and defending itself against incoming airborne threats. The Republic of Korea will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Raytheon Missile and Defense, Louisville, KY. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to the Republic of Korea. However, U.S. Government or contractor personnel in-country visits will be required on a temporary basis in conjunction with program technical oversight and support requirements, including multiple trips by U.S. Government and contractor representatives to participate in program and technical reviews, as well as to provide training and maintenance support in country, as required.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 20–86

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 MK 15 MOD 25 Phalanx Close-In Weapon System (CIWS) consists of a rapid-fire computer-controlled radar and gun system mounted on a turret designed to defeat anti-ship missiles; small surface craft; low, slow aircraft; rockets and mortars. The weapons system carries out search, detection, target threat evaluation, tracking, firing and kill loop fire control that uses advanced radar and computer technology to locate, identify and direct a system of armor piercing projectiles to the target. The Phalanx Block 1B Baseline 2 (1B2) Radar Upgrade Kits converted the system's radar from an analog to digital suite, and in doing so addressed significant hardware obsolescence.

2. The highest level of classification of defense articles, components, and services included in this potential sale is CONFIDENTIAL.

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 the Republic of Korea 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 Republic of Korea.

[FR Doc. 2020–28198 Filed 12–21–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 20–87]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

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 20–87 with attached Policy Justification and Sensitivity of Technology.

Dated: December 17, 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

December 7, 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. 20-87 concerning the Army's proposed Letter(s) of Offer and Acceptance to the Taipei Economic and Cultural Representative Office in the United States (TECRO) for defense articles and services estimated to cost \$280 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. 20-87

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:* Taipei Economic and Cultural Representative Office in the United States (TECRO)
- (ii) *Total Estimated Value:*

| | |
|---------------------------|----------------------|
| Major Defense Equipment * | \$ 0 million |
| Other | \$280 million |
| Total | \$280 million |

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* TECRO has requested to buy a Field Information

Communications System (FICS), consisting of:

- Major Defense Equipment (MDE):* None
- Non-MDE:* One hundred fifty-four (154) Communications Nodes (CN) with S-788 Type III shelter; twenty-four (24) Communication Relays with S-788 Type III shelter; eight (8) Network Management Systems (NMS) with S-

788 Type III shelter; Basic Issue Items (BII); program management support; verification testing; system technical support; transportation; spare and repair parts; communication support equipment; communication equipment integration; tools and test equipment; personnel training and training equipment; initial repair and return program; Additional Authorized List (AAL); technical manuals; Quality Assurance Team (QAT); U.S. Government and contractor engineering; technical and logistics support services; contractor provided training; Field Service Representatives (FSR); and other related elements of logistics and program support.

(iv) *Military Department: Army (TW-B-ZAW)*

(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: December 7, 2020*

*As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office in the United States (TECRO)—Field Information Communications System (FICS)

TECRO has requested to buy a Field Information Communications System (FICS), consisting of one hundred fifty-four (154) Communications Nodes (CN) with S-788 Type III shelter; twenty-four (24) Communication Relays with S-788 Type III shelter; eight (8) Network Management Systems (NMS) with S-788 Type III shelter; Basic Issue Items (BII); program management support; verification testing; system technical support; transportation; spare and repair parts; communication support equipment; communication equipment integration; tools and test equipment; personnel training and training equipment; initial repair and return program; Additional Authorized List (AAL); technical manuals; Quality Assurance Team (QAT); U.S. Government and contractor engineering; technical and logistics support services; contractor provided training; Field Service Representatives (FSR); and other related elements of logistics and program support. The total estimated program cost is \$280 million.

This proposed sale is consistent with U.S. law and policy as expressed in Public Law 96-8.

This proposed sale serves U.S. national, economic, and security

interests by supporting the recipient's continuing efforts to modernize its armed forces and to maintain a credible defensive capability. The proposed sale will help improve the security of the recipient and assist in maintaining political stability, military balance, economic and progress in the region.

This proposed sale is designed to provide mobile and secure communications. It will contribute to the recipient's goal to modernize its military communication's capability in support of their mission and operational needs. The recipient will have no difficulty absorbing these systems into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor is currently unknown due to a pending open competition for selection. The purchaser typically requests offsets. Any offset agreement will be defined in negotiations between the purchaser and the contractor(s).

Implementation of this proposed sale will not require the permanent assignment of any additional U.S. Government or contractor representatives to the recipient. Contractor representative and U.S. Government support teams may be required to travel to the country on a temporary basis.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 20-87

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 Field Information Communications System (FICS) is made up of commercially available, non-program of record components. The FICS system (also referred to as "Syun Lien") is an area-switched communications system which is designed to provide mobile and secure communications in a wide range of battle situations. The FICS system provides mobile and secure voice and data communications on an automatic, discrete addressed, fixed-directory basis to the military Tactical Operations Center (TOC)-level command posts (CPs), and remote (mobile) users employing technological improvements in radio transmissions, data networking and packetized voice, while minimizing system footprint (power, size, personnel and logistics train). The system supports

both mobile and wire subscribers with a means to exchange command, control, communications, and intelligence information in a dynamic tactical environment.

2. The highest level of classification of defense articles, components, and services included in this potential sale is UNCLASSIFIED.

3. If a technologically advanced adversary were to obtain knowledge of the hardware and software elements, the information could be used to develop countermeasures or equivalent systems, which might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that the recipient 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 recipient.

[FR Doc. 2020-28201 Filed 12-21-20; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 20-83]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

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 20-83 with attached Policy Justification and Sensitivity of Technology.

Dated: December 17, 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

November 3, 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. 20-83 concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of Romania for defense articles and services estimated to cost \$175.4 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. 20-83

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 Romania

(ii) *Total Estimated Value:*

Major Defense Equipment * \$ 12.1 million

| | |
|-------------|------------------|
| Other | \$ 163.3 million |
| Total | \$175.4 million |

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* The Government of Romania has requested to buy upgrades to the avionics, software, communication equipment, navigational aids, and cockpit of its

Mid-Life Update (MLU) Block 15 F-16 aircraft fleet along with additional logistics support.

Major Defense Equipment (MDE):

Eight (8) LN-260 Global Positioning System (GPS)

Nineteen (19) Multifunctional Information Distribution System Joint Tactical Radio Systems (MIDS JTTRS)

Non-MDE: Also included is AN/APX-126 Advanced Identification Friend or

Foe (IFF); ARC-210 Radios; KIV-78 Cryptographic Appliques; other secure communications, navigation, and encryption devices; Joint Mission Planning System (JMPS) software; aircraft minor modification, integration and test support, support equipment, software and software support; personnel training; spare and repair parts; publications and technical documentation; U.S. Government and contractor engineering, technical and logistical support services; and other related elements of logistical and program support.

(iv) *Military Department*: Air Force (RO-D-QAN); Navy (RO-P-LBF)

(v) *Prior Related Cases, if any*: RO-D-QAH

(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*: November 3, 2020

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Romania—F-16 Modernization and Logistics Support

The Government of Romania has requested to buy upgrades to the avionics, software, communication equipment, navigational aids, and cockpit of its Mid-Life Update (MLU) Block 15 F-16 aircraft fleet along with additional logistics support. Included in the aircraft modernization are eight (8) LN-260 Global Positioning System (GPS) and nineteen (19) Multifunctional Information Distribution System Joint Tactical Radio Systems (MIDS JTRS). Also included is AN/APX-126 Advanced Identification Friend or Foe (IFF); ARC-210 Radios; KIV-78 Cryptographic Appliques; other secure communications, navigation, and encryption devices; Joint Mission Planning System (JMPS) software; aircraft minor modification, integration and test support, support equipment, software and software support; personnel training; spare and repair parts; publications and technical documentation; U.S. Government and contractor engineering, technical and logistical support services; and other related elements of logistical and program support. The estimated total cost is \$175.4 million.

This proposed sale will support the foreign policy goals and national security of the United States by helping to improve the security of a NATO ally in developing and maintaining a strong

and ready self-defense capability. This proposed sale will enhance U.S. national security objectives in the region.

The proposed sale will improve Romania's capability to meet current and future threats by upgrading its avionics to meet interoperability requirements for encrypted communications systems used by NATO forces. This increased secure communications capability will assist Romania in the defense of its homeland and U.S. personnel stationed there. Romania has demonstrated a significant financial commitment to modernizing its military, which will further enhance its interoperability with NATO. Romania will have no difficulty absorbing these capabilities into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Lockheed Martin Aeronautics Company of Fort Worth, TX. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of U.S. Government or contractor representatives in Romania.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 20-83

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 embedded GPS-INS (EGI) LN-260 is a sensor that combines GPS and inertial sensor inputs to provide accurate location information for navigating and targeting.

2. The Multifunctional Information Distribution System with Joint Tactical Radio System (MIDS JTRS) is an advanced Link-16 command, control, communications, and intelligence (C3I) system incorporating high-capacity, jam-resistant, digital communications links for exchange of near real-time tactical information, including both data and voice, among air, ground and sea elements.

3. The AN/APX-126 Advanced Identification Friend or Foe (IFF) Combined Interrogator Transponder (CIT) is a system capable of transmitting and interrogating Mode 5.

4. The ARC-210 UHF/VHF secure radio with HAVE QUICK II is a voice communications radio system that can

operate in either normal, secure, and/or jam-resistant modes.

5. The KIV-78 is a crypto applique for IFF. It can be loaded with Mode 5 classified elements.

6. The Joint Mission Planning System (JMPS) is a multi-platform PC based mission planning system.

7. The highest level of classification of information included in this potential sale is SECRET.

8. 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.

9. A determination has been made that Romania 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.

10. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Romania.

[FR Doc. 2020-28200 Filed 12-21-20; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF EDUCATION

[Docket No. ED-2020-SCC-0195]

Agency Information Collection Activities; Comment Request; National Blue Ribbon Schools Program

AGENCY: Office of Communications and Outreach (OCO), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension to a currently approved information collection.

DATES: Interested persons are invited to submit comments on or before February 22, 2021.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED-2020-SCC-0195. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the [regulations.gov](http://www.regulations.gov) site is not

available to the public for any reason, ED will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208B, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Aba Kumi, 202–401–1767.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: National Blue Ribbon Schools Program.

OMB Control Number: 1860–0506.

Type of Review: An extension to a currently approved information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 420.

Total Estimated Number of Annual Burden Hours: 16,695.

Abstract: Each year since 1982, the U.S. Department of Education's National Blue Ribbon Schools Program has sought out and celebrated great American schools; schools that are demonstrating that all students can achieve to high levels. The purpose of the Program is to honor public and private elementary, middle and high schools based on their overall academic excellence or their progress in closing achievement gaps among different groups of students. The Program is part of a larger U.S. Department of Education effort to identify and disseminate knowledge about best school leadership and teaching practices.

Dated: December 17, 2020.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–28251 Filed 12–21–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Educational Technology, Media, and Materials for Individuals With Disabilities Program—Stepping-Up Technology Implementation

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2021 for Educational Technology, Media, and Materials for Individuals with Disabilities—Stepping-up Technology Implementation, Assistance Listing Number 84.327S. This notice relates to the approved information collection under OMB control number 1820–0028.

DATES:

Applications Available: December 22, 2020.

Deadline for Transmittal of

Applications: February 22, 2021.

Deadline for Intergovernmental

Review: April 21, 2021.

Pre-Application Webinar Information:

No later than December 28, 2020, OSERS will post pre-recorded informational webinars designed to provide technical assistance to interested applicants. The webinars may be found at www2.ed.gov/fund/grant/apply/osep/new-osep-grants.html.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.

FOR FURTHER INFORMATION CONTACT:

Terry Jackson, U.S. Department of Education, 400 Maryland Avenue SW, room 5128, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–6039. Email: Terry.Jackson@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of the Educational Technology, Media, and Materials for Individuals with Disabilities Program are to improve results for children with disabilities by: (1) Promoting the development, demonstration, and use of technology; (2) supporting educational activities designed to be of educational value in the classroom; (3) providing support for captioning and video description that is appropriate for use in the classroom; and (4) providing accessible educational materials to children with disabilities in a timely manner.¹

Priority: This competition includes one absolute priority. In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in sections 674(c)(1)(D) and 681(d) of the Individuals with Disabilities Education Act (IDEA); 20 U.S.C. 1474(c)(1)(D) and 1481(d).

Absolute Priority: For FY 2021 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

¹ Applicants should note that other laws, including the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*; 28 CFR part 35) and section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794; 34 CFR part 104), may require that State educational agencies (SEAs) and local educational agencies (LEAs) provide captioning, video description, and other accessible educational materials to students with disabilities when these materials are necessary to provide equally integrated and equally effective access to the benefits of the educational program or activity, or as part of a “free appropriate public education” as defined in 34 CFR 104.33.

This priority is:
Providing Technology-Based Professional Development to Trainers of Special Education Teachers to Support Children with Disabilities.

Background

Technology has enhanced professional development learning opportunities for teachers by expanding access to information and resources that support their content expertise and pedagogy and promote their professional growth. As an alternative to face-to-face professional development that can be expensive or impracticable (e.g., during an emergency), professional development facilitated by technology has the potential to more efficiently shape and impact teaching practices. Some examples of the technologies that can be used to support teacher learning include, but are not limited to, virtual coaching, in which a coach interacts electronically with teachers to improve teaching skills; learning management systems (LMS) that allow sharing of documents and data in one central location; and gamification, which involves bringing elements associated with video games into the learning environment to increase engagement and making tasks challenging.

McAleavy et al. (2018) noted that using technology to support teachers' professional learning can promote collaboration through professional learning communities and communities of practice. In addition, technology that can be used to build the skills of teachers and related services personnel in rural or remote areas may be more cost-effective than face-to-face trainings and will offer flexibility that allows teachers to train at a time and place that suits them.

However, regardless of the delivery, effective professional development must go beyond learning new materials and skills; it must also support teachers and related services personnel in improving classroom instruction and student learning (Gess-Newsome et al., 2003). Darling-Hammond et al. (2017) indicated that effective professional development should have the following features: (1) Be content focused, (2) incorporate active learning utilizing adult learning principles, (3) support collaboration, (4) use models and modeling of effective practices, (5) provide coaching and expert support, (6) offer opportunities for feedback and reflection, and (7) be of sustained duration.

The Department therefore intends to fund three cooperative agreements to (a) identify strategies needed to implement and integrate an existing technology-based tool or approach, based on at least

promising evidence,² into the provision of teacher in-service training; and (b) provide ongoing technology-based professional development and coaching for in-service trainers in the use of technology to, and understanding of how the technology may support teachers to, improve classroom and remote learning environment instruction and learning outcomes for children with disabilities in pre-kindergarten through grade 12 (PK–12) settings.

Priority

To be considered for funding under this priority, applicants, at a minimum, must—

(a) Build partnerships with LEAs, at least one of which is in a rural site³ and that includes public and nonpublic schools, to support teacher in-service trainers in the understanding, use, and delivery of a technology-based tool or approach that will support teacher in-service training for instruction of children with disabilities in PK–12 instructional settings, including classrooms and remote learning environments;

(b) Increase the capacity of teacher in-service trainers to effectively use and deliver a technology-based tool or approach⁴ that supports teacher classroom and remote learning

² Promising evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome, based on a relevant finding from one of the following: (a) A practice guide prepared by the WWC reporting a "strong evidence base" or "moderate evidence base" for the corresponding practice recommendation; (b) an intervention report prepared by the WWC reporting a "positive effect" or "potentially positive effect" on a relevant outcome with no reporting of a "negative effect" or "potentially negative effect" on a relevant outcome; or (c) a single study assessed by the Department, as appropriate, that is an experimental study, a quasi-experimental design study, or a well-designed and well-implemented correlational study with statistical controls for selection bias (e.g., a study using regression methods to account for differences between a treatment group and a comparison group); and includes at least one statistically significant and positive (i.e., favorable) effect on a relevant outcome. See 34 CFR 77.1.

³ Rural site is based on the National Center for Education Statistics (NCES) revised definitions of school locale types that can be found at <https://nces.ed.gov/surveys/ruraled/definitions.asp>. Rural can be considered as "fringe, less than or equal to 5 miles from an urbanized area, as well as rural territory that is less than or equal to 2.5 miles from an urban cluster;" "distant, more than 5 miles but less than or equal to 25 miles from an urbanized area, as well as rural territory that is more than 2.5 miles but less than or equal to 10 miles from an urban cluster;" or "remote, more than 25 miles from an urbanized area and is also more than 10 miles from an urban cluster."

⁴ "Technology-based tool or approach" refers to the technology the applicant is proposing that has at least "promising evidence" with the population intended.

environment instruction and professional growth;

(c) Develop an implementation package of products and resources that will help teacher in-service trainers to use a technology-based tool or approach; and

(d) Evaluate whether the in-service training conducted using the technology-based tool or approach meets the project goals and target outcomes.

In addition to these programmatic requirements, to be considered for funding under this priority, applicants must meet the following application and administrative requirements in this priority:

(a) Demonstrate, in the narrative section of the application under "Significance," how the proposed project will—

(1) Address the need for a technology-based tool or approach and identify specific gaps and weaknesses, infrastructure, or opportunities to support teacher in-service training. To meet this requirement the applicant must—

(i) Identify a fully developed technology-based tool or approach that is based on at least promising evidence;

(ii) Identify how the technology-based tool or approach will improve teacher in-service training and the capacity of teachers to deliver instruction or services for PK–12 children with disabilities;

(iii) Present applicable national, State, regional, or local data demonstrating the need for the identified technology-based tool or approach in teacher in-service training to support children with disabilities;

(iv) Identify current policies, procedures, and practices used by teacher in-service trainers that incorporate technology-based tools or approaches to meet their training needs;

(v) Identify systemic barriers, gaps, or challenges, including challenges using the identified technology-based tools or approaches in providing teacher in-service training; and

(vi) Describe the potential impact of the identified technology-based tool or approach on teacher in-service trainers, teachers, families and children with disabilities.

(b) Demonstrate, in the narrative section of the application under "Quality of project services," how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this

requirement, the applicant must describe how it will—

(i) Identify the needs of the intended recipients for ongoing coaching and supports;

(ii) Identify potential strategies to provide recipients of the in-service training with the flexibility to personalize their own learning and coaching supports; and

(iii) Ensure that products and resources meet the needs of the intended recipients of the grant;

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model⁵ or conceptual framework by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a logic model or conceptual framework (and provide a copy in Appendix A) to develop project plans and activities describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

Note: The following websites provide more information on logic models and conceptual frameworks:
www.osepideastthatwork.org/logicModel
and www.osepideastthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.

(4) Be based on current research. To meet this requirement, the applicant must—

(i) Describe how the proposed project will align to current research, policies, and practices related to the benefits, services, or opportunities that are available using the technology-based tool or approach;

(ii) Describe how the proposed project will incorporate current research and practices to guide the development and delivery of its products and resources, including accessibility and usability; and

(iii) Document that the technology tool used by the project is fully developed, has been tested and shown

to have promising evidence, and addresses, at a minimum, the following principles of universal design for learning (UDL):

(A) Multiple means of presentation so that information can be delivered in more than one way (*e.g.*, specialized software and websites, screen readers that include features such as text-to-speech, changeable color contrast, alterable text size, or selection of different reading levels).

(B) Multiple means of expression that allow knowledge to be exhibited through options such as writing, online concept mapping, or speech-to-text programs, where appropriate.

(C) Multiple means of engagement to stimulate interest in and motivation for learning (*e.g.*, options among several different learning activities or content for a particular competency or skill and providing opportunities for increased collaboration consistent with UDL principles).

(5) Develop new products and resources that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must—

(i) Provide a plan for recruiting and selecting a wide range of settings where children with disabilities are served, which must include the following:

(A) Three development sites. Development sites are the sites in which iterative development of the products and resources intended to support the implementation of technology tools will occur. The project must start implementing the technology tool with one development site in year one of the project period and two additional development sites in year two.

(B) Four pilot sites. Pilot sites are the sites in which try-out, formative evaluation, and refinement of the products and resources will occur. The project must work with the four pilot sites during years three and four of the project period.

(C) Ten dissemination sites. Dissemination/scale-up sites will be selected if the project is extended for a fifth year. Dissemination/scale-up sites will be used to (1) refine the products for use by educators, and (2) evaluate the performance of the technology tool. Dissemination/scale-up sites will receive less technical assistance (TA) from the project than development and pilot sites. Also, dissemination/scale-up sites will extend the benefits of the technology tool to additional students. To be selected as a dissemination/scale-up site, eligible sites must commit to working with the project to implement the technology tool.

(D) A site may not serve in more than one category (*i.e.*, development, pilot, dissemination/scale-up).

(E) A minimum of three of the seven development and pilot sites must be in settings other than traditional public elementary and secondary schools and include at least one rural site. A minimum of four of the 10 dissemination/scale-up sites must be in settings other than traditional public elementary and secondary schools and include at least one rural site. These non-traditional and rural sites must otherwise meet the requirements of each category listed above.

(ii) Provide information on the development and pilot sites, including student demographics and other pertinent data (*e.g.*, whether the settings are schools identified for comprehensive or targeted support and improvement in accordance with section 1111(c)(4)(C)(iii), (c)(4)(D), or (d)(2)(C)–(D) of the ESEA);

(iii) Provide its plan for dissemination, which must address how the project will systematically distribute information, products, and services to varied intended audiences, using a variety of dissemination strategies, to promote awareness and use of the project's products and resources that goes beyond conference presentations and research articles;

(iv) Provide its plan for how the project will sustain project activities after funding ends; and

(v) Provide assurances that the final products disseminated to help sites effectively implement technology tools will be both open educational resources (OER) and licensed through an open access licensing authority.

(c) In the narrative section of the application under "Quality of the project evaluation," include an evaluation plan for the project as described in the following paragraphs. The evaluation plan must describe measures of progress in implementation, including the criteria for determining the extent to which the project's products and resources have met the goals for reaching the project's target population; measures of intended outcomes or results of the project's activities in order to evaluate those activities; and how well the goals or objectives of the proposed project, as described in its logic model, have been met. The applicant must provide an assurance that, in designing the evaluation plan, it will—

(1) Provide a logic model or conceptual framework that depicts, at a minimum, the goals, activities, project evaluation, methods, performance

⁵ Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.*, the active "ingredients" that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes. See 34 CFR 77.1.

measures, outputs, and outcomes of the proposed project;

(2) Provide a plan to implement the activities described in this priority;

(3) Provide a plan, linked to the proposed project's logic model or conceptual framework, for a formative evaluation of the proposed project's activities. The plan must describe how the formative evaluation will use clear performance objectives to ensure continuous improvement in the operation of the proposed project, including objective measures of progress in implementing the project and ensuring the quality of products and resources;

(4) Describe a plan or method for assessing—

(i) The development and pilot sites' current teacher in-service training uses and needs, any current in-service technology investments, and the knowledge and availability of dedicated on-site in-service training personnel;

(ii) The readiness of development and pilot sites to pilot or try-out the technology-based teacher in-service training, including at a minimum, their current infrastructure, available resources, and ability to build capacity;

(iii) Whether the technology-based tool or approach has achieved its intended outcomes for teacher in-service trainers and PK–12 teachers; and

(iv) Ongoing training needs of in-service trainers to implement with fidelity;

(5) Collect formative and summative data from the in-service training to refine and evaluate the products;

(6) If the project is extended to a fifth year—

(i) Provide the implementation package of products and resources developed for the technology-based tool or approach to no fewer than 10 additional school sites, one of which must be rural, in year five; and

(ii) Collect summative data about the success of the project's products and resources in supporting implementation of the technology-based tool or approach in teacher in-service training sites; and

(7) By the end of the project period, provide—

(i) Information on the products and resources, as supported by the project evaluation, including accessibility features, that will enable other sites to implement and sustain implementation of the technology-based tool or approach;

(ii) Information in the Technology Implementation Report, including data on how in-service trainers used the technology-based tool or approach, and how the technology-based tool or

approach was implemented with fidelity;

(iii) Data on how the technology-based tool or approach changed in-service trainers' practices; and

(iv) A plan for disseminating or scaling up the technology-based tool or approach and accompanying products beyond the sites directly involved in the project.

(d) Demonstrate, in the narrative section of the application under "Adequacy of resources and quality of project personnel," how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits.

(e) Demonstrate, in the narrative section of the application under "Quality of the management plan," how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and resources provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements. The applicant must include—

(1) In Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative; and

(2) In the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, or virtually after receipt of the award, and an annual planning meeting in Washington, DC, or virtually, with the Office of Special Education Programs (OSEP) project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative.

(ii) A two and one-half-day project directors' conference in Washington, DC, or a virtual conference during each year of the project period.

(iii) Two annual two-day trips to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP.

(iv) A one-day intensive OSEP review meeting during the last half of the second year of the project period.

Cohort Collaboration and Support

OSEP project officer(s) will provide coordination support among the projects. Each project funded under this priority must—

(a) Participate in monthly conference-call discussions to share and collaborate on implementation and project issues; and

(b) Provide information annually using a template that captures descriptive data on project site selection and the processes for installation and use of the technology-based tool or approach (*i.e.*, the implementation process).

Note: The following website provides more information about implementation research: <https://nirn.fpg.unc.edu/national-implementation-research-network>.

Fifth Year of Project

The Secretary may extend a project one year beyond the initial 48 months to work with dissemination/scale-up sites if the grantee is achieving the intended outcomes of the project (as demonstrated by data gathered as part of the project evaluation) and making a positive contribution to the implementation of a technology-based tool or approach based on at least promising evidence with fidelity in the development and pilot sites. Each applicant must include in its application a plan for the full 60-month period. In deciding whether to continue funding the project for the fifth year, the Secretary will consider the requirements of 34 CFR 75.253(a), and will consider—

(a) The recommendation of a review team consisting of the OSEP project officer and other experts selected by the Secretary. This review will be held during the last half of the second year of the project period;

(b) The success and timeliness with which the requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The degree to which the project's activities have changed practices and improved outcomes for PK–12 children with disabilities.

References

- Darling-Hammond, L., Hyster, M. E., & Gardner, M. (2017). *Effective Teacher Professional Development*. Learning Policy Institute. <https://learningpolicyinstitute.org/product/teacher-prof-dev>.
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Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1474 and 1481.

Note: Projects must be awarded and operated in a manner consistent with the nondiscrimination requirements contained in the U.S. Constitution and the Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Cooperative agreements.

Estimated Available Funds: The Administration has requested \$29,547,000 for the Educational Technology, Media, and Materials for Individuals with Disabilities program for FY 2021, of which we intend to use an estimated \$1,500,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2022 from the list of unfunded applications from this competition.

Estimated Range of Awards: \$450,000 to \$500,000 per year.

Estimated Average Size of Awards: \$475,000 per year.

Maximum Award: We will not make an award exceeding \$2,500,000 for the 60-month project period.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. **Eligible Applicants:** SEAs; LEAs, including public charter schools that operate as LEAs under State law; IHEs; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations.

Note: If you are a nonprofit organization, under 34 CFR 75.51, you may demonstrate your nonprofit status by providing: (1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code; (2) a statement from a State taxing body or the State attorney general certifying that the organization is a nonprofit organization operating within the State and that no part of its net earnings may lawfully benefit any private shareholder or individual; (3) a certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or (4) any item described above if that item applies to a State or national parent organization,

together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

2. a. **Cost Sharing or Matching:** This program does not require cost sharing or matching.

b. **Indirect Cost Rate Information:** This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see www2.ed.gov/about/offices/list/ocfo/intro.html.

c. **Administrative Cost Limitation:** This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. **Subgrantees:** A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application. Under 34 CFR 75.708(e), a grantee may contract for supplies, equipment, and other services in accordance with 2 CFR part 200.

4. **Other General Requirements:** (a) Recipients of funding under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Each applicant for, and recipient of, funding must, with respect to the aspects of their proposed project relating to the absolute priority, involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. **Application Submission Instructions:** Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf, which contain requirements and information on how to submit an application.

2. **Intergovernmental Review:** This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

3. *Funding Restrictions*: We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit*: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 50 pages and (2) use the following standards:

- A “page” is 8.5” x 11”, on one side only, with 1” margins at the top, bottom, and both sides.

- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.

- Use a font that is 12 point or larger.

- Use one of the following fonts:

Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the recommended page limit does apply to all of the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

V. Application Review Information

1. *Selection Criteria*: The selection criteria for this competition are from 34 CFR 75.210 and are as follows:

(a) *Significance (15 points)*.

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The significance of the problem or issue to be addressed by the proposed project;

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses;

(iii) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies; and

(iv) The potential replicability of the proposed project or strategies,

including, as appropriate, the potential for implementation in a variety of settings.

(b) *Quality of project services (30 points)*.

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice;

(ii) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services;

(iii) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services;

(iv) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services; and

(v) The likely impact of the services to be provided by the proposed project on the intended recipients of those services.

(c) *Quality of the project evaluation (20 points)*.

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project;

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible;

(iii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies;

(iv) The extent to which the methods of evaluation will provide performance

feedback and permit periodic assessment of progress toward achieving intended outcomes; and

(v) The extent to which the evaluation plan clearly articulates the key project components, mediators, and outcomes, as well as a measurable threshold for acceptable implementation.

(d) *Adequacy of resources and quality of project personnel (20 points)*.

(1) The Secretary considers the adequacy of resources for the proposed project and the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator;

(ii) The qualifications, including relevant training and experience, of key project personnel;

(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors;

(iv) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization;

(v) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project; and

(vi) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(e) *Quality of the management plan (15 points)*.

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks;

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project;

(iii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project;

(iv) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate; and

(v) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

2. Review and Selection Process: We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. Additional Review and Selection Process Factors: In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications.

4. Risk Assessment and Specific Conditions: Consistent with 2 CFR 200.205, before awarding grants under this competition, the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

5. Integrity and Performance System: If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently \$250,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds \$10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed \$10,000,000.

VI. Award Administration Information

1. Award Notices: If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. Administrative and National Policy Requirements: We identify administrative and national policy requirements in the application package and reference these and other

requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. Open Licensing Requirements: Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. Reporting: (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to www.ed.gov/fund/grant/apply/appforms/appforms.html.

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. Performance Measures: Under the Government Performance and Results Act of 1993 (GPRA), the Department has established a set of performance

measures, including long-term measures, that are designed to yield information on various aspects such as evaluating whether project goals and target outcomes are met and quality of the Educational Technology, Media, and Materials (ETechM2) for Individuals with Disabilities Program. These measures are:

- Program Performance Measure 1: The percentage of ETechM2 Program products and services judged to be of high quality by an independent review panel of experts qualified to review the substantial content of the products and services.
- Program Performance Measure 2: The percentage of ETechM2 Program products and services judged to be of high relevance to improving outcomes for infants, toddlers, children, and youth with disabilities.
- Program Performance Measure 3: The percentage of ETechM2 Program products and services judged to be useful in improving results for infants, toddlers, children, and youth with disabilities.
- Program Performance Measure 4.1: The Federal cost per unit of accessible educational materials funded by the ETechM2 Program.
- Program Performance Measure 4.2: The Federal cost per unit of accessible educational materials from the National Instructional Materials Accessibility Center funded by the ETechM2 Program.
- Program Performance Measure 4.3: The Federal cost per unit of video description funded by the ETechM2 Program.

These measures apply to projects funded under this competition, and grantees are required to submit data on these measures as directed by OSEP.

Grantees will be required to report information on their project's performance in annual performance reports and additional performance data to the Department (34 CFR 75.590 and 75.591).

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved

application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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.

Mark Schultz,

Commissioner, Rehabilitation Services Administration. Delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2020-28345 Filed 12-18-20; 4:15 pm]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No. ED-2020-SCC-0196]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; National Public Education Financial Survey (NPEFS) 2019-2021: Common Core of Data (CCD)

AGENCY: National Center for Education Statistics (NCES), Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is seeking public comment on proposed changes to a currently existing information collection.

DATES: Interested persons are invited to submit comments on or before January 21, 2021.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information request by selecting "Department of Education" under "Currently Under Review," then check "Only Show ICR for Public Comment" checkbox.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carrie Clarady, 202-245-6347.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) changes that are described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: National Public Education Financial Survey (NPEFS) 2019-2021: Common Core of Data (CCD).

OMB Control Number: 1850-0067.

Type of Review: A change to a currently existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 56.

Total Estimated Number of Annual Burden Hours: 6,738.

Abstract: The National Public Education Financial Survey (NPEFS) is the Nation's only source of annual statistical information about total revenues and expenditures for public elementary and secondary education at the state level. NCES collects data annually from SEAs under Section 153(a)(1)(I) of the Education Sciences Reform Act of 2002, 20 U.S.C.

9543(a)(1)(I), which authorizes NCES to gather data on the financing and management of education. NCES and the Economic Reimbursable Surveys Division of the U.S. Census Bureau collaborate to collect public education finance data. The U.S. Census Bureau (Census), Governments Division, administers the NPEFS data collection for NCES under interagency agreement.

NPEFS provides detailed finance data at the state level, including average daily attendance; school district revenues by source (local, state, and federal); and expenditures by function (instruction, support services, and non-instruction), sub function (e.g., school administration), and object (e.g., salaries). This survey also includes capital outlay and debt service expenditures. The NPEFS includes data on all public schools from the 50 states, the District of Columbia, American Samoa, the Northern Mariana Islands, Guam, Puerto Rico, and the Virgin Islands. NPEFS serves as both a statistical and an administrative collection used for a number of federal program funding allocations.

In 2019, NCES requested an extension of approval for the NPEFS data collection, OMB Control Number 1850-0067. NPEFS is an annual collection of state-level finance data that have been a component of NCES's Common Core of Data (CCD) since FY 1982 (covering school year 1981/82). On August 22, 2019, the Office of Management and Budget (OMB) approved the collection of state-level finance data for the data collections of FY 19–FY 21 data. The expiration date is August 31, 2022. The statistical uses of NPEFS were previously set forth in National Public Education Financial Survey (NPEFS) 2019–2021: Common Core of Data (CCD), Supporting Statement Part A, OMB# 1850-0067 v.17.

This submission for 30-day public review requests changes to the National Public Education Financial Survey (NPEFS) data collection. As a direct result of the COVID-19 circumstances,

the National Center for Education Statistics (NCES) is requesting to:

1. Amend the instructions for Average Daily Attendance (ADA) on NPEFS;

2. Obtain approval to send a letter to Chief State School Officers (CSSOs) and State Fiscal Coordinators pertaining to ADA;

3. Amend the data plan for NPEFS;

4. Add certain data items to NPEFS;

5. Make other small changes to FY 20 NPEFS, based on regular communication with state fiscal coordinators; and

6. Change the estimated respondent burden and the costs to the federal government incurred by the above changes.

Dated: December 17, 2020.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020-28257 Filed 12-21-20; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open virtual meeting.

SUMMARY: This notice announces an online virtual meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act requires that public notice of this conference call be announced in the **Federal Register**.

DATES: Wednesday, January 13, 2021; 1:00 p.m.–4:45 p.m.

ADDRESSES: This meeting will be held virtually via Webex. To attend, please contact Menice Santistevan by email, Menice.Santistevan@em.doe.gov, no later than 5:00 p.m. MST on Monday, January 11, 2021.

To Sign Up For Public Comment: Please contact Menice Santistevan by email, Menice.Santistevan@em.doe.gov, no later than 5:00 p.m. MST on Monday, January 11, 2021.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 94 Cities of Gold Road, Santa Fe, NM 87506. Phone (505) 995-0393 or Email: Menice.Santistevan@em.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE-EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Call to Order
- Welcome and Introductions
- Roll Call
- Overview and Approval of Agenda
- Approval of November 18, 2020 Minutes
- Old Business
- Report from NNMCAB Chair and Vice Chair
- Report from Committee Chairs
- Consideration and Action on Draft Recommendation 2020-03: Need for Native America, Hispanic, and Other Traditional Lifestyle Special Pathways Exposure Scenario for EM Los Alamos Field Office Campaigns [tabled during November 18, 2020 meeting]
- Other Items
- New Business
- Presentation on Legacy Transition Materials Project
- Update from EM Los Alamos Field Office
- Update from NNMCAB Deputy Designated Federal Officer
- Update from N3B
- Update from New Mexico Environment Department
- Presentation on N3B Labor Force Demographics
- Public Comment Period
- February 2021 Meeting Schedule and Presentation Requests
- Wrap-Up and Comments from NNMCAB Members
- Adjourn

Public Participation: The online virtual meeting is open to the public. Written statements may be filed with the Board either before or within five days after the meeting by sending them to Menice Santistevan at the aforementioned email address. The Deputy Designated Federal Officer is empowered to conduct the conference call in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or telephone number listed above. Minutes and other Board documents are on the internet at: <https://www.energy.gov/em/nnmcab/meeting-materials>.

Signed in Washington, DC, on December 17, 2020.
LaTanya Butler,
Deputy Committee Management Officer.
 [FR Doc. 2020-28203 Filed 12-21-20; 8:45 am]
BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1855-050]

Great River Hydro, LLC; Notice Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following amended hydroelectric application has been filed with the Commission and is available for public inspection.

- a. *Type of Application:* New Major License.
- b. *Project No.:* 1855-050.
- c. *Date Material Amendments Filed:* December 7, 2020.
- d. *Applicant:* Great River Hydro, LLC (Great River Hydro).
- e. *Name of Project:* Bellows Falls Hydroelectric Project.
- f. *Location:* The existing project is located on the Connecticut River in Windsor and Windham Counties, Vermont, and Sullivan and Cheshire Counties, New Hampshire. There are no federal lands within the project boundary.
- g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).
- h. *Applicant Contact:* John Ragonese, FERC License Manager, Great River Hydro, LLC, 40 Pleasant Street, Suite 202, Portsmouth, NH 03801; (603) 498-2851 or jragonese@greatriverhydro.com.
- i. *FERC Contact:* Steve Kartalia, (202) 502-6131 or stephen.kartalia@ferc.gov.
- j. This application is not ready for environmental analysis at this time.
- k. Great River Hydro filed an application for a new license for the Bellows Falls Hydroelectric Project No.

1855 on May 1, 2017. In the license application, Great River Hydro stated that it could not develop a complete licensing proposal for the project since many of the required environmental studies were not complete as of May 1, 2017. Great River Hydro indicated that it would amend the license application after completing additional field work, consultation, and analyses on the required studies. Great River Hydro filed material amendments to the final license application on December 7, 2020.

1. *Project Description:* The existing Bellows Falls Project consists of: (1) A 643-foot-long, 30-foot-high concrete dam that includes: (a) Two 18-foot-high, 115-foot-wide steel roller gates; (b) two 13-foot-high, 121-foot-wide stanchion flashboards; and (c) a 13-foot-high, 100-foot-wide stanchion flashboard; (2) a 26-mile-long, 2,804-acre impoundment with a useable storage volume of 7,467 acre-feet between elevations 288.63 and 291.63 feet National Geodetic Vertical Datum of 1929 (NGVD 29); (3) a 1,700-foot-long, 36- to 100-foot-wide, 29-foot-deep stone-lined power canal; (4) a 130.25-foot-wide concrete forebay that includes trashracks with 4-inch clear bar spacing; (5) a 186-foot-long, 106-foot-wide, 52-foot-high steel frame, brick powerhouse containing three 13.6-megawatt (MW) vertical Francis turbine-generator units, for a total project capacity of 40.8 MW; (6) three approximately 20-foot-high, 31-foot-wide concrete draft tubes; (7) a 900-foot-long tailrace; (8) a 12-foot-wide, 10-foot-high ice sluice; (9) three 80-foot-long, 6.6-kilovolt generator leads that connect the turbine-generator units to two step-up transformers; (10) a 920-foot-long, 8-foot-wide fishway; (11) a concrete fish barrier dam in the bypassed reach; and (12) appurtenant facilities.

Great River Hydro operates the project in coordination with its upstream Wilder Project No. 1892 and downstream Vernon Project No. 1904 and in a peaking mode. Average annual

generation is approximately 239,070 MW-hours. Great River Hydro is proposing changes to project operation that would reduce impoundment fluctuations and increase the stability of downstream flow releases relative to current project operation, including targeted water surface elevation levels and flow ramping rates. Great River Hydro proposes several protection, mitigation, and enhancement measures for aquatic, terrestrial, cultural, and recreation resources, and threatened and endangered species. The specific proposed changes are described in the amended application.

m. In addition to publishing the full text of this notice in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this notice, as well as other documents in the proceeding (e.g., license application) via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document (P-1855). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19) issued by the President on March 13, 2020. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (866) 208-3676 or (202) 502-8659 (TTY).

n. You may also register online at <https://ferconline.ferc.gov/FERCOnline.aspx> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. *Procedural Schedule:* The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

| Milestone | Target date |
|---|---------------|
| Commission issues letter identifying application deficiencies and requesting additional information | January 2021. |
| Notice of Acceptance/Notice of Ready for Environmental Analysis | May 2021. |
| Filing of recommendations, preliminary terms and conditions, and fishway prescriptions | July 2021. |
| Reply Comments due | August 2021. |

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: December 16, 2020.

Kimberly D. Bose,
Secretary.

[FR Doc. 2020–28237 Filed 12–21–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–654–000]

PGR Lessee O, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of PGR Lessee O, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is January 5, 2021.

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 TTY, (202) 502–8659.

Dated: December 16, 2020.

Kimberly D. Bose,
Secretary.

[FR Doc. 2020–28239 Filed 12–21–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–14–000]

Adelphia Gateway, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on December 7, 2020, Adelphia Gateway, LLC (Adelphia), 1415 Wyckoff Road, Wall, New Jersey, 07719, filed in the above referenced docket a prior notice pursuant to Section 157.210 and 157.216 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act, seeking authorization to install and operate one new electric motor-driven 3,000 hp reciprocating compressor unit at its Marcus Hook Compressor Station in Delaware County, Pennsylvania including related equipment such as one horizontal process gas cooler, two variable frequency drives, one motor control center assembly and instrumentation and communication equipment, all within the existing certificated foot print of the station. Installation of unit will increase the overall hp at the facility from 5,625 hp to 8,625 hp and increase the certificated capacity of its system by 16,500 Dth/d, from 250,000 to

266,500 Dth/d.¹ The Project is designed to increase the discharge pressure at the Marcus Hook Compressor Station to provide firm service to a new shipper that will transport gas on Adelphia's system to the interconnection with Columbia Gas. Adelphia proposes to install these facilities under authorities granted by its blanket certificate issued in Docket No. CP18–46–000, *et al.*² Adelphia estimates the cost of the project to be approximately \$4.6 million, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Any questions concerning this application should be directed to Ginger P. Richman, President, Adelphia Gateway, LLC, (732) 938–1268, GRichman@NJResources.com, 1415 Wyckoff Road, Wall, NJ 07719.

Public Participation

There are three ways to become involved in the Commission's review of this project: You can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on February 16, 2021. How to file protests, motions to intervene, and comments is explained below.

Protests

Pursuant to section 157.205 of the Commission's regulations under the

¹ *Adelphia Gateway, LLC*, errata letter, December 9, 2020.

² *Adelphia Gateway, LLC*, 169 FERC 61,220 (2019), *order denying reh'g* 171 FERC 61,049 (2020).

NGA,³ any person⁴ or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,⁵ and must be submitted by the protest deadline, which is February 16, 2021. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure⁶ and the regulations under the NGA⁷ by the intervention deadline for the project, which is February 16, 2021. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at <https://www.ferc.gov/resources/guides/how-to-intervene.asp>.

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for

being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before February 16, 2021. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP21-14-000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to Documents and Filings. New eFiling users must first create an account by clicking on eRegister. You will be asked to select the type of filing you are making; first select General and then select Protest, Intervention, or Comment on a Filing; or⁸

(2) You can file a paper copy of your submission by mailing it to the address below.⁹ Your submission must reference the Project docket number CP21-14-000. Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502-8258 or FercOnlineSupport@ferc.gov.

⁸ Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at www.ferc.gov under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

⁹ Hand-delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: GRichman@NJResources.com, 1415 Wyckoff Road, Wall, NJ 07719. Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC website at www.ferc.gov using the eLibrary link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to www.ferc.gov/docs-filing/esubscription.asp.

Dated: December 16, 2020.

Kimberly D. Bose,
Secretary.

[FR Doc. 2020-28245 Filed 12-21-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1889-085]

FirstLight MA Hydro LLC; Notice Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following amended hydroelectric application has been filed with the Commission and is available for public inspection.

- a. *Type of Application:* New Major License.
- b. *Project No.:* 1889-085.
- c. *Date Material Amendments Filed:* December 4, 2020.
- d. *Applicant:* FirstLight MA Hydro LLC (FirstLight).
- e. *Name of Project:* Turners Falls Hydroelectric Project (project).

³ 18 CFR 157.205.

⁴ Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

⁵ 18 CFR 157.205(e).

⁶ 18 CFR 385.214.

⁷ 18 CFR 157.10.

f. *Location:* The existing project is located on the Connecticut River in Windham County, Vermont, Cheshire County, New Hampshire, and Franklin County, Massachusetts. There are approximately 20 acres of federal lands within the current project boundary associated with the U.S. Geological Survey's Silvio Conte Anadromous Fish Laboratory.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Justin Trudell, Vice President, Operations, FirstLight MA Hydro LLC, 111 South Bedford Street, Suite 103, Burlington, MA 01803; (781) 653–4247 or justin.trudell@firstlightpower.com.

i. *FERC Contact:* Steve Kartalia, (202) 502–6131 or stephen.kartalia@ferc.gov.

j. This application is not ready for environmental analysis at this time.

k. FirstLight Hydro Generating Company filed an application for a new license for the Turners Falls Hydroelectric Project No. 1889 (project) on April 29, 2016. In the license application, FirstLight Hydro Generating Company stated that it could not develop a complete licensing proposal for the project since many of the required environmental studies were not complete as of April 29, 2016. FirstLight Hydro Generating Company indicated that it would amend the license application after completing additional field work, consultation, and analyses on the required studies. On July 11, 2019, Commission staff approved the transfer of the license for the project from FirstLight Hydro Generating Company to FirstLight MA Hydro LLC. FirstLight MA Hydro LLC filed material amendments to the final license application on December 4, 2020.

l. *Project Description:* The existing Turners Falls Project consists of: (1) A 630-foot-long, 35-foot-high dam (Montague dam) that includes: (i) Four 120-foot-wide, 13.25-foot-high bascule gates; and (ii) a 170-foot-long fixed section with a crest elevation of 185.5 feet National Geodetic Vertical Datum of 1929 (NGVD 29); (2) a 493-foot-long, 55-foot-high dam (Gill dam) that includes: (i) Three 40-foot-wide, 39-foot-high tainter gates; and (ii) 97.3- and 207.5-foot-long fixed sections with crest elevations of 185.5 feet NGVD 29; (3) a 2,110-acre impoundment with a useable storage volume of 16,150 acre-feet

between elevations 176.0 feet and 185.0 feet NGVD 29; (4) a 214-foot-long, 33-foot-high gatehouse that includes six 9-foot-wide, 10.66-foot-high gates and nine 9.5-foot-wide, 12.6-foot-high gates; (5) a 2.1-mile-long, 120- to 920-foot-wide, 17- to 30-foot-deep power canal; (6) a 700-foot-long, 100-foot-wide, 16- to 23-foot-deep branch canal; (7) the Station No.1 generating facility that includes: (i) Eight 15-foot-wide bays with trashracks with 2.625-inch clear-bar spacing; (ii) four 100-foot-long, 13.1- to 14-foot-diameter penstocks; (iii) a 134-foot-long, 64-foot-wide powerhouse that contains five turbine-generator units with a total installed capacity of 5.693 megawatts (MW); (iv) four 21-foot-long, 6.5-foot-diameter draft tubes; (v) five 40- to 70-foot-long, 2.4-kilovolt (kV) generator leads that connect the turbine-generator units to a generator bus; (vi) a 110-foot-long, 2.4-kV generator lead that connects the generator bus to a substation; and (vii) a 20-foot-long, 2.4-kV generator lead that connects the substation to three transformers; (8) the Cabot Station generating facility that includes: (i) An intake structure with 217-foot-wide, 31-foot-high trashracks with 0.94-inch and 3.56-inch clear-bar spacing; (ii) six 70-foot-long penstocks; (iii) a 235-foot-long, 79.5-foot-wide powerhouse that contains six turbine-generator units with a total installed capacity of 62.016 MW; (iv) six 41-foot-long, 12.5- to 14.5-foot-diameter draft tubes; (v) six 80- to 250-foot-long, 13.8-kV generator leads that connect the turbine-generator units to a generator bus; (vi) a 60-foot-long, 13.8-kV generator lead that connects the generator bus to the powerhouse roof; and (vii) a 200-foot-long, 13.8-kV generator lead that connects to a transformer; (9) eight 13.6-foot-wide, 16.7-foot-high power canal spillway gates that are adjacent to Cabot Station; (10) a 16.2-foot-wide, 13.1-foot-high log sluice gate in the Cabot Station forebay with an 8-foot-wide weir for downstream fish passage; (11) a 200-foot-long, 7-foot-diameter drainage tunnel (Keith Drainage Tunnel) and headgate; (12) a 955-foot-long, 5-foot-diameter lower drainage tunnel; (13) an 850-foot-long, 16-foot-wide, 10-foot-high fishway (Cabot fishway); (14) a 500-foot-long, 10-foot-wide, 10-foot-high fishway (Spillway fishway); (15) a 225-foot-long, 16-foot-wide, 17.5-foot-high fishway

(Gatehouse fishway); and (16) appurtenant facilities.

The Turners Falls Project operates in peaking and run-of-river modes, depending on inflows. Average annual generation from 2011–2019 was approximately 332,351 MW-hours.

FirstLight proposes three changes to the current project boundary: (1) Remove 0.2 acre of land associated with residential property; (2) add 0.8 acre of land for recreation purposes; and (3) remove 20.1 acres of land associated with the U.S. Geological Survey's Silvio Conte Anadromous Fish Laboratory.

FirstLight proposes to construct new fish passage facilities and recreational access trails. FirstLight also proposes changes to project operation that would generally reduce impoundment fluctuations and increase flow releases to the portion of the Connecticut River that is bypassed by the project. The specific proposed changes are described in the amended application.

m. In addition to publishing the full text of this notice in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this notice, as well as other documents in the proceeding (e.g., license application) via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document (P–1889). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19) issued by the President on March 13, 2020. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (866) 208–3676 or (202) 502–8659 (TTY).

n. You may also register online at <https://ferconline.ferc.gov/FERCOOnline.aspx> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. *Procedural Schedule:* The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

| Milestone | Target date |
|--|---------------|
| Commission issues letters identifying application deficiencies and requesting additional information | January 2021. |
| Notice of Acceptance/Notice of Ready for Environmental Analysis | May 2021. |
| Filing of recommendations, preliminary terms and conditions, and fishway prescriptions | July 2021. |
| Reply Comments due | August 2021. |

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: December 16, 2020.

Kimberly D. Bose,
Secretary.

[FR Doc. 2020-28235 Filed 12-21-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2485-071]

Northfield Mountain LLC; Notice Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

(December 16, 2020)

Take notice that the following amended hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2485-071.

c. *Date Material Amendments Filed:* December 4, 2020.

d. *Applicant:* Northfield Mountain LLC (Northfield).

e. *Name of Project:* Northfield Mountain Pumped Storage Project.

f. *Location:* The existing project is located on the Connecticut River in Windham County, Vermont, Cheshire County, New Hampshire, and Franklin County, Massachusetts. There are no federal lands within the project boundary.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Justin Trudell, Vice President, Operations, Northfield Mountain LLC, 111 South Bedford Street, Suite 103, Burlington, MA 01803; (781) 653-4247 or justin.trudell@firstlightpower.com.

i. *FERC Contact:* Steve Kartalia, (202) 502-6131 or stephen.kartalia@ferc.gov.

j. This application is not ready for environmental analysis at this time.

k. FirstLight Hydro Generating Company (FirstLight) filed an application for a new license for the Northfield Mountain Pumped Storage Project No. 2485 (project) on April 29, 2016. In the license application, FirstLight stated that it could not develop a complete licensing proposal for the project since many of the required environmental studies were not complete as of April 29, 2016. FirstLight indicated that it would

amend the license application after completing additional field work, consultation, and analyses on the required studies. On July 11, 2019, Commission staff approved the transfer of the license for the project from FirstLight to Northfield Mountain LLC. Northfield Mountain LLC filed material amendments to the final license application on December 4, 2020.

l. *Project Description:* The existing Northfield Mountain Pumped Storage Project consists of: (1) A 1-mile-long, 30-foot-wide, 30- to 140-foot-high main dam that includes: (i) An intake structure with two 7-foot-wide, 9-foot-high sluice gates and an 8-foot-diameter outlet pipe; and (ii) a 589-foot-long, 2-foot-diameter low-level outlet pipe; (2) a 425-foot-long, 25-foot-high dike (North dike); (3) a 2,800-foot-long, 45-foot-high dike (Northwest dike); (4) a 1,700-foot-long, 40-foot-long dike (West dike); (5) a 327-foot-long, 10- to 20-foot-high gravity dam; (6) an ungated 550-foot-long, 6-foot-high spillway structure with a 20-foot-long notch at an elevation of 1,005.0 feet National Geodetic Vertical Datum of 1929 (NGVD 29); (7) a 286-acre impoundment (upper reservoir) with a useable storage volume of 12,318 acre-feet between elevations 938.0 feet and 1,000.5 feet NGVD 29; (8) a 2,110-acre impoundment (lower reservoir or Turners Falls impoundment); (9) a 1,890-foot-long, 130-foot-wide intake channel with a 63-foot-long, 9-foot-high submerged check dam and two 6-foot-wide, 2.75-foot-high sluice gates and two 18-foot-wide stoplogs; (10) a 200-foot-long, 55-foot-wide, 80-foot-high pressure shaft; (11) an 853-foot-long, 31-foot-diameter penstock; (12) two 22-foot-diameter, 100- to 150-foot-long penstocks; (13) four 340-foot-long, 9.5- to 14-foot-diameter penstocks; (14) a 328-foot-long, 70-foot-wide powerhouse that contains four reversible pump turbine-generator units with a total installed capacity of 1,166.8 megawatts (MW); (15) four 25-foot-long, 11-foot-diameter draft tubes that transition to a 20-foot-long, 17-foot-diameter draft tube; (16) a 5,136-foot-long, 33-foot-wide, 31-foot-high horseshoe-shaped tailrace tunnel; (17) 35-foot-long, 40-foot-high trapezoid-shaped stoplogs with 74.3- to 99.5-foot-wide, 48-foot-high trashracks with 6-inch clear-bar spacing; (18) four 26-foot-long, 13.8-kilovolt (kV) generator leads that connect the turbine-generator units to four transformers; (19) two 3,000-foot-long, 345-kV transmission lines; and (20) (21) appurtenant facilities.

The existing Northfield Mountain Pumped Storage Project generally operates in pumping mode when electricity demand is low and

generating mode when electricity demand is high. In the summer and winter, the project generally operates in a peaking mode in the morning and late afternoon. In the spring and fall, the project may operate in a peaking mode one or two times a day depending on electricity demand. The existing license requires maintaining the upper reservoir between elevations 938.0 feet and 1,000.5 feet NGVD 29 (*i.e.*, a maximum reservoir drawdown of 62.5 feet). Average annual generation at the Northfield Mountain Project from 2011-2019 was 889,845 MW-hours, and average annual energy consumption for pumping from 2011 to 2019 was 1,189,640 MW-hours.

Northfield proposes three changes to the current project boundary: (1) Remove 0.2 acre of land associated with residential property; (2) remove 8.1 acre of land referred to as "Fuller Farm" that includes residential and agricultural structures; and (3) add 135.5 acres of land that includes recreation trails.

Northfield proposes to increase the maximum water surface elevation of the upper reservoir to 1,004.5 feet NGVD 29 and decrease the minimum water surface elevation of the upper reservoir to 920.0 feet NGVD 29 (*i.e.*, a maximum reservoir drawdown of 84.5 feet) year-round. Northfield proposes to install a barrier net in the lower impoundment to prevent fish entrainment. Northfield also proposes to periodically dredge the upper reservoir and to construct new recreation access trails. The specific proposed changes are described in the amended application.

m. In addition to publishing the full text of this notice in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this notice, as well as other documents in the proceeding (*e.g.*, license application) via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document (P-2485). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19) issued by the President on March 13, 2020. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (866) 208-3676 or (202) 502-8659 (TTY).

n. You may also register online at <https://ferconline.ferc.gov/FERCOnline.aspx> to be notified via email of new filings and issuances

related to this or other pending projects. For assistance, contact FERC Online Support.

o. *Procedural Schedule:* The application will be processed according to the following preliminary Hydro

Licensing Schedule. Revisions to the schedule may be made as appropriate.

| Milestone | Target date |
|--|---------------|
| Commission issues letters identifying application deficiencies and requesting additional information | January 2021. |
| Notice of Acceptance/Notice of Ready for Environmental Analysis | May 2021. |
| Filing of recommendations, preliminary terms and conditions, and fishway prescriptions | July 2021. |
| Reply Comments due | August 2021. |

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: December 16, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020-28247 Filed 12-21-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21-653-000]

Centerfield Cooper Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Centerfield Cooper Solar, LLC’s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant’s request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is January 5, 2021.

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 TTY, (202) 502-8659.

Dated: December 16, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020-28241 Filed 12-21-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:
Docket Number: CP21-16-000.

Applicants: Midcontinent Express Pipeline LLC.

Description: Joint Abbreviated Application of Midcontinent Express Pipeline LLC et al for Partial Lease Capacity Abandonment Authorization.
Filed Date: 12/10/20.
Accession Number: 202012105111.
Comments Due: 5 p.m. ET 1/4/21.
Docket Number: PR21-8-000.

Applicants: Interstate Power and Light Company.

Description: § 284.123 Rate Filing: 2020 Fuel Reimbursement Mechansim Report to be effective N/A.
Filed Date: 12/15/20.
Accession Number: 202012155048.
Comments Due: 5 p.m. ET 1/5/21.
Docket Number: PR21-9-000.

Applicants: Jefferson Island Storage & Hub, L.L.C.
Description: § 284.123 Rate Filing: 2020 Fuel Reimbursement Mechansim Report to be effective N/A.
Filed Date: 12/15/20.
Accession Number: 202012155063.
Comments Due: 5 p.m. ET 1/5/21.
Docket Number: PR21-10-000.

Applicants: Valley Crossing Pipeline, LLC.
Description: § 284.123 Rate Filing: 2020 Fuel Reimbursement Mechansim Report to be effective N/A.
Filed Date: 12/15/20.
Accession Number: 202012155075.
Comments Due: 5 p.m. ET 1/5/21.
Docket Numbers: RP21-232-001.
Applicants: Cheniere Corpus Christi Pipeline, LP.

Description: Compliance filing CCPL Stage 3 Supplemental Compliance Filing CP18-513 to be effective 2/1/2021.
Filed Date: 12/15/20.
Accession Number: 20201215-5078.
Comments Due: 5 p.m. ET 12/28/20.
Docket Numbers: RP21-309-000.
Applicants: Portland Natural Gas Transmission System.

Description: Compliance filing 2020 Fuel Reimbursement Mechansim Report to be effective N/A.
Filed Date: 12/15/20.
Accession Number: 20201215-5035.
Comments Due: 5 p.m. ET 12/28/20.

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: December 16, 2020.

Kimberly D. Bose,
Secretary.

[FR Doc. 2020-28236 Filed 12-21-20; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1904-078]

Great River Hydro, LLC; Notice Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following amended hydroelectric application has been filed with the Commission and is available for public inspection.

- a. *Type of Application:* New Major License.
- b. *Project No.:* 1904-078.
- c. *Date Material Amendments Filed:* December 7, 2020.
- d. *Applicant:* Great River Hydro, LLC (Great River Hydro).
- e. *Name of Project:* Vernon Hydroelectric Project.
- f. *Location:* The existing project is located on the Connecticut River in Windham County, Vermont, and Cheshire County, New Hampshire. There are no federal lands within the project boundary.
- g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).
- h. *Applicant Contact:* John Ragonese, FERC License Manager, Great River

Hydro, LLC, 40 Pleasant Street, Suite 202, Portsmouth, NH 03801; (603) 498-2851 or jragonese@greatriverhydro.com.

- i. *FERC Contact:* Steve Kartalia, (202) 502-6131 or stephen.kartalia@ferc.gov.
- j. This application is not ready for environmental analysis at this time.
- k. Great River Hydro filed an application for a new license for the Vernon Hydroelectric Project No. 1904 on May 1, 2017. In the license application, Great River Hydro stated that it could not develop a complete licensing proposal for the project since many of the required environmental studies were not complete as of May 1, 2017. Great River Hydro indicated that it would amend the license application after completing additional field work, consultation, and analyses on the required studies. Great River Hydro filed material amendments to the final license application on December 7, 2020.

l. *Project Description: The existing Vernon Project consists of:* (1) A 956-foot-long, 58-foot-high concrete dam that includes: (a) 356-foot-long section integral to the powerhouse; and (b) a 600-foot-long overflow spillway section that includes: (i) A 9-foot-high, 6-foot-wide downstream fishway sluice; (ii) a 13-foot-high, 13-foot-wide trash/ice sluice; (iii) two 20-foot-high, 50-foot-wide tainter gates; (iv) four 10-foot-high, 50-foot-wide tainter gates; (v) two 10-foot-high, 50-foot-wide hydraulic panel bays; (vi) two 10-foot-high, 50-foot-wide stanchion bays; (vii) a 10-foot-high, 42.5-foot-wide stanchion bay; and (viii) eight 7-foot-high, 9-foot-wide hydraulic flood gates; (2) a 26-mile-long, 2,550-acre impoundment with a useable storage volume of 18,300 acre-feet between elevations 212.13 and 220.13 feet National Geodetic Vertical Datum of 1929 (NGVD 29); (3) eight approximately 30-foot-high trashracks with 1.75-inch clear bar spacing and two approximately 30-foot-high trashracks with 3.625-inch clear bar spacing; (4) a 356-foot-long, 55-foot-wide, 45-foot-high reinforced concrete, steel, and brick powerhouse containing four 2-megawatt (MW) vertical Francis turbine-generator units, four 4-MW vertical Kaplan turbine-generator units, and two 4.2-MW vertical Francis turbine-generator units, for a total project capacity of 32.4 MW; (5) ten concrete draft tubes ranging from 16 to 27 feet in diameter; (6) a 500-foot-long, 13.8-kilovolt underground generator

lead that connects the turbine-generator units to two step-up transformers; (7) a 984-foot-long, 15-foot-wide upstream fishway; and (8) appurtenant facilities.

Great River Hydro operates the project in coordination with its upstream Wilder Project No. 1892 and Bellows Falls Project No. 1855 and in a peaking mode. Average annual generation is approximately 158,028 MW-hours. Great River Hydro is proposing changes to project operation that would reduce impoundment fluctuations and increase the stability of downstream flow releases relative to current project operation, including targeted water surface elevation levels and flow ramping rates. Great River Hydro proposes several protection, mitigation, and enhancement measures for aquatic, terrestrial, cultural, and recreation resources, and threatened and endangered species. The specific proposed changes are described in the amended application.

m. In addition to publishing the full text of this notice in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this notice, as well as other documents in the proceeding (e.g., license application) via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document (P-1904). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19) issued by the President on March 13, 2020. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (866) 208-3676 or (202) 502-8659 (TTY).

n. You may also register online at <https://ferconline.ferc.gov/FERCOnline.aspx> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. *Procedural Schedule:* The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

| Milestone | Target date |
|---|---------------|
| Commission issues letter identifying application deficiencies and requesting additional information | January 2021. |
| Notice of Acceptance/Notice of Ready for Environmental Analysis | May 2021. |
| Filing of recommendations, preliminary terms and conditions, and fishway prescriptions | July 2021. |

| Milestone | Target date |
|--------------------------|--------------|
| Reply Comments due | August 2021. |

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: December 16, 2020.

Kimberly D. Bose,
Secretary.

[FR Doc. 2020-28244 Filed 12-21-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG21-55-000.

Applicants: Dry Lake Solar Holdings LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Dry Lake Solar Holdings LLC.

Filed Date: 12/11/20.

Accession Number: 20201211-5214.

Comments Due: 5 p.m. ET 1/4/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20-1062-001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.19a(b): Refund Report _Garden Wind to be effective N/A under ER20-2062.

Filed Date: 12/16/20.

Accession Number: 20201216-5183.

Comments Due: 5 p.m. ET 1/6/21.

Docket Numbers: ER21-402-001.

Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2020-12-16_Shared Network Upgrades Amendment Filing to be effective 2/1/2021.

Filed Date: 12/16/20.

Accession Number: 20201216-5146.

Comments Due: 5 p.m. ET 1/6/21.

Docket Numbers: ER21-653-000.

Applicants: Centerfield Cooper Solar, LLC.

Description: Baseline eTariff Filing: Centerfield Cooper Solar, LLC MBR Tariff to be effective 12/16/2020.

Filed Date: 12/15/20.

Accession Number: 20201215-5158.

Comments Due: 5 p.m. ET 1/5/21.

Docket Numbers: ER21-654-000.

Applicants: PGR Lessee O, LLC.

Description: Baseline eTariff Filing: PGR Lessee O, LLC MBR Tariff to be effective 12/16/2020.

Filed Date: 12/15/20.

Accession Number: 20201215-5161.

Comments Due: 5 p.m. ET 1/5/21.

Docket Numbers: ER21-655-000.

Applicants: Arizona Public Service Company.

Description: Notice of cancellation of Rate Schedule No. 182 of Arizona Public Service Company.

Filed Date: 12/15/20.

Accession Number: 20201215-5176.

Comments Due: 5 p.m. ET 1/5/21.

Docket Numbers: ER21-656-000.

Applicants: Florida Power & Light Company.

Description: Baseline eTariff Filing: FPL's Seventh Amendment to LCEC Rate Schedule No. 317 to be effective 12/16/2020.

Filed Date: 12/15/20.

Accession Number: 20201215-5181.

Comments Due: 5 p.m. ET 1/5/21.

Docket Numbers: ER21-657-000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) Rate Filing: Transmission Access Charge Balancing Account Adjustment (2021 TACBAA) to be effective 3/1/2021.

Filed Date: 12/15/20.

Accession Number: 20201215-5185.

Comments Due: 5 p.m. ET 1/5/21.

Docket Numbers: ER21-658-000.

Applicants: Florida Power & Light Company.

Description: § 205(d) Rate Filing: FPL's Eighth Amendment to FKEC's Rate Schedule 322 to be effective 12/16/2020.

Filed Date: 12/15/20.

Accession Number: 20201215-5186.

Comments Due: 5 p.m. ET 1/5/21.

Docket Numbers: ER21-659-000.

Applicants: NSTAR Electric Company.

Description: Tariff Cancellation: Cancellation Transfer Agrmnt between NSTAR NEMC for transfer of CMEEC Use Rights to be effective 12/15/2020.

Filed Date: 12/15/20.

Accession Number: 20201215-5188.

Comments Due: 5 p.m. ET 1/5/21.

Docket Numbers: ER21-660-000.

Applicants: NSTAR Electric Company.

Description: Tariff Cancellation: Cancellation of NSTAR-HQUS Transfer Agreement (MMWEC Use Rights) to be effective 12/15/2020.

Filed Date: 12/15/20.

Accession Number: 20201215-5189.

Comments Due: 5 p.m. ET 1/5/21.

Docket Numbers: ER21-661-000.

Applicants: NSTAR Electric Company.

Description: Tariff Cancellation: Cancellation of NSTAR-HQUS Transfer Agreement (ENE Use Rights) to be effective 12/15/2020.

Filed Date: 12/15/20.

Accession Number: 20201215-5190.

Comments Due: 5 p.m. ET 1/5/21.

Docket Numbers: ER21-662-000.

Applicants: Mobile Energy, LLC.

Description: § 205(d) Rate Filing: Notice of Succession and Revisions to MBR Tariff, and Request for Waivers to be effective 12/17/2020.

Filed Date: 12/16/20.

Accession Number: 20201216-5038.

Comments Due: 5 p.m. ET 1/6/21.

Docket Numbers: ER21-663-000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Tariff Cancellation: Notice of Cancellation of Rate Schedule FERC No. 88 to be effective 12/17/2020.

Filed Date: 12/16/20.

Accession Number: 20201216-5049.

Comments Due: 5 p.m. ET 1/6/21.

Docket Numbers: ER21-664-000.

Applicants: Elmwood Park Power, LLC.

Description: Tariff Cancellation: Notice of Cancellation to be effective 3/12/2021.

Filed Date: 12/16/20.

Accession Number: 20201216-5073.

Comments Due: 5 p.m. ET 1/6/21.

Docket Numbers: ER21-665-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Correction to Original ISA, SA No. 5691; Queue No. AF1-194 (amend) to be effective 6/30/2020.

Filed Date: 12/16/20.

Accession Number: 20201216-5104.

Comments Due: 5 p.m. ET 1/6/21.

Docket Numbers: ER21-666-000.

Applicants: WPPI Energy.

Description: Baseline eTariff Filing: RPS Rate Schedule baseline to be effective 3/1/2021.

Filed Date: 12/16/20.

Accession Number: 20201216-5160.

Comments Due: 5 p.m. ET 1/6/21.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES21–17–000.

Applicants: Mid-Atlantic Interstate Transmission, LLC.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities for Mid-Atlantic Interstate Transmission, LLC.

Filed Date: 12/15/20.

Accession Number: 20201215–5178.

Comments Due: 5 p.m. ET 1/5/21.

Docket Numbers: ES21–18–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities for Midcontinent Independent System Operator, Inc.

Filed Date: 12/16/20.

Accession Number: 20201216–5153.

Comments Due: 5 p.m. ET 1/6/21.

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: December 16, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–28238 Filed 12–21–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–5922–003]

Lankford, Kelly; Notice of Filing

Take notice that on December 15, 2020, Kelly Lankford submitted for filing, application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act,

16 U.S.C. 825d (b) (2020) and Part 45 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR part 45.8 (2020).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://ferc.gov>) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on January 5, 2021.

Dated: December 16, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–28233 Filed 12–21–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP20–528–001; CP20–528–000]

Stingray Pipeline Company, L.L.C.; Notice of Amendment to Application

Take notice that on December 11, 2020, Stingray Pipeline Company, L.L.C. (Stingray), 1300 Main Street, Houston, Texas 77002, filed an application under section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations seeking authorization to amend its application in Docket No. CP20–528–000 to abandon certain facilities in the WC 509 System by removal or in place, rather than by sale to Triton Gathering LLC (Triton) that were damaged and/or destroyed by Hurricane Delta. Specifically, Stingray seeks authorization to: (1) Abandon in place approximately 14.98 miles of 24-inch-diameter pipeline and (2) abandon by removal its 50 percent ownership interest in the A330 Platform and related equipment, all located in federal waters, offshore Louisiana, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://ferc.gov>) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Any questions regarding the proposed project should be directed to Blair Lichtenwalter, Senior Director of Certificates, Stingray Pipeline Company, L.L.C., 1300 Main Street, Houston, Texas 77002; by phone at (713) 989–2605 or by email at blair.lichtenwalter@energytransfer.com.

Pursuant to Section 157.9 of the Commission's Rules of Practice and

Procedure,¹ within 90 days of this Notice the Commission staff will either: Complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are two ways to become involved in the Commission's review of this project: You can file comments on the project, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on January 6, 2021.

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please submit your comments on or before January 6, 2021.

There are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number CP20-528-001 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at www.ferc.gov under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to Documents and Filings. 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; first select "General" and then select "Comment on a Filing"; or

(3) You can file a paper copy of your comments by mailing them to the following address below.² Your written comments must reference the Project docket number (CP20-528-001). Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502-8258 or FercOnlineSupport@ferc.gov.

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,³ has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure⁴ and the regulations under the NGA⁵ by the intervention deadline for the project, which is January 6, 2021. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest

in the proceeding. [For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene.] For more information about motions to intervene, refer to the FERC website at <https://www.ferc.gov/resources/guides/how-to/intervene.asp>.

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP20-528-001 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to Documents and Filings. New eFiling users must first create an account by clicking on eRegister. You will be asked to select the type of filing you are making; first select General and then select Intervention. The eFiling feature includes a document-less intervention option; for more information, visit <https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf>; or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below.⁶ Your motion to intervene must reference the Project docket number CP20-528-001. Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502-8258 or FercOnlineSupport@ferc.gov.

Motions to intervene must be served on the applicant either by mail or email at: 1300 Main Street, Houston, Texas 77002 or at blair.lichtenwalter@energytransfer.com. Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed⁷ motions to intervene are automatically granted by operation of Rule 214(c)(1).⁸ Motions to

² Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

³ 18 CFR 385.102(d).

⁴ 18 CFR 385.214.

⁵ 18 CFR 157.10.

⁶ Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

⁷ The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

⁸ 18 CFR 385.214(c)(1).

¹ 18 CFR (Code of Federal Regulations) 157.9.

intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.⁹ A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC website at www.ferc.gov using the eLibrary link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to www.ferc.gov/docs-filing/esubscription.asp.

Intervention Deadline: 5:00 p.m. Eastern Time on January 6, 2021.

Dated: December 16, 2020.

Kimberly D. Bose,
Secretary.

[FR Doc. 2020-28250 Filed 12-21-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP21-144-000]

Eastern Gas Transmission & Storage, Inc.; Notice of Technical Conference

Take notice that a virtual technical conference will be held on January 28, 2021, at 10:00 a.m. (EST) to discuss comments and protests filed in the proceeding captioned above.

At the technical conference, the parties to the proceeding should be prepared to discuss all issues set for technical conference as established in

the November 30, 2020 Order (*Dominion Energy Transmission, Inc.*, 173 FERC 61,188 (2020)).

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please email accessibility@ferc.gov or call toll free 1-866-208-3372 (voice) or 202-502-8659 (TTY); or send a fax to 202-208-2106 with the required accommodations.

All interested parties are invited to participate remotely. Staff will use the WebEx platform to view and present supporting documents related to this docket. For more information, please contact Brandon Henke at brandon.henke@ferc.gov or call 202-502-8386 by January 21, 2021, to register and to receive specific instructions on how to participate in the technical conference.

Dated: December 16, 2020.

Kimberly D. Bose,
Secretary.

[FR Doc. 2020-28234 Filed 12-21-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1892-030]

Great River Hydro, LLC; Notice Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following amended hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 1892-030.

c. *Date Material Amendments Filed:* December 7, 2020.

d. *Applicant:* Great River Hydro, LLC (Great River Hydro).

e. *Name of Project:* Wilder Hydroelectric Project.

f. *Location:* The existing project is located on the Connecticut River in Orange and Windsor Counties, Vermont, and Grafton County, New Hampshire. There are no federal lands within the project boundary.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* John Ragonese, FERC License Manager, Great River Hydro, LLC, 40 Pleasant Street, Suite 202, Portsmouth, NH 03801; (603) 498-2851 or jragonese@greatriverhydro.com.

i. *FERC Contact:* Steve Kartalia, (202) 502-6131 or stephen.kartalia@ferc.gov.

j. This application is not ready for environmental analysis at this time.

k. Great River Hydro filed an application for a new license for the Wilder Hydroelectric Project No. 1892 on May 1, 2017. In the license application, Great River Hydro stated that it could not develop a complete licensing proposal for the project since many of the required environmental studies were not complete as of May 1, 2017. Great River Hydro indicated that it would amend the license application after completing additional field work, consultation, and analyses on the required studies. Great River Hydro filed material amendments to the final license application on December 7, 2020.

l. *Project Description:* The existing Wilder Project consists of: (1) A 1,546-foot-long, 59-foot-high, concrete dam that includes: (a) A 400-foot-long non-overflow, earthen embankment (north embankment); (b) a 232-foot-long non-overflow, concrete bulkhead; (c) a 208-foot-long concrete forebay; (d) a 526-foot-long concrete, gravity spillway that includes: (i) Six 30-foot-high, 36-foot-long tainter gates; (ii) four 17-foot-high, 50-foot-wide stanchion flashboards; (iii) a 15-foot-high, 20-foot-long skimmer gate (north gate); and (iv) a 10-foot-high, 10-foot-long skimmer gate (south gate); and (e) a 180-foot-long non-overflow, earthen embankment (south embankment); (2) a 45-mile-long, 3,100-acre impoundment with a useable storage volume of 13,350 acre-feet between elevations 380 and 385 feet National Geodetic Vertical Datum of 1929 (NGVD 29); (3) four approximately 25-foot-high, 20-foot-wide trashracks with 5-inch clear bar spacing and one approximately 28-foot-high, 20-foot-wide trashrack with 1.625-inch clear bar spacing; (4) a 181-foot-long, 50-foot-wide, 50-foot-high steel frame, brick powerhouse containing two 16.2-megawatt (MW) adjustable-blade Kaplan turbine-generator units and one 3.2-MW vertical Francis turbine-generator unit for a total project capacity of 35.6 MW; (5) three concrete draft tubes ranging from 9.5 to 20.5 feet in diameter; (6) 13.8-kilovolt generator leads that connect the turbine-generator units to two substation transformers; (7) an approximately 580-foot-long, 6-foot-wide fishway; and (8) appurtenant facilities.

Great River Hydro operates the project in coordination with its downstream Bellows Falls Project No. 1855 and Vernon Project No. 1904 and in a peaking mode. Average annual generation is approximately 156,303 MW-hours. Great River Hydro is proposing changes to project operation

⁹ 18 CFR 385.214(b)(3) and (d).

that would reduce impoundment fluctuations and increase the stability of downstream flow releases relative to current project operation, including targeted water surface elevation levels and flow ramping rates. Great River Hydro proposes several protection, mitigation, and enhancement measures for aquatic, terrestrial, cultural, and recreation resources, and threatened and endangered species. The specific proposed changes are described in the amended application.

m. In addition to publishing the full text of this notice in the **Federal Register**, the Commission provides all interested persons an opportunity to

view and/or print the contents of this notice, as well as other documents in the proceeding (e.g., license application) via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document (P-1892). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19) issued by the President on March 13, 2020. For

assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (866) 208-3676 or (202) 502-8659 (TTY).

n. You may also register online at <https://ferconline.ferc.gov/ferconline.aspx> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. *Procedural Schedule*: The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

| Milestone | Target date |
|---|---------------|
| Commission issues letter identifying application deficiencies and requesting additional information | January 2021. |
| Notice of Acceptance/Notice of Ready for Environmental Analysis | May 2021. |
| Filing of recommendations, preliminary terms and conditions, and fishway prescriptions | July 2021. |
| Reply Comments due | August 2021. |

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: December 16, 2020.

Kimberly D. Bose,
Secretary.

[FR Doc. 2020-28249 Filed 12-21-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 14803-001; 2082-063]

PacifiCorp and Klamath River Renewal Corporation; Notice of Application for Surrender of License, Soliciting Comments, Motions To Intervene, and Protests

December 16, 2020.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Surrender of Project License.

b. *Project No*: 14803-001 and 2082-063.

c. *Date Filed*: September 23, 2016, and supplemented June 29, 2018; July 29, 2019; February 28, 2020; and November 17, 2020.

d. *Applicant*: PacifiCorp and Klamath River Renewal Corporation.

e. *Name of Project*: Lower Klamath Hydroelectric Project.

f. *Location*: The project is located on the Klamath River in Klamath County,

Oregon and Siskiyou County, California. The project includes federal lands managed by the U.S. Bureau of Land Management.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791a-825r.

h. *Applicant Contact*: Mark Bransom, Chief Executive Officer, Klamath River Renewal Corporation, 2001 Addison Street, Suite 317, Berkeley, CA 94704, (415) 820-4441, info@klamathrenewal.org. Sarah Kamman, Vice President and General Counsel, PacifiCorp, 825 NE Multnomah Street, Suite 2000, Portland, OR 97232, (503) 813-5865, sarah.kamman@pacificorp.com.

i. *FERC Contact*: Diana Shannon, (202) 502-6136, diana.shannon@ferc.gov.

j. *Deadline for filing comments, motions to intervene, and protests*: February 15, 2021.

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 numbers P-14803-001 and P-2082-063. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request*: The Klamath River Renewal Corporation (Renewal Corporation) and PacifiCorp request to surrender the license for and decommission the Lower Klamath Project No. 14803 (project). Decommissioning activities would include the full removal of the J.C. Boyle, Copco No. 1, Copco No. 2 and Iron Gate dams, located on the mainstem Klamath River in Klamath County, Oregon and Siskiyou County, California.

On July 16, 2020, the Commission issued an order approving a partial transfer of the license for the project from PacifiCorp to PacifiCorp and the

Renewal Corporation as co-licensees. In the amended surrender application filed on November 17, 2020, PacifiCorp and the Renewal Corporation indicated that they will not be accepting co-licensee status. PacifiCorp and the Renewal Corporation state that they intend to file a new transfer application by January 16, 2021, requesting that the Lower Klamath Project be transferred from PacifiCorp to the Renewal Corporation and the states of California and Oregon, for the purposes of license surrender and decommissioning the four developments.

Also included in the November 17 filing was a Memorandum of Agreement entered into by PacifiCorp, the Renewal Corporation, the Karuk Tribe, the Yurok Tribe, and the states of California and Oregon indicating the parties' support for the new transfer proposal to be filed by January 16, 2021.

With PacifiCorp's consent and technical support, the Renewal Corporation will act as the proponent of the surrender application and is authorized to act as the Commission's non-federal representative in ongoing consultations.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at <http://www.ferc.gov> using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502-8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title COMMENTS, PROTEST, or MOTION TO INTERVENE as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: December 16, 2020.

Kimberly D. Bose,
Secretary.

[FR Doc. 2020-28240 Filed 12-21-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21-17-000]

Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization

Take notice that on December 11, 2020, Columbia Gas Transmission, LLC, 700 Louisiana Street, Houston, Texas 77002-2700, filed in Docket No. CP21-17-000 a prior notice request pursuant to section 157.205 and 157.216 of the Commission's regulations under the Natural Gas Act, for authorization to abandon 9 injection/withdrawal wells and associated pipelines and appurtenances, located in its Wellington Storage Field in Lorain and Medina Counties, Ohio (2021 Wellington Well Abandonments Project).

Specifically, Columbia proposes to plug and abandon wells 7779, 8907, 8908, 8909, 8968, 9060, 9031, 9121, and 9309, and their associated pipelines. Columbia asserts that plugging and abandoning these wells will reduce integrity risk in alignment with the PHMSA Storage Final Rule. Columbia states that there will be no change to the existing boundary, total inventory, reservoir pressure, reservoir and buffer boundaries, or the certificated capacity of the Wellington Storage Field as a result of these abandonments, therefore will have no impact on Columbia's existing customers or affect Columbia's

existing storage operations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The filing is available for review on the Commission's website web 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 at FERCOnlineSupport@ferc.gov or call toll-free, (866) 208-3676 or TTY, (202) 502-8659. 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.

Any questions concerning this application should be directed to Sorana Linder, Director, Modernization & Certificates, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 700, Houston, Texas 77002-2700, at (832) 320-5209 or sorana_linder@tcenergy.com.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and

the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commenters, will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFile link at <http://www.ferc.gov>. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: December 16, 2020.

Kimberly D. Bose,
Secretary.

[FR Doc. 2020-28248 Filed 12-21-20; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2018-0640; FRL-10018-92-Region 4]

EPA's Approval of Florida's Clean Water Act Section 404 Assumption Request

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: On August 20, 2020, the Environmental Protection Agency (EPA) received from the Governor of the State of Florida a complete program submission to assume regulating discharges of dredged or fill material into waters within the jurisdiction of the State in accordance with Clean Water Act (CWA) section 404(g-1). Receipt of the package initiated a 120-day statutory review period. After careful review of the package submitted, as well as

consideration of comments submitted on the package by the U.S. Fish and Wildlife Service (USFWS), the National Marine Fisheries Service (NMFS), and the U.S. Army Corps of Engineers (Corps), comments received during consultation with tribes, and over 3,000 comments received from the public, EPA has determined that the State of Florida has the necessary authority to operate a CWA Section 404 program in accordance with the requirements found in CWA section 404(g-1) and EPA's implementing regulations. Therefore, EPA has taken final action to approve Florida's assumption of the program.

DATES: Florida's program assumption will be applicable December 22, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Kelly Laycock, Oceans, Wetlands and Streams Protection Branch, USEPA Region 4, 61 Forsyth St. SW, Atlanta, GA 30303; telephone number: (404) 562-9262; email address: 404Assumption-FL@epa.gov.

SUPPLEMENTARY INFORMATION: The CWA established the Section 404 program, under which the Secretary of the Army, acting through the Chief of Engineers of the Corps, may issue permits for the discharge of dredged or fill material into waters of the United States as identified in the CWA. Section 404(g)(1) of the CWA provides states and tribes the option of submitting to EPA a request to assume administration of a CWA Section 404 program in certain waters within state or tribal jurisdiction.

The regulations establishing the requirements for the approval of state or tribal programs under section 404 of the CWA were published in the **Federal Register** at 53 FR 20764 (June 6, 1988) (40 CFR parts 232 and 233), and can be accessed at <https://www.epa.gov/cwa404g/statutory-and-regulatory-requirements-assumption-under-cwa-section-404>. "State regulated waters" are defined in 40 CFR 232.2.

The Corps generally retains CWA Section 404 permitting authority over waters of the United States within "Indian country" as that term is defined at 18 U.S.C. 1151, unless a tribe has assumed administration of a CWA Section 404 program within Indian country. See 40 CFR 233.1(b).

A state application to administer a Section 404 program must include the following: (a) A letter from the Governor of the state requesting program approval; (b) a complete program description as set forth in 40 CFR 233.11; (c) an Attorney General's statement or a statement from the attorney for those state or interstate agencies which have independent legal counsel, as set forth in 40 CFR 233.12;

(d) a Memorandum of Agreement with the EPA Regional Administrator, as set forth in 40 CFR 233.13; (e) a Memorandum of Agreement with the Secretary of the Army, as set forth in 40 CFR 233.14; and (f) copies of all applicable state statutes and regulations, including those governing applicable state administrative procedures. 40 CFR 233.10.

On September 16, 2020, EPA published a **Federal Register** notice of its receipt of a complete program assumption request package (85 FR 57853), opened a public comment period, and scheduled two virtual public hearings on the Section 404 program submitted by Florida. EPA held virtual public hearings on October 21, 2020, and October 27, 2020, and received comments submitted to Docket ID No. EPA-HQ-OW-2018-0640 during the public comment period which ended November 2, 2020. EPA received and reviewed over 3,000 comments submitted during the comment period and public hearings, comments provided during tribal consultation, as well as comments from USFWS, NMFS, and the Corps. EPA also consulted under section 7 of the Endangered Species Act with the USFWS, and under section 106 of the National Historic Preservation Act (NHPA) with the Advisory Council on Historic Preservation (ACHP), the Florida State Historic Preservation Officer (Florida SHPO), the Florida Department of Environmental Protection (FDEP), and Indian tribes with interests in the State of Florida on its decision whether to approve Florida's program request. On December 16, 2020, EPA entered into a programmatic agreement with the ACHP, the Florida SHPO, and FDEP which evidences EPA's compliance with section 106 of the NHPA and its implementing regulations. The programmatic agreement became effective on December 16, 2020. EPA has concluded that the State of Florida and FDEP have the necessary authority to operate a program in accordance with the requirements found in CWA section 404 and 40 CFR part 233. EPA has met its requirements under ESA section 7(a)(2) by completing ESA consultation and receiving a "no jeopardy" Biological Opinion from the USFWS on November 17, 2020. A summary of the comments received, EPA's responses to the comments, and a memorandum documenting the basis for EPA's decision ("State of Florida's Request to Assume a Clean Water Act Section 404 Program", December 17, 2020) can be found in the docket for this action

(Docket ID No. EPA–HQ–OW–2018–0640).

All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form at the EPA Docket Center and Reading Room. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are open by appointment only, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. For further information on the EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>. Publicly available docket materials are available electronically through <http://www.regulations.gov>.

Dated: December 17, 2020.

Mary Walker,

Regional Administrator, EPA Region 4.

[FR Doc. 2020–28232 Filed 12–18–20; 4:15 pm]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2020–0527; FRL–10017–07–OLEM]

RIN 2050–ZA18

Interim PFAS Destruction and Disposal Guidance; Notice of Availability for Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability for public comment.

SUMMARY: The National Defense Authorization Act for Fiscal Year 2020 (FY 2020 NDAA) was signed into law on

December 19, 2019. Section 7361 of the FY 2020 NDAA directs the U.S. Environmental Protection Agency (EPA) to publish interim guidance on the destruction and disposal of perfluoroalkyl and polyfluoroalkyl substances (PFAS) and materials containing PFAS. The EPA is releasing the interim guidance for public comment. The guidance provides information on technologies that may be feasible and appropriate for the destruction or disposal of PFAS and PFAS-containing materials. It also identifies needed and ongoing research and development activities related to destruction and disposal technologies, which may inform future guidance.

DATES: Comments must be received on or February 22, 2021.

ADDRESSES: You may send comments, identified by Docket ID No EPA–HQ–OLEM–2020–0527, by any of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.
- **Agency website:** www.epa.gov/pfas. Follow the online instructions for submitting comments.
- **Mail:** U.S. Environmental Protection Agency, EPA Docket Center, OLEM Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- **Hand Delivery/Courier:** EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center’s hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided.

Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of

transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov/>, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Carlos Pachon, TIFSD, OSRTI, OLEM, 5023P, Environmental Protection Agency, 1200 Pennsylvania Ave. NW; email address, pachon.carlos@epa.gov or visit www.epa.gov/pfas.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to Me?

This interim guidance provides a summary of EPA’s current knowledge of technologies for destruction or disposal of PFAS and PFAS-containing materials. This information may be useful to EPA staff, other federal agencies, states, tribes, and local governments, the public, including environmental and public interest groups, as well as commercial and industry groups.

Peter Wright,

Assistant Administrator, Office of Land and Emergency Management.

[FR Doc. 2020–28376 Filed 12–18–20; 4:15 pm]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of Intent To Terminate Receiverships

Notice is hereby given that the Federal Deposit Insurance Corporation (FDIC or Receiver), as Receiver for the institutions listed below, intends to terminate its receivership for said institutions.

NOTICE OF INTENT TO TERMINATE RECEIVERSHIPS

| Fund | Receivership name | City | State | Date of appointment of receiver |
|-------|----------------------------------|--------------|-------|---------------------------------|
| 10109 | Bradford Bank | Baltimore | MD | 08/28/2009 |
| 10110 | Affinity Bank | Ventura | CA | 08/28/2009 |
| 10156 | Greater Atlantic Bank | Reston | VA | 12/04/2009 |
| 10184 | George Washington Savings Bank | Orland Park | IL | 02/19/2010 |
| 10192 | Sun American Bank | Boca Raton | FL | 03/05/2010 |
| 10250 | Nevada Security Bank | Reno | NV | 06/18/2010 |
| 10254 | USA Bank | Port Chester | NY | 07/09/2010 |
| 10263 | First National Bank of the South | Spartanburg | SC | 07/16/2010 |
| 10419 | The First State Bank | Stockbridge | GA | 01/20/2012 |

NOTICE OF INTENT TO TERMINATE RECEIVERSHIPS—Continued

| Fund | Receivership name | City | State | Date of appointment of receiver |
|-------------|------------------------------------|-----------------------|-------|---------------------------------|
| 10195 | The Park Avenue Bank | New York | NY | 03/12/2010 |
| 10217 | Tamalpais Bank | San Rafael | CA | 04/16/2010 |
| 10312 | Darby Bank and Trust Company | Vidalia | GA | 11/12/2010 |
| 10525 | Proficio Bank | Cottonwood Heights .. | UT | 03/03/2017 |
| 10533 | Resolute Bank | Maumee | OH | 10/25/2019 |

The liquidation of the assets for each receivership has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receiverships will serve no useful purpose. Consequently, notice is given that the receiverships shall be terminated, to be effective no sooner than thirty days after the date of this notice. If any person wishes to comment concerning the termination of any of the receiverships, such comment must be made in writing, identify the receivership to which the comment pertains, and be sent within thirty days of the date of this notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of the above-mentioned receiverships will be considered which are not sent within this time frame.

Authority: 12 U.S.C. 1819.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on December 16, 2020.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2020–28134 Filed 12–21–20; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection

Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Reports of Deposits (FR 2900, FR 2915; OMB No. 7100–0087). The revisions to the weekly collection of the FR 2900 are effective for the report as-of-date April 12, 2021.

The revisions to the FR 2915 are applicable for the report as-of-date June 21, 2021. The quarterly collection of the FR 2900 and the FR 2910a are discontinued as of January 1, 2021. The final quarterly submission of the FR 2900 is for the as-of-date December 21, 2020, while the last FR 2910a was submitted on June 30, 2020. The FR 2930 is also being discontinued, effective January 31, 2021; the last filing of this report is for January 14, 2021.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghribi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at <https://www.reginfo.gov/public/do/PRAMain>. These documents are also available on the Federal Reserve Board's public website at <https://www.federalreserve.gov/apps/reportforms/review.aspx> or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collection

Report title: Reports of Deposits.

Agency form number: FR 2900 and FR 2915.

OMB control number: 7100–0087.

Effective dates: FR 2900 (weekly): April 12, 2021; FR 2900 (quarterly): January 1, 2021; FR 2910a: January 1, 2021; FR 2915: June 21, 2021; FR 2930: January 31, 2021.

Frequency: Quarterly and weekly.

Respondents: Depository institutions.

Estimated number of respondents: FR 2900: 1,000; FR 2915: 116.

Estimated average hours per response:

FR 2900: 1.0; FR 2915: 0.5.

Estimated annual burden hours: FR 2900: 52,000; FR 2915: 232.

General description of report: Data from these mandatory reports are used by the Board to support the calculation and analysis of the U.S. monetary aggregates and to meet the Board's obligations under Section 19(b) of the Federal Reserve Act to index key thresholds used in the calculation of reserve requirements. The FR 2900 is the primary source of data for the construction and analysis of the monetary aggregates and was used until recently for the calculation of reserve requirements. FR 2900 respondents that offer deposits denominated in foreign currencies at their U.S. offices file the FR 2915. Foreign currency deposits are not included in the monetary aggregates, and the FR 2915 data are used to net foreign currency-denominated deposits from the FR 2900 data to exclude them from measures of the monetary aggregates.

Legal authorization and confidentiality: The FR 2900 and FR 2915 reports are authorized to be collected from depository institutions (commercial banks, credit unions, and savings and loan associations) pursuant to section 11(a)(2) of the Federal Reserve Act (FRA); from agreement corporations pursuant to sections 25(5) and (7) and section 604a of the FRA; from banking Edge corporations pursuant to section 25A(17) of the FRA; and from branches and agencies of foreign banks pursuant to section 7 of the International Banking Act. The FR 2900 and FR 2915 reports are mandatory.

The data collected under the FR 2900 and FR 2915 reports are considered

confidential commercial and financial information, and respondents are assured that the data being collected will be treated as confidential by the Federal Reserve (except that aggregate data, which does not identify any individual institution, may be disclosed). Accordingly, the data collected on these reports is considered confidential pursuant to exemption 4 of the Freedom of Information Act, which protects confidential commercial or financial information from public disclosure.

Current actions: On September 2, 2020, the Board published a notice in the **Federal Register** (85 FR 54577) requesting public comment for 60 days on the extension, with revision, of the Report of Deposits. The notice proposed discontinuing the collection of the FR 2910a and FR 2930, ceasing the quarterly collection of the FR 2900, and refocusing items on the weekly collection of the FR 2900 and the quarterly collection of the FR 2915 to those that support the construction and analysis of the monetary aggregates. The comment period for this notice expired on November 2, 2020. The Board received five comments.

Detailed Discussion of Public Comments

Of the five comments, three were from depository institutions, one was from a trade association, and one was from a federal agency. The public comments sought clarification of the proposed changes, which the Board has addressed below and, in some cases, through amendments to the FR 2900 instructions described below.

One depository institution asked for more information on the reporting requirements for U.S. branches and agencies of foreign banks. As noted in the proposal, the Board plans to maintain its current practice of requiring banking Edge and agreement corporations and U.S. branches and agencies of foreign banks to report weekly on the FR 2900, regardless of size, because the deposit flows of these institutions are large enough and different enough from those of other depository institutions that weekly reporting of data is needed to support the construction of monetary aggregates.

Another depository institution requested clarification on the proposal's treatment of the reporting of demand deposit items: A.1.a, demand deposits due to depository institutions; A.1.b, demand deposits due to the U.S. government; and A.1.c, demand deposits due to other. The Board will discontinue collecting items A.1.a and A.1.b, and will renumber and rename

A.1.c to "A.1, Demand deposits due to the public (excluding demand deposits due to depository institutions and demand deposits due to the U.S. government)."

The third depository institution requested clarification of the effective date of the proposed changes. The effective dates of the proposed changes vary by report form and are detailed above and in the Proposed Revisions section of the Supporting Statement for the Reports of Deposits that accompanied the Board's request for public comment.

The fourth comment letter was from a trade association. The commenter provided one suggestion and made four requests for clarification on the proposal. The commenter suggested the Board do more to align items reported on the FR 2900, FR Y-9C, and FR 2886b reports, as well as on the Call Reports, to reduce burden on reporters. In the development of the proposal, the Board evaluated the interaction of the proposed changes to the FR 2900 with other report forms. The Board did not find it appropriate, however, to continue to collect items on the FR 2900 that are no longer needed for the Board's purposes, even if discontinuing those items led to some lack of alignment with other report forms, such as the Call Report. The same commenter also asked the Board to amend the FR 2900 instructions to include guidance on how to report retail sweep arrangements. The final version of the FR 2900 instructions includes such guidance. The commenter also requested that the Board specify whether personal or nonpersonal ineligible acceptances and obligations issued by affiliates and maturing in more than seven days should be included on the proposed annual item E.1 Reservable Liabilities. The instructions have been amended to specify that only the nonpersonal portion of ineligible acceptances and obligations issued by affiliates and maturing in more than seven days should be included. The commenter also sought confirmation on the treatment of savings deposits in Regulation CC (Availability of Funds and Collection of Checks, 12 CFR part 229) as a result of the recent amendments to Regulation D. Because Regulation CC continues to exclude accounts described in 12 CFR 204.2(d)(2) from the Regulation CC "account" definition, the recent amendments to Regulation D did not result in savings deposits (accounts described in 12 CFR 204.2(d)(2)) being covered by Regulation CC. Lastly, the commenter requested that the Board clarify its expectations of reporters for

explaining movements in data, which the commenter noted can be very burdensome. The Board continues to expect Federal Reserve System staff to work with reporters to explain movements in data and submit revisions if necessary to ensure data quality while remaining sensitive to minimizing such requests where feasible.

The fifth and final comment was from a U.S. government agency. The agency raised concerns that the elimination of total transaction accounts, deductions from transaction accounts, and ineligible acceptances and obligations issued by affiliates and maturing in seven days from the FR 2900 would affect their data production. These concerns have been addressed.

The Board has also considered the continued collection of FR 2900 reports from bankers' banks and corporate credit unions (CCUs).¹ Data reported on the FR 2900 by bankers' banks and CCUs have historically been used to administer reserve requirements, but not for the construction of the monetary aggregates. The monetary aggregates measure money in the hands of the nonbank public in the United States. Deposits at bankers' banks and CCUs represent funds of depository institutions and not nonbank depositors, and therefore data regarding these deposits have historically been excluded from construction of the monetary aggregates. As noted above, all reserve requirement ratios have been set to zero percent since March 2020. Because FR 2900 report data from bankers' banks and CCUs will not be used for either administration of reserve requirements or construction of the monetary aggregates, the Board has determined to discontinue collecting FR 2900 reports from these institutions.²

Board of Governors of the Federal Reserve System, December 17, 2020.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2020-28218 Filed 12-21-20; 8:45 am]

BILLING CODE 6210-01-P

¹ Currently, nine bankers' banks and eleven corporate credit unions submit FR 2900 reports weekly, and three bankers' banks submit the FR 2900 quarterly. The revisions to this information collection, as originally proposed, would likely affect four of these institutions and these institutions would be required to submit FR 2900 reports weekly.

² The last report as-of-date for bankers' banks and CCUs that file the FR 2900 weekly is April 5, 2021; for FR 2900 quarterly filers, the last report as-of-date is December 21, 2020.

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 January 6, 2021.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166-2034. Comments can also be sent electronically to Comments.applications@stls.frb.org:

1. *Charles Taff Cross and John Fuller Cross, Jr., both of Eureka Springs, Arkansas*; to acquire additional voting shares of Eureka Bancshares, Inc., and thereby indirectly acquire voting shares of CS Bank (fka Cornerstone Bank), all of Eureka Springs, Arkansas.

Board of Governors of the Federal Reserve System, December 17, 2020.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.
[FR Doc. 2020-28186 Filed 12-21-20; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

[Docket No. OP-1699]

**FEDERAL DEPOSIT INSURANCE
CORPORATION**

RIN 3064-ZA15

**Guidance for Resolution Plan
Submissions of Certain Foreign-Based
Covered Companies**

AGENCY: Board of Governors of the Federal Reserve System (Board) and Federal Deposit Insurance Corporation (FDIC).

ACTION: Final guidance.

SUMMARY: The Board and the FDIC (together, the agencies) are adopting this final guidance for the 2021 and subsequent resolution plan submissions by certain foreign banking organizations (FBOs). The final guidance is meant to assist these firms in developing their resolution plans, which are required to be submitted pursuant to Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The final guidance reflects a number of changes to the proposal in response to comments received by the agencies and further analysis by the agencies. The scope of application of the final guidance is FBOs that are Category II firms according to their combined U.S. operations under the Board's tailoring rule and are required to have a U.S. intermediate holding company (IHC) under the Board's Regulation YY (the Specified FBOs) as published in 84 FR 59032 (November 1, 2019). In addition to the three firms (Barclays PLC, Credit Suisse Group AG, and Deutsche Bank AG (the Proposed FBOs) that would have been within the scope of application under the methodology utilized in the proposal, one additional firm, Mitsubishi UFJ Financial Group, Inc. (MUFG), is within the scope for application of the final guidance at the time of its issuance. Consequently, MUFG will have a transition period to consider the application of the final guidance to its resolution plan submission, as further described below. The final guidance describes the agencies' expectations regarding a number of key vulnerabilities in plans for an orderly resolution under the U.S. Bankruptcy Code (*i.e.*, capital, liquidity, governance mechanisms, operational, branches, legal entity rationalization, and derivatives and trading activities). The final guidance modifies and clarifies certain aspects of the proposed guidance based on the agencies' consideration of comments to the proposal, additional analysis, and

further assessment of the business and risk profiles of the U.S. operations of large and complex FBOs.

DATES: The final guidance is available on December 22, 2020.

FOR FURTHER INFORMATION CONTACT:

Board: Mona Elliot, Deputy Associate Director, (202) 452-4688, Catherine Tilford, Deputy Associate Director, (202) 452-5240, Division of Supervision and Regulation, Laurie Schaffer, Deputy General Counsel, (202) 452-2272, Jay Schwarz, Special Counsel, (202) 452-2970, Steve Bowne, Senior Counsel, (202) 452-3900, or Sarah Podrygula, Attorney, (202) 912-4658, Legal Division; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

FDIC: Alexandra Steinberg Barrage, Associate Director, Policy and Data Analytics, abarrage@fdic.gov; Yan Zhou, Acting Associate Director, Data Analytics, yazhou@fdic.gov; Catherine Needham, Advisor, cneedham@fdic.gov; Ronald W. Crawley, Jr., Senior Resolution Policy Specialist, rcrawley@fdic.gov, Division of Complex Institution Supervision and Resolution; David N. Wall, Assistant General Counsel, dwall@fdic.gov; Celia Van Gorder, Senior Counsel, 202-898-6749, cvangorder@fdic.gov; or Esther Rabin, Counsel, erabin@fdic.gov, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:**Table of Contents**

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I. Introduction*a. Background*

Section 165(d) of the Dodd-Frank Act¹ and the jointly issued implementing regulation (the Rule)²

¹ 12 U.S.C. 5365(d).

² 12 CFR part 243 and 12 CFR part 381, as amended.

require certain financial companies, including certain foreign-based firms, to report periodically to the agencies their plans for rapid and orderly resolution under the U.S. Bankruptcy Code (the Bankruptcy Code) in the event of material financial distress or failure. With respect to a covered company³ that is organized or incorporated in a jurisdiction other than the United States (other than a bank holding company) or that is an FBO, the Rule requires that the firm's U.S. resolution plan include specified information with respect to the subsidiaries, branches, and agencies, and identified critical operations and core business lines, as applicable, that are domiciled in the United States or conducted in whole or material part in the United States.⁴ The Rule also requires, among other things, each covered company's full resolution plan to include a strategic analysis of the plan's components, a description of the range of specific actions the covered company proposes to take in resolution, and a description of the covered company's organizational structure, material entities, and interconnections and interdependencies.⁵ In addition, the Rule requires that all resolution plans include a confidential section that contains any confidential supervisory and proprietary information submitted to the agencies as part of the resolution plan and a separate section that the agencies make available to the public. Public sections of resolution plans can be found on the agencies' websites.⁶

Objectives of the Resolution Planning Process

The goal of the Dodd-Frank Act resolution planning process is to help ensure that a covered company's failure would not have serious adverse effects on financial stability in the United States. Specifically, the resolution planning process requires covered companies to demonstrate that they have adequately assessed the challenges that their structures and business activities pose to an orderly resolution and that they have taken action to

address those issues. For FBOs, the resolution planning process focuses on their U.S. subsidiaries and operations.

The agencies recognize that the preferred resolution outcome for many FBOs is a successful home country resolution using a single point of entry (SPOE) resolution strategy where U.S. material entities are provided with sufficient capital and liquidity resources to allow them to stay out of resolution proceedings and maintain continuity of operations throughout the parent's resolution. However, because support from the foreign parent in stress cannot be ensured, the Rule provides that the U.S. resolution plan for foreign-based covered companies should specifically address a scenario where the U.S. operations experience material financial distress, and the plan should not assume that the covered company takes resolution actions outside the United States that would eliminate the need for any U.S. subsidiaries to enter resolution proceedings.⁷ Nonetheless, the Rule also provides firms with appropriate flexibility to construct a U.S. resolution strategy in a way that is not inconsistent with a firm's global resolution strategy, as long as assumptions consistent with the firm's global strategy support the firm's U.S. resolution strategy and adhere to the required and prohibited assumptions articulated in the Rule.

Recent Developments

Implementation of the Rule has been an iterative process aimed at strengthening the resolution planning capabilities of financial institutions subject to the Rule. The final guidance is based on the *Guidance for 2018 § 165(d) Annual Resolution Plan Submissions By Foreign-based Covered Companies that Submitted Resolution Plans in July 2015* (2018 FBO guidance).⁸ The 2018 FBO guidance was provided to four FBOs.⁹ The agencies also have previously provided feedback on several occasions to the four FBOs that at present are in scope for the final guidance.¹⁰ In general, the guidance and feedback were intended to assist the recipients in their development of future resolution plan submissions and to provide additional clarity with respect to the agencies' expectations for the filers' future progress. The 2018 FBO

guidance and the feedback letters were made available to the public.

Several developments inform the final guidance:

- The agencies' consideration of comments to the proposed guidance (as defined below);
- The agencies' review of certain FBOs' 2018 resolution plans and the issuance of individual letters communicating the agencies' views on and shortcomings contained in the 2018 resolution plans filed by the firms subject to the 2018 FBO guidance (2018 feedback letters);¹¹
- Revisions to the content related to payment, clearing, and settlement (PCS) activities and derivatives and trading activities in the updated guidance for the resolution plan submissions by the eight largest, most complex U.S. banking organizations in February 2019 (2019 domestic guidance);¹²
- The 2019 amendments to the Rule (2019 Rule revisions), which included the clarification that FBOs should not assume that its foreign parent company takes resolution actions outside of the United States that would eliminate the need for any U.S. subsidiaries to enter into resolution proceedings;¹³ and
- An analysis of the current risk profiles of the large, complex FBOs subject to resolution planning requirements.

The preamble to the 2019 Rule revisions indicated that the agencies would make any future resolution guidance available for comment,¹⁴ and in March 2020 the agencies invited comments on proposed guidance for the 2021 and subsequent resolution plan submissions by certain FBOs (proposed guidance).¹⁵

Under the 2019 Rule revisions, each Specified FBO will be a triennial full filer and will be required to submit a resolution plan every three years, alternating between a full resolution plan and a targeted resolution plan. The 2019 Rule revisions require all triennial full filers to submit a targeted resolution plan on or before July 1, 2021, followed by a full resolution plan in 2024. In addition, the agencies indicated in the 2019 Rule revisions that they would strive to provide final general guidance at least a year before the next resolution

³ The terms "covered company," "material entities," "identified critical operations," "core business lines," and similar terms used throughout this guidance all have the same meaning as in the Rule. See generally 12 CFR 243.2; 12 CFR 381.2.

⁴ 12 CFR 243.5(a)(2)(i); 12 CFR 381.5(a)(2)(i).

⁵ Under the Rule, all filers must submit a full resolution plan, either every other time a resolution plan submission is required or as a firm's initial resolution plan submission. See 12 CFR 243.4(a)(5)–(6), (b)(4)–(5), and (c)(4)–(5); 12 CFR 381.4(a)(5)–(6), (b)(4)–(5), and (c)(4)–(5).

⁶ The public sections of resolution plans submitted to the agencies are available at <https://www.federalreserve.gov/supervisionreg/resolution-plans.htm> and www.fdic.gov/regulations/reform/resplans/.

⁷ 12 CFR 243.4(h)(3); 12 CFR 381.4(h)(3).

⁸ Available at www.federalreserve.gov/newsevents/pressreleases/files/bcreg20170324a21.pdf and www.fdic.gov/resauthority/2018subguidance.pdf.

⁹ Barclays PLC, Credit Suisse Group AG, Deutsche Bank AG, and UBS AG.

¹⁰ See *infra* Section III.C (Consolidation of Prior Guidance).

¹¹ Available at www.federalreserve.gov/newsevents/pressreleases/bcreg20181220c.htm.

¹² Final Guidance for the 2019, 84 FR 1438 (February 4, 2019).

¹³ Resolution Plans Required, 84 FR 59194 (November 1, 2019). The amendments became effective on December 31, 2019.

¹⁴ 84 FR 59204.

¹⁵ Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies, 85 FR 15449 (March 18, 2020).

plan submission date of firms to which the general guidance is directed.

On May 6, 2020, the agencies extended the 2021 resolution plan submission date for Category II and III firms, including those firms who are currently Specified FBOs, from July 1 to September 29.¹⁶ In accordance with the expectation set out in the preamble to the 2019 Rule revisions, the agencies are further extending the 2021 resolution plan submission deadline for the firms that are currently Specified FBOs and were previously subject to the 2018 FBO guidance to December 17, 2021, to provide the firms with sufficient time to develop their targeted resolution plans in light of the final guidance. In addition, as discussed in more detail below, a Specified FBO that was not subject to the 2018 FBO guidance for its most recent resolution plan submission will not be expected to have taken the final guidance into consideration in developing its targeted plan submission due in 2021. Instead, such a firm should consider the final guidance in connection with developing its next full resolution plan submission due in 2024.

International Cooperation on Resolution Planning

The 2018 feedback letters also noted the importance of the agencies' engagement with non-U.S. regulators. The Specified FBOs are subject to their home country resolvability frameworks, in addition to section 165(d) of the Dodd-Frank Act and the Rule. Resolution of the U.S. operations of a firm domiciled outside the United States with significant global activities (e.g., the Specified FBOs) will require substantial coordination between home and host country authorities, just as resolution of the foreign operations of a U.S. G-SIB would. The agencies identified three areas in the 2018 feedback letters (legal entity rationalization, PCS, and derivatives booking practices) where enhanced cooperation between the agencies and each firm's home country regulatory authorities would maximize resolvability under both the U.S. and home country resolution strategies.¹⁷ The agencies will continue to coordinate with non-U.S. authorities regarding these and other resolution matters (e.g., resources in resolution, communications), including developments in the U.S. and home

country resolution capabilities of the Specified FBOs.

b. Proposed Guidance

In March 2020, the agencies invited public comment on the proposed guidance, which was proposed to apply beginning with the subject firms' 2021 resolution plan submissions. The proposed guidance began with a description of the proposed scoping methodology and was then organized into eight substantive areas, consistent with the 2018 FBO guidance. These areas were: Capital, liquidity, governance mechanisms, operational, branches, group resolution plan, legal entity rationalization and separability, and derivatives and trading activities. The proposed guidance described the agencies' proposed expectations for each of these areas.

The proposal was largely consistent with the 2018 FBO guidance and the 2019 domestic guidance. Accordingly, the agencies expected that the Proposed FBOs had already incorporated significant aspects of the proposed guidance into their resolution planning. With respect to the 2019 domestic guidance, the proposed guidance differed in certain respects, given the circumstances under which a foreign-based covered company's U.S. resolution plan is most likely to be relevant. The proposal was tailored for large, complex FBOs as compared to the U.S. global systemically important banks (G-SIBs) to account for differences between U.S. G-SIBs' and FBOs' U.S. footprints and operations. The proposal updated the PCS and derivatives and trading activities areas of the 2018 FBO guidance to reflect the agencies' review of certain FBOs' 2018 resolution plans and revisions contained in the 2019 domestic guidance. It also made minor clarifications to certain areas of the 2018 FBO guidance in light of the 2019 Rule revisions. In general, the proposed revisions to the guidance were intended to streamline the firms' submissions and to provide additional clarity. In addition, the proposed guidance would have consolidated all guidance applicable to the Proposed FBOs into a single document, which would provide the industry and public with one source of applicable guidance to which to refer.

The agencies invited comments on all aspects of the proposed guidance. The agencies also specifically requested comments on a number of issues, including whether the topics in the proposed guidance represented the key vulnerabilities of the covered companies in resolution, whether the proposed scope of applicability was appropriate,

and whether the proposed guidance was sufficiently clear.

II. Overview of Comments

The agencies received and reviewed seven comment letters on the proposed guidance. Commenters included various financial services trade associations, a financial market utility, and two FBOs. In addition, the agencies met with industry representatives and FBOs at their request to discuss issues relating to the proposed guidance.¹⁸ This section provides an overview of the general themes raised by commenters. The comments received on the proposed guidance are further discussed below in the sections describing the final guidance, including any changes that the agencies have made to the proposed guidance in response to comments.

Further Tailoring of Proposal Due to Reduced Size and Risk

Most commenters suggested that the proposed guidance should be further tailored for the Proposed FBOs. They asserted that these firms have reduced the size and systemic risk profiles of their U.S. operations since resolution guidance was originally issued, and the guidance should be commensurately streamlined. Therefore, commenters questioned the appropriateness of issuing guidance to the Proposed FBOs—which they noted were Category III firms, as calculated using the assets and activities of each firm's top tier U.S. intermediate holding company—that would be similar to the guidance provided to the U.S. G-SIBs, which are Category I covered companies. Commenters argued that, in some cases, the proposed guidance was even more expansive than the guidance issued to the U.S. G-SIBs. Certain commenters also stated that the proposal failed to articulate a clear distinction in the expectations applicable to Category I firms and to Category II/III firms. In addition, commenters asserted that the proposal, if finalized, would have resulted in disparate treatment among firms in Category II and Category III.

Home Country Considerations

Some commenters disagreed with the proposal's view on resolution planning for the Proposed FBOs, which these commenters described as narrowly focused on the resolution of U.S. operations independent of home country measures or foreign parent support. The commenters noted that these firms have been subject to extensive home country frameworks,

¹⁸ Summaries of those meetings and copies of the comments can be found on each agency's website.

¹⁶ See <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20200506a.htm> and <https://www.fdic.gov/news/news/press/2020/pr20057.html>.

¹⁷ Available at www.federalreserve.gov/newsevents/pressreleases/bcreg20181220c.htm.

which include global SPOE strategies. These commenters asserted that the resolution plans for the U.S. operations of these firms should be considered in this context and should not have requirements equivalent to the U.S. G-SIBs.

Some commenters cited prior comments by the Vice Chair for Supervision of the Board in which he encouraged host regulators to recognize their interests in the success of the foreign parent company's SPOE strategy and to provide further flexibility for the parent to move resources as necessary within the organization. The commenters offered resource pre-placement requirements for FBOs, which exceed those required by similarly sized U.S. firms, as an example of how the proposed guidance would be inconsistent with these principles.

Scoping Methodology

The commenters generally opposed the proposed use of the second methodology (method 2) of the G-SIB surcharge framework as the scoping methodology for the proposal. The commenters made a number of assertions about the proposed scoping methodology, including:

- Method 2 does not accurately reflect the reduced systemic risk of the Proposed FBOs due to shortcomings in the metric as applied to firms other than the U.S. G-SIBs. As a result, the method 2 scores for the Proposed FBOs are inappropriately inflated.
- Method 2 was not intended to be applied to FBOs as a scoping methodology, but rather was designed to calculate the G-SIB capital surcharge.
- Using method 2 as the scoping methodology for the guidance would be inconsistent with the approach taken by the agencies to use the tailoring framework to determine resolution plan submission requirements, especially since the agencies previously rejected using the G-SIB surcharge framework for that purpose.

Some commenters suggested a number of alternatives to method 2 as the scoping methodology. One suggestion was to use the tailoring categories established for enhanced prudential standards, specifically having the proposal only apply to Category II firms, as calculated using the assets and activities of each firm's top tier U.S. intermediate holding company. Two commenters suggested, as an alternative, that the agencies use a modified version of method 2 or method 1 G-SIBs' surcharge scores.

Payment, Clearing, and Settlement Services

Several commenters asserted that the proposed guidance for PCS services raised issues of extraterritoriality. They argued that the PCS guidance regarding non-U.S. affiliates should be addressed as part of the group resolution planning process or supervision and any related information request would be outside the scope of the Title I resolution plan requirements. They also proposed that the agencies obtain this information through home-host supervisor cooperation. Commenters also argued that the proposed PCS expectations were even more extensive than the guidance provided to the U.S. G-SIBs on this topic.

One commenter supported certain portions of the PCS services section, but also suggested changes, including aligning the guidance with certain expectations of the European Banking Union's resolution authority, enhancing communication strategies, and clarifying terms used in the proposed guidance.

Derivatives and Trading Activities

A number of comments concerning the proposed derivatives guidance were similar to those made for the PCS section in asserting that the proposed information requests presented concerns of extraterritoriality and were outside the scope of the Title I resolution plan requirements. Commenters argued that the proposal called for strategies regarding and data on the activities of non-U.S. affiliates and non-U.S. transactions. They noted that these items are generally addressed in home country resolution plans or supervision and suggested that the related information could be requested from home country regulators. Some commenters maintained that the proposed guidance on derivatives was broader than the guidance issued to the U.S. G-SIBs and should be tailored for the Proposed FBOs. For example, the proposal would have established expectations for non-derivatives trading activities, such as securities financing transactions.

Contractually Binding Mechanisms

A few commenters provided views concerning contractually binding mechanisms (CBMs), which are intended to ensure that sufficient capital and liquidity are provided to material entity subsidiaries in a timely manner. These commenters generally agreed that the agencies should continue to allow firms flexibility to create support arrangements that work best for their

structures and global and U.S. resolution plans. They asserted that, accordingly, the guidance should continue to focus on the need to mitigate the risks of creditor challenges and on how well the strategy selected by the firm satisfies the policy objectives of the agencies, rather than specifying a particular mechanism.

Capital and Liquidity

The agencies received a number of comments on the capital and liquidity sections of the proposed guidance. With regard to the capital section of the proposed guidance, commenters argued that the proposal included expectations that are duplicative of existing capital requirements and suggested removing the guidance on resolution capital adequacy and positioning (RCAP) from the final guidance. Most of these commenters asserted that streamlining the multiple capital measures would reduce burden on the firms. Further, two commenters asserted that the proposal would have reduced the flexibility for firms to position their capital most effectively in stress. With regard to the liquidity section of the proposed guidance, commenters suggested there is redundancy between the proposal and existing regulatory requirements and also recommended removing the guidance on resolution liquidity adequacy and positioning (RLAP) from the final guidance.

III. Final Guidance

After considering the comments, conducting additional analysis, and further assessing the business and risk profiles of the U.S. operations of large and complex FBOs, the agencies are issuing final guidance that includes certain modifications and clarifications. In particular, the scope, capital, liquidity, governance mechanisms, PCS, and derivatives and trading activities sections of the final guidance reflect changes from the proposed guidance. Other sections, such as group resolution plan, and sub-sections such as management information systems, qualified financial contracts (QFCs), and mapping of branch activities, were determined to be duplicative of existing regulatory requirements and accordingly, have been eliminated from the guidance. The intent of these changes is to clarify expectations, more closely align expectations with the current business and risk profiles of the Specified FBOs' U.S. operations, and recognize that the preferred resolution strategy for the Specified FBOs is a successful home country resolution. The agencies are also eliminating expectations that relate to information

that, in the agencies' experience, may be obtained through other existing and effective mechanisms, such as home/host coordination and supervisory information sharing. In addition, the final guidance consolidates all prior resolution planning guidance for the firms in one document and clarifies that any prior guidance not included in the final guidance has been superseded. These changes are discussed in more detail below.

The final guidance is not meant to limit firms' consideration of additional vulnerabilities or obstacles that might arise based on a firm's particular structure, operations, or resolution strategy and that should be factored into the firm's submission. Moreover, the final guidance does not contain certain expectations in the proposed guidance and in the 2018 FBO guidance, including certain expectations relating to capital, liquidity, governance mechanisms, PCS, and derivatives and trading activities. The agencies do not expect that the Specified FBOs' resolution plans will continue to address the elements that have been removed from the guidance. However, the agencies note that the Specified FBOs' resolution plans, like the plans for all covered companies, are still required to meet all of the informational requirements of the Rule notwithstanding these changes to the guidance.¹⁹

The agencies note that commenters described certain expectations that are set forth in the guidance as "requirements." The agencies are clarifying that the final guidance does not have the force and effect of law. Rather, the final guidance outlines the agencies' supervisory expectations regarding each subject area covered by the final guidance.²⁰

a. Scope of Application.

The agencies received numerous comments objecting to the scope of application of the proposed guidance, which proposed using the method 2 G-SIB surcharge framework²¹ to determine the Proposed FBOs. Specifically, commenters argued that the proposed scope of application appeared to be inconsistent with the principles of tailoring established in the

Board's tailoring rule.²² In addition, commenters asserted that the method 2 G-SIB framework was not designed to be a scoping mechanism outside of certain requirements for U.S. G-SIBs, has never been applicable to IHCs, and inappropriately weights the short-term wholesale funding (STWF) factor. Commenters also questioned the proposal's justification for why a method 2 score of 250 was chosen as the threshold for purposes of scope of application. Furthermore, several commenters asserted that the proposed guidance did not adequately recognize that the Proposed FBOs have reduced risk at their U.S. operations, are smaller and less systemically important than the U.S. G-SIBs, and are subject to robust global resolution planning requirements, and so should not be subject to similar expectations as the U.S. G-SIBs.

Commenters suggested that the agencies consider alternative scoping methodologies, including those that were discussed in the proposal's preamble. Some commenters suggested that the agencies adopt a scope based on the Board's tailoring categories, with some commenters recommending that the guidance apply only to firms subject to Category II standards while others recommended that the final guidance should be similar to expectations for domestic firms subject to Category II and III standards. Other commenters suggested different potential options to modify or replace the proposed method 2 G-SIB surcharge framework, such as using method 1 G-SIB surcharge scores, that the commenters asserted would more appropriately balance the agencies' guidance expectations with the actual risk profile of the Proposed FBOs. Even if an alternative scoping methodology were adopted, some commenters asked the agencies to consider tailoring the guidance to what they viewed as the Proposed FBOs' reduced risk and stronger capital and liquidity positions, and recommended that the final guidance not introduce new expectations beyond those already in effect.

In their consideration of the commenters' feedback, the agencies have sought to align resolution plan supervisory expectations with the current business and risk profiles of the Specified FBOs' U.S. operations through the simple, transparent, and predictable mechanism of the Board's tailoring framework. The agencies also

acknowledge that relevant resolution plan information can be obtained via other means, such as through engagement with home country regulators and supervisory information sharing. The agencies appreciate the analyses provided by the commenters that compared the operations of U.S. G-SIBs to the reduced U.S. footprint of Proposed FBOs with large U.S. operations. The agencies continue to believe that the scope of heightened resolution planning expectations applicable to FBOs should align with the Specified FBOs' systemic risk profile and relevant resolution challenges, and the final guidance should be consistent with the principles of national treatment and equality of competitive opportunity.

The agencies acknowledge commenters' meaningful input on certain methodological traits in the method 2 G-SIB surcharge framework, in particular the STWF factor weight, which could distort the liquidity risk and systemic relevance of FBOs relative to U.S. G-SIBs. Liquidity risk is just one of several important factors in a resolution scenario, and the measure of liquidity risk should not solely determine scoping of the guidance; rather, scoping should be determined holistically. Therefore, the final guidance applies to FBOs that are subject to Category II standards according to their combined U.S. operations pursuant to the Board's tailoring rule²³ and that are also required to form IHCs.²⁴

Using the tailoring categories in this context also will promote uniform scoping between resolution expectations and regulatory requirements. As stated in the preamble to the Rule, the agencies believe that the risk-based indicators identified in the Board's tailoring rule are an effective means of dividing firms into groups for the purposes of determining the frequency and informational content of resolution plans. The indicators-based approach for application of Category II, III, and IV standards provides a simple framework

²³ Category II FBOs are defined as those with (1) \geq \$700 billion average combined U.S. assets or (2) \geq \$100 billion average combined U.S. assets with \geq \$75b in average cross-jurisdictional activity.

²⁴ The formula defining Category II in the Board's tailoring rule does not include formation of an IHC as a requirement. The final guidance diverges from the Board's tailoring rule in this respect because an IHC formed pursuant to the Board's Regulation YY indicates the materiality of the FBO's U.S. operations that would go through bankruptcy under the Bankruptcy Code or other ordinary U.S. resolution regime. The agencies note that Category II is not limited to FBOs. The final guidance, however, is directed only to FBOs that meet the criteria noted above and not to domestic banking organizations.

¹⁹ See 12 CFR 243.5 and 243.6; 12 CFR 381.5 and 381.6.

²⁰ See generally, Interagency Statement Clarifying the Role of Supervisory Guidance (Sept. 11, 2018), available at <https://www.federalreserve.gov/supervisionreg/srletters/sr1805a1.pdf>. See also Role of Supervisory Guidance, 85 FR 70512 (Nov. 5, 2020).

²¹ 12 CFR 217.405.

²² Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and Foreign Banking Organizations, 84 FR 59032 (November 1, 2019).

that supports the objectives of risk sensitivity and transparency and thus is an appropriate mechanism for scoping the application of the final guidance.

Size and operational complexity are also factors in the decision to apply the guidance to FBOs subject to Category II standards. As indicated in the preamble to the Board's tailoring rule, the failure or distress of the U.S. operations of a FBO that is subject to Category II standards could impose significant costs on the U.S. financial system and economy. In addition, increased levels of cross-jurisdictional activity, an indicator for Category II firms, could increase the operational complexity of a resolution, as it may be more difficult to resolve or unwind a firm's positions due to the involvement of multiple jurisdictions and regulatory authorities. As such, FBOs subject to Category II standards merit the application of more detailed expectations than those FBOs that are smaller or that do not share the same indicators of operational risk. The agencies also believe this modification to the scope appropriately focuses on the largest and most complex FBOs with U.S. IHCs without losing the focus on cross-jurisdictional activities.

While the proposal relied only to a limited extent on the Board's tailoring rule for scoping the proposed guidance—noting that the tailoring categories were developed to determine application of a broad range of enhanced prudential standards and were not explicitly focused on determining which covered companies should be subject to more detailed resolution planning guidance—the agencies have concluded that the benefits of employing the tailoring categories—clear, predictable scoping based on publicly reported quantitative data—outweigh any concerns related to using them for this purpose.

Consistent with the Rule, the final guidance takes into account a Specified FBO's entire U.S. operations, including branches and agencies (*i.e.*, combined U.S. operations), when determining scope of applicability. As discussed in the preamble to the 2019 Rule revisions, reference to combined U.S. operations is appropriate as the resolution planning requirement applies to a firm's entire U.S. operations. Moreover, U.S. branches, agencies, and offices constitute a significant share of these foreign banking organizations' presence in the United States and the agencies' experience reviewing resolution plans demonstrates that there are interconnections and dependencies between a foreign firm's U.S. branches, agencies, and offices and its U.S. subsidiaries, core business lines, and

critical operations. Thus, the inclusion of U.S. branches, agencies, and offices in determining the scope of application of the final guidance is not only consistent with the Rule, but it is also appropriate in order to measure the operational complexity and full scope of potential risks to U.S. financial stability that a FBO may pose.

Finally, while the method 1 G–SIB surcharge score methodology could potentially address the concerns raised on STWF, the agencies believe the risk-based indicator approach in the Board's tailoring rule further simplifies application of the guidance.

b. Transition Period

The proposed guidance did not describe how the guidance would be applied to FBOs that become covered by its scope, but it did request comment on the methodology and process for determining the FBOs to which the guidance should apply, including whether the agencies should specify an implementation period for any FBOs that are designated as Specified FBOs under the final guidance. Some commenters requested that the agencies provide clarity on a transition period for firms that may newly fall under the scope of the guidance, and, conversely, on an exit process for firms that may no longer be covered.

To provide certainty to FBOs, the final guidance includes transition periods for Specified FBOs that were not previously within the scope of the 2018 FBO guidance and for firms that become Specified FBOs after December 22, 2020. A firm that is currently a Specified FBO, but was not previously the subject of guidance for its most recent resolution plan, will not be expected to have taken the final guidance into consideration in developing its targeted plan submission due in 2021. Rather, such a firm will be expected to consider the final guidance in developing its next full resolution plan submission, so long as the firm is a Specified FBO as of the submission date for that plan.

The final guidance also states that when an FBO becomes a Specified FBO, the final guidance will apply to the firm's next resolution plan submission with a submission date that is at least 12 months after the time the firm becomes a Specified FBO.²⁵ If a Specified FBO ceases to be subject to Category II standards or to the Board's requirement to form an intermediate holding company, it will no longer be

²⁵ The plan type for that next submission remains as specified by the Rule, *i.e.*, a full or targeted resolution plan. See 12 CFR 243.4; 12 CFR 381.4.

considered a Specified FBO, and the guidance will no longer be applicable to that firm as of the date the firm ceases to be subject to Category II standards.

c. Consolidation of Prior Guidance and Format and Structure of Plans

One commenter supported, and no commenters opposed, the agencies' proposal to consolidate prior guidance. Accordingly, the final guidance includes, as proposed, a section regarding the format, assumptions, and structure of resolution plans, which includes the aspects of previous guidance that remain applicable to resolution planning. In light of the changes in the final guidance to the areas of capital, liquidity, governance mechanisms, and separability, the agencies have reviewed the Frequently Asked Questions (FAQs) contained in the proposed guidance. The FAQs appended to the final guidance contain those FAQs that continue to be applicable to resolution planning, with appropriate modifications to reflect the changes to the final guidance. Consistent with the proposal, to the extent not incorporated in or appended to the final guidance, prior guidance²⁶ is superseded.

d. Capital and Liquidity

While the proposed guidance would have maintained substantially all of the expectations in the capital and liquidity sections that were included in the 2018 FBO guidance,²⁷ the final guidance, in contrast to the proposal, does not include expectations for RCAP, RLAP, and certain liquidity capabilities. These changes were made to more closely align guidance expectations with the current business and risk profiles of the Specified FBOs' U.S. operations and in recognition of the overlap between those concepts and certain other regulatory provisions, as discussed below. As noted in the proposed guidance, the agencies continue to evaluate the relationship between the capital and liquidity sections of the final guidance and other capital and liquidity regulatory provisions. The agencies expect that any further changes to the

²⁶ In addition to the 2018 FBO guidance, the agencies have also issued and provided to certain FBOs: *The Guidance for 2013 § 165(d) Annual Resolution Plan Submissions by Foreign-Based Covered Companies that Submitted Initial Resolution Plans in 2012*; the February 2015 staff communication regarding the 2016 plan submissions; the July 2017 *Resolution Plan Frequently Asked Questions*; and feedback letters issued to Barclays PLC, Credit Suisse Group AG, Deutsche Bank AG, and UBS AG in December 2018 and in August 2014 and feedback letters issued to Mitsubishi UFJ Financial Group in July 2019, January 2018, and July 2015.

²⁷ Section II and Section III of the proposal.

remaining guidance in these areas would be adopted following notice and comment.

i. Capital

The final guidance does not include expectations for RCAP but retains proposed expectations for resolution capital execution need (RCEN). Several commenters requested that the agencies remove RCAP expectations from the guidance because of the reduced U.S. systemic risk of the Proposed FBOs and the potential redundancy with other regulatory provisions, such as the Board's rule on total loss absorbing capacity (TLAC). Commenters also suggested that RCAP expectations are redundant with TLAC requirements for local, bail-in-able resources to recapitalize an FBO's U.S. operations, and one commenter further asserted that RCAP constrains a firm's ability to position capital within the U.S. IHC entities in a manner that allows for the most flexibility and efficiency in a stress scenario. One commenter expressed support for maintaining expectations for RCEN. Some commenters also suggested that the guidance should take into account the positioning of financial resources in the United States in light of the positioning of resources in the firm's non-U.S. operations and that the agencies should reconsider expectations for resource preplacement within the United States to encourage more flexibility at the international level.

The final guidance does not include RCAP expectations concerning the appropriate positioning of capital and other loss-absorbing instruments among the U.S. IHC and its subsidiaries because existing TLAC requirements applicable to the U.S. IHC provide a backstop of resources that is appropriate to the size and complexity of the Specified FBOs. The final guidance, consistent with one commenter's recommendation, maintains the RCEN expectations regarding a methodology for periodically estimating the amount of capital that may be needed to support each U.S. IHC subsidiary after the U.S. IHC's bankruptcy filing. RCEN helps the firm and the agencies determine when the U.S. IHC is approaching a situation where it will not have sufficient resources to conduct a successful resolution.

Several commenters requested that the agencies reconsider requirements and expectations for resource preplacement within the United States, such as internal TLAC requirements applicable to the U.S. IHC, that are not set by the guidance. As these requirements and expectations are outside the scope of the guidance, the

final guidance does not address these requests.

ii. Liquidity

The final guidance retains the proposed expectations for resolution liquidity execution need (RLEN) but does not include expectations for liquidity capabilities and RLAP. Several commenters requested that the agencies remove RLAP expectations from the guidance, in consideration of factors including the reduced U.S. systemic risk of the Proposed FBOs and potential redundancy with other regulatory provisions, such as the Net Stable Funding Ratio (NSFR) and internal liquidity stress testing. One commenter suggested that the agencies conduct an assessment of the cumulative effect of liquidity and capital expectations and requirements, specifically between RLEN and NSFR and between RLAP and TLAC. Another commenter suggested integrating the RLAP liquidity expectations in the proposal into regulatory liquidity requirements via the rulemaking process. This commenter also expressed concern about the potential additive requirements and expectations of RLAP relative to the NSFR. Finally, one commenter expressed support for maintaining RLEN expectations.

Like the rationale for eliminating RCAP from the final guidance, because of the Specified FBOs' relatively simple U.S. legal entity structures and reduced risk profiles, the final guidance does not include RLAP expectations concerning the appropriate positioning of liquidity among the U.S. IHC and its subsidiaries. However, a firm's ability to reliably estimate and meet the liquidity needs of the U.S. IHC and its subsidiaries prior to, and in, resolution remains important to the execution of a Specified FBO's U.S. resolution strategy, as reflected in the Rule.²⁸ The final guidance therefore incorporates only expectations for RLEN. The final guidance also eliminates references to RLAP.

The agencies do not believe there will be significant overlap between RLEN expectations and the NSFR rule because the regulation implicates long-term liquidity risks and stability of funding sources, while the guidance focuses on liquidity needs during a resolution scenario, which are shorter-term in nature. Further, liquidity needs in a resolution scenario may be driven by highly idiosyncratic factors. These factors can be incorporated into a firm's RLEN framework, but would not necessarily be addressed in a

standardized measure like the NSFR. The agencies' decision not to include expectations for RLAP in the final guidance obviates the need to analyze interaction between RLAP and TLAC. Separately, the suggestion to incorporate liquidity expectations into existing regulatory requirements is outside the scope of the current guidance-making.

e. Governance Mechanisms

i. Playbooks

The proposed guidance outlined an expectation for Proposed FBOs to develop governance playbooks that detail specific actions that the board of directors and senior management of U.S. non-branch material entities would take under the firm's U.S. resolution strategy. The expectations related to communication and escalation protocols were contingent on triggers, which are firm-defined financial metrics reflecting the U.S. IHC's financial condition. In addition, the proposed guidance called for playbooks to address, among other things, the fiduciary responsibilities of boards of directors, potential conflicts of interest, and employee retention policies. One commenter suggested that the agencies streamline playbook expectations to focus only on governance and escalation procedures as well as capabilities to produce key information and data that support timely and informed decision-making. The commenter argued that outlining details about specific decisions management would have to make would be of limited value given that resolution-related actions would be driven by the circumstances and market conditions present at the time of financial stress. The agencies are finalizing this aspect of the guidance as proposed as the agencies believe that the suggested additional information would have important value in a resolution scenario.

ii. Triggers

The agencies received no comments about the expectations in the proposed guidance regarding triggers. That said, recognizing that the preferred resolution outcome for the Specified FBOs is a successful home country resolution, the final guidance does not include expectations regarding triggers or escalation protocols based on the U.S. IHC's financial condition. The final guidance, however, retains the broader expectation that firms have in place mechanisms to ensure that timely communication and coordination occurs between and among the boards of the U.S. IHC, U.S. IHC subsidiaries, and the

²⁸ See 12 CFR 243.5(c)(1)(iii); 12 CFR 381.5(c)(1)(iii).

foreign parent to facilitate the provision of financial support.

iii. Potential Mechanisms for Parent Support

Having a structure in place that facilitates the transmission of resources to an FBO's U.S. material entity subsidiaries and mitigates against potential legal challenges is an important component for resolution plans that contemplate the provision of such support. Neither the proposed guidance nor the Rule endorses a specific strategy for the provision of such support. Rather, under the proposal, firms would have been expected to (i) develop a mechanism for planned foreign parent support of U.S. non-branch material entities to meet those entities' liquidity needs and (ii) include in their resolution plan submissions analysis of potential challenges to planned foreign parent support and associated mitigants. Further, the proposal provided that if a plan anticipates the provision of capital and liquidity by a U.S. material entity (e.g., the U.S. IHC) to its U.S. affiliates prior to the U.S. IHC's bankruptcy filing, the plan should also include a detailed legal analysis of the potential state law and bankruptcy law challenges and mitigants to the provision of resources. To date, some Specified FBOs have relied on CBMs for the timely provision of capital and liquidity from a U.S. material entity (e.g., the U.S. IHC) to its U.S. affiliates prior to the U.S. IHC commencing a bankruptcy case and to mitigate potential legal challenges to the provision of such support. In addition, the agencies solicited comment on the benefits and costs and the relative advantages and disadvantages of two approaches currently used by FBOs to assist the agencies in deciding whether to endorse a specific approach in finalizing the guidance.

Commenters urged against imposing specific requirements or expectations regarding CBMs and supported maintaining flexibility for firms to determine the particular form and structure of CBMs based on a firm's structure, resolution strategy, and global capital and liquidity planning needs. Commenters further recommended that the agencies evaluate CBMs based on their effectiveness in mitigating creditor challenges. One commenter suggested that the agencies' assessment of the effectiveness of various CBMs should take into consideration the nature of the Proposed FBOs, specifically that: (i) All of the Proposed FBOs in the proposed guidance have global SPOE strategies that do not contemplate the insolvency of the U.S. IHC or any other U.S. entity;

(ii) internal TLAC requirements have been complied with and incentivize the firms to recapitalize their U.S. operations to avoid the costs, operational burdens, and other consequences associated with bankruptcy proceedings; and (iii) the Board has the authority to trigger the conversion of internal TLAC in the form of long-term debt into equity to recapitalize an IHC without the need for a U.S. bankruptcy proceeding. This commenter also argued that the agencies should provide a threshold for determining whether a CBM sufficiently mitigates the risk of creditor challenges that is materially lower than for U.S. BHCs for which a bankruptcy proceeding is a primary resolution strategy. This commenter also stated that the agencies had already been provided with substantial legal analyses supporting the workability of existing CBMs and urged the agencies to engage with the Proposed FBOs prior to providing specific requirements regarding CBMs.

One commenter cautioned that the proposed CBM guidance may impede capital and liquidity placed in the U.S. IHC from being returned to the parent for efficient deployment globally, and that a CBM developed only to support a U.S. resolution may trap financial resources in the IHC. Separately, another commenter requested that the agencies engage with the Proposed FBOs and consider alternative approaches to ensure the timely availability of capital and liquidity support. Suggestions included reducing or amending internal TLAC requirements, allowing use of internal TLAC to satisfy the demands of Comprehensive Capital Analysis and Review, and eliminating the requirement in the Rule that firms must assume the bankruptcy of a U.S. entity.

Consistent with the comments received, and to maintain flexibility for firms, the agencies are finalizing the guidance without including additional expectations regarding the use and structure of CBMs. This lack of specific, additional expectations related to CBMs should not be interpreted as an expression of the agencies' view on the feasibility of current support mechanisms. Additionally, no revisions have been made in response to a comment that urged the agencies to describe, *ex ante*, a particular threshold for what constitutes an effective CBM. Furthermore, the agencies have not made changes in response to the comment recommending amendments to various rules, as revisions to regulatory requirements are outside the scope of the present guidance. The

agencies refer to the above discussion about capital and liquidity in response to concerns about the placement and availability of capital and liquidity.²⁹

In addition, the final guidance removes the expectation for the resolution plan to include an analysis of the potential challenges to the planned foreign parent support to U.S. non-branch material entities, and the planned provision of capital and liquidity by a U.S. material entity to its U.S. affiliates prior to the U.S. IHC's bankruptcy filing. This approach gives due consideration to the arguments put forth by commenters that the Specified FBOs should have flexibility to determine the particular form and structure of the framework developed to support its particular resolution strategy and needs, that the preferred resolution outcome for the Specified FBOs is a successful home country resolution, and that internal TLAC resources are available for conversion to support IHC recapitalization outside of bankruptcy.

f. Operational

i. Payment, Clearing and Settlement Activities

Scope of PCS Activities: Most commenters requested that the scope of the guidance be limited to U.S. material entities, core business lines, and critical operations domiciled in the U.S. and resolved under the U.S. Bankruptcy Code, and that guidance should not include indirect PCS relationships through non-U.S. affiliates. Commenters contended that the proposal would subject the Proposed FBOs to expectations that are essentially the same as, and in some ways more extensive than, the expectations for PCS activities applicable to U.S. G-SIBs. Commenters also claimed that the proposal would be potentially extraterritorial in its coverage of non-U.S. branches and affiliates and contrary to the Rule and Title I of the Dodd-Frank Act. These commenters also asserted that because non-U.S. affiliate relationships were covered under home country regulatory frameworks, inclusion of information about these relationships in U.S. resolution planning would be duplicative and the information should be obtained via home-host supervisor cooperation. One commenter suggested that indirect access to PCS services through non-U.S. affiliates does not raise significant U.S. resolution concerns. Another commenter claimed that a U.S. material entity would not have the ability to distinguish activity specific to its clients

²⁹ See *supra* Section III.d (Capital and Liquidity).

or counterparties with the indirect financial market utility (FMU), as this activity is typically subject to netting by the non-U.S. affiliate, and that a U.S. material entity of a Proposed FBO would not have the authority to make decisions on contingency actions involving an FMU that is accessed via a non-U.S. affiliate. These commenters suggested that the guidance be tailored to fit the Proposed FBOs' reduced U.S. footprint and their limited role in this space, relative to U.S. G-SIBs.

As a preliminary matter, the agencies note that the Rule requires full resolution plan submissions by foreign-based covered companies to include information on "the interconnections and interdependencies among the U.S. subsidiaries, branches, and agencies, and between those entities and . . . [a]ny foreign-based affiliate."³⁰ In addition, each full resolution plan is required to "identify each trading, payment, clearing, or settlement system of which the covered company, directly or indirectly, is a member and on which the covered company conducts a material number or value amount of trades or transactions."³¹ These provisions, together, provide the agencies the authority to set forth the expectation that a firm's PCS framework address its indirect access to PCS services through non-U.S. affiliates. The proposed guidance was therefore consistent with the Rule and Title I of the Dodd-Frank Act. The agencies reiterate that continuity of access arrangements provided indirectly by non-U.S. affiliates to support a Specified FBO's U.S. operations and key clients are an important part of a Specified FBO's U.S. resolution planning.

The agencies acknowledge, however, that commenters' feedback that a non-U.S. affiliate's ability to maintain access to key FMUs and key agent banks to support indirect PCS relationships through non-U.S. affiliates may be addressed in the firm's group resolution plan or in other information provided to home country regulators. As such, expectations that Specified FBOs submit detailed information related to non-U.S. affiliates' support of their U.S. operations may be duplicative. In recognition of this feedback and in an effort to more closely align expectations with the business and risk profiles of the Specified FBOs' U.S. operations, the final guidance does not include expectations that firms provide information regarding indirect access to key FMUs and agent banks provided by non-U.S. branches and affiliates. As

further suggested by commenters and consistent with prior statements by the agencies, the agencies expect to engage with the Specified FBOs and their home country authorities.

Providers of PCS Services: Two commenters recommended clarifying the term "provider of PCS services" to include other key roles in which a firm may act, and to provide further examples where a firm may act as provider (or recipient) of PCS services. One commenter also recommended that the term "agent bank" should be clarified to specifically include "nostro banks." One commenter also suggested that firms be encouraged to amend their bilateral contracts with agent banks, including contracts with nostro agents, to facilitate continuity of access to PCS services. The final guidance does not include additional clarification or examples as the agencies do not intend the guidance to be prescriptive. Rather, the final guidance is intended to provide a firm with flexibility to define and identify PCS services, as well as the instances where the firm is a provider of such PCS services to its clients. Regarding the amendment of bilateral contracts, the agencies believe that the expectations regarding establishment of service-level agreements (SLAs) in the Shared and Outsourced Services section of the final guidance address the commenter's suggestions.

One commenter also recommended that the proposal recognize that many FMUs and agent banks do not implement bilateral SLAs for core clearing and custody services. The agencies have clarified the final guidance by adding 'as applicable' to the relevant capability in the guidance text.

Playbooks for Continued Access to PCS Services: One commenter stated that FMU playbooks should be streamlined to include only critical information necessary to facilitate an orderly resolution (e.g., management information, liquidity considerations, key governance, and responsible parties) and that firms should not be expected to include information regarding FMU membership rules or expected behavior. Another commenter stated that to the extent such critical information had already been provided to the agencies through prior exam processes, firms should be able to reference such items instead of including them in playbooks. Separately, another commenter recommended that the final guidance direct firms to maintain lists of key resolution contacts for their key FMUs and key agent banks and provide equivalent contact information to key FMUs and key agent banks. This

commenter also suggested that the guidance put additional emphasis on the importance of continued firm engagement with key external stakeholders and that the agencies consider adding expectations for firm communication with key FMUs and key agent banks during stress and resolution. The agencies also were encouraged by this commenter to develop their own communication strategies for key stakeholders and vet them with relevant firms and FMUs. The commenter further suggested that firms should identify, *ex ante*, services they would likely cease to provide in a resolution and plan for actions they would take to mitigate any resulting adverse systemic impact. Finally, a commenter stated that the guidance should recognize that there is specific, industry-wide default guidance already in place for certain FMUs (e.g., central counterparties) that would apply to a Proposed FBO's activities in a resolution.

The agencies are finalizing these elements of the guidance as proposed. The expectations in the final guidance call for playbooks that address specifically how firms would maintain access to PCS services but that do not necessarily include a discussion of FMU rules around a member firm's default. The final guidance aims to provide firms flexibility in determining how they would best maintain access to PCS services in a stress scenario and to clarify that playbooks are not expected to include a scenario in which the firm loses access to an agent bank or FMU. The proposed guidance contained expectations for firms to engage with key external stakeholders and reflect any feedback received during such ongoing outreach, and the agencies are retaining those expectations in the final guidance. To the extent that certain playbook information may be addressed in other sections of the firm's submission, the firm may include a specific cross-reference to that content in the appropriate playbook. While the agencies are not expecting firms to model expected FMU behaviors, firms are expected to consider operational and financial resources that would be needed to respond to adverse actions and execute any contingency arrangement. In addition, given the joint nature of the resolution plan process, the final guidance, like the Rule, provides for incorporation of previously submitted resolution plan information by reference.

The comment suggesting that the agencies develop their own communication strategies for key stakeholders is not applicable to the

³⁰ 12 CFR 243.5(a)(2)(i); 12 CFR 381.5(a)(2)(i).

³¹ 12 CFR 243.5(e)(12); 12 CFR 381.5(e)(12).

content in a firm's resolution plan; therefore, no changes have been made to address the comment. The agencies already proactively engage with firms and key stakeholders through various fora, including direct engagement, crisis management groups, and international working groups focused on crisis management under the Financial Stability Board. The agencies also encourage firms and their agent banks to continue engaging and communicating with each other, key FMUs, agent banks, and clients, and other stakeholders to identify possible ways to support continued access to PCS services.

While expressing general support for the expectations in the proposed guidance related to PCS-related Liquidity Sources and Uses, a commenter suggested that the sentence related to "PCS Liquidity Sources" be revised from "various currencies" to "all currencies relevant to banks' participation" in FMUs, to be consistent with international expectations. The agencies are adopting this suggestion in the final guidance. The commenter also suggested that the final guidance clarify that firms should assess their key FMU and key agent bank liquidity needs in the aggregate so that firms account for the availability of funds across more than one key FMU or agent bank. Regarding intraday liquidity, this commenter suggested that the final guidance be amended to include additional specific expectations for playbooks beyond describing capabilities to control intraday liquidity inflows and outflows, and to identify and prioritize time-specific payments. The agencies are not adopting these suggestions in the final guidance to allow the Specified FBOs flexibility to tailor and streamline playbook content based on the actual profile of their PCS activities relevant to their U.S. operations.

Key Client Contingency Arrangements: Two commenters questioned the benefit of expectations related to the identification and mapping of PCS services to key clients and the description of contingency actions that the firm may take concerning provision of intraday credit to key clients since most clients have other relationships. Another commenter suggested that the final guidance contain examples of particular actions and arrangements that the agencies expect the firms to consider around the provision of intraday credit to affiliate and third-party clients. The agencies are not modifying the final guidance in response to these comments. The final guidance contains expectations that firms maintain continuity of access to

PCS services for key clients in the United States. The final guidance is not prescriptive, and each firm is expected to determine the relevant contingency actions and arrangements that are specific to maintaining continuity of access to its PCS activities. Firms have the discretion to tailor the discussion to client impacts specific to the PCS services provided by such firms. The agencies are not modifying provisions related to the identification and mapping of PCS services to key clients as this information helps the agencies understand the ecosystem of provision of PCS services.

Adverse Actions: A commenter expressed support for the expectation for playbooks to assess the range of adverse actions that may be taken by key FMUs or key agent banks but indicated that the term "adverse actions" may be incorrectly interpreted and suggested using "risk-mitigating actions," which would be more consistent with a home country authority's guidance. The agencies are not making any changes to the final guidance because "adverse actions" includes not only "risk mitigating actions," but also a broader set of actions that could be taken by key FMUs or key agent banks.

Loss of Access: One commenter suggested that there was a contradiction in the proposed guidance and requested clarification about whether there was an expectation for a firm to contemplate a scenario where it loses access to a key FMU or key agent bank. The agencies are finalizing the guidance as proposed. The final guidance specifies that a firm is not expected to incorporate a scenario in which it loses FMU or agent bank access into its U.S. resolution strategy. However, in support of maintaining continuity of access to PCS services, playbooks should provide analysis of the financial and operational impacts to the firm's material entities and key clients due to adverse actions that may be taken by an FMU or agent bank, and the contingency actions that may be taken by the filer.

ii. Management Information Systems

The agencies received no comments regarding the management information systems (MIS) section of the proposed guidance. The expectations contained in the proposed guidance articulate general expectations for firms to have the requisite MIS capabilities to produce timely, accurate financial and risk data on a U.S. legal entity basis. The agencies determined that the expectations and capabilities are addressed in the Rule³²

³² See 12 CFR 243.5(f); 12 CFR 381.5(f).

and thus the final guidance does not include a section on MIS.

iii. Managing, Identifying, and Valuing Collateral

The agencies received no comments regarding the managing, identifying, and valuing collateral section of the proposed guidance and are finalizing the section as proposed.

iv. Shared and Outsourced Services

The agencies received no comments regarding the shared and outsourced services section of the proposed guidance and are finalizing the section as proposed.

v. Qualified Financial Contracts

The agencies received no comments regarding the QFC section of the proposed guidance, which sets forth expectations for firms to articulate their progress in implementing requirements regarding contractual stays in qualified financial contracts. However, the agencies are not including this subsection in the final guidance due to the progress made by the Specified FBOs in complying with the QFC stay rules of the Board, the Office of the Comptroller of the Currency, and the FDIC.³³

g. Branches

The agencies received no comments regarding the branches section of the proposed guidance. However, the agencies are removing expectations from the final guidance that are viewed as duplicative to existing rules or repeat, without elaboration, components of the Rule. Specifically, mapping expectations for U.S. branches that are material entities are specified in the Rule.³⁴ In addition, expectations for a liquidity buffer are addressed in the Board's Regulation YY.³⁵ Neither subsection of the proposed guidance was intended to expand upon or clarify existing rules and thus it is appropriate to remove them from the final guidance. The remaining parts of the Branches section regarding expectations for supporting assumptions on continuity of operations and analyzing the impact of cessation of operations remain unchanged from the proposed guidance.

h. Group Resolution Plan

The agencies received no comments regarding the group resolution section of the proposed guidance, which set forth expectations for firms to address how

³³ 12 CFR part 47 (Office of the Comptroller of the Currency); 12 CFR part 252, subpart I (Board); and 12 CFR part 382 (FDIC).

³⁴ See 12 CFR 243.5(a)(2), (g); 12 CFR 381.5(a)(2), (g).

³⁵ See 12 CFR 252.

resolution planning in the U.S. is integrated into the group resolution plan. However, in recognition that the preferred resolution outcome for many Specified FBOs is a successful home country resolution using an SPOE resolution strategy, the agencies expect to supplement their understanding of the impact on U.S. operations of executing a firm's group resolution plan through international collaboration with home country regulators and therefore such a section is unnecessary. The agencies determined that as this item is addressed by the Rule,³⁶ the final guidance does not include a section on group resolution.

i. Legal Entity Rationalization and Separability

The agencies received no comments regarding the legal entity rationalization and separability section of the proposed guidance. However, consistent with agencies' efforts to more closely align guidance expectations with the current business and risk profiles of the Specified FBOs' U.S. operations, the final guidance does not include the separability expectations, which would have suggested that firms identify discrete U.S. operations that would be sold or transferred in a resolution scenario. Given that the U.S. operations of the Specified FBOs are a subcomponent of a larger FBO, for which the preferred resolution approach is a home-country SPOE resolution, the agencies have found that the separability options within the United States are few and that their inclusion in resolution plans has yielded limited new insights. Moreover, the agencies expect that such information is obtainable through international collaboration with home country regulators. As such, the agencies have eliminated these expectations from the final guidance.

j. Derivatives and Trading Activities

The agencies received a number of comments on the Derivatives and Trading Activities section of the proposed guidance. Overall, commenters supported the proposed elimination of the active and passive wind-down scenario analyses and rating agency playbooks, and recommended certain additional modifications and clarifications to streamline the resolution plan submissions and provide further clarity.

After reviewing the comments, the agencies have adopted final guidance that includes several adjustments to

address matters raised by the commenters. Specifically, the final guidance does not include elements from the proposal related to derivatives and trading activities originated in the U.S. and booked directly to non-U.S. affiliates. Commenters argued that the derivatives guidance should not include U.S. derivatives and trading activities or prime brokerage customer account balances booked directly to non-U.S. affiliates because they are beyond the scope of the Rule and the information is better gathered through collaboration with home country regulators. Commenters suggested that the derivatives guidance focus solely on derivatives and trading activities and prime brokerage customer account balances that are booked to U.S. material entities and related to core business lines and critical operations.³⁷ Further, commenters suggested that the guidance should not include the identification, assessment, or reporting on risk transfer arrangements with non-U.S. affiliates and also argued that the proposed guidance would result in firms having to create reporting processes for activities booked in non-U.S. affiliates. Commenters also suggested that the proposed guidance would subject the Proposed FBOs to expectations greater than, or similar to, those imposed on U.S. G-SIBs and that transactions booked outside the U.S. fall under the purview of home country authorities, are best addressed in the global resolution plan, and are outside the scope of the Rule and Title I of the Dodd-Frank Act.

As a preliminary matter, similar to the discussion in the PCS section of this preamble, the agencies note that the Rule requires full resolution plan submissions by foreign-based covered companies to include information "with respect to the subsidiaries, branches and agencies, and identified critical operations and core business lines, as applicable, that are domiciled in the United States or conducted in whole or material part in the United States."³⁸

³⁷ The agencies note that based on the Specified FBOs' most recent resolution plans, each of the Specified FBOs identifies certain U.S. derivatives and trading activities (including U.S. prime brokerage services) as an identified critical operation or core business line.

³⁸ 12 CFR 243.5(a)(2)(i); 12 CFR 381.5(a)(2)(i). See also 12 CFR 243.5(a)(2)(ii); 12 CFR 381.5(a)(2)(i) (requiring each full resolution plan to include a "detailed explanation of how resolution planning for the subsidiaries, branches and agencies, and identified critical operations and core business lines of the foreign-based covered company that are domiciled in the United States or conducted in whole or material part in the United States is integrated into the foreign-based covered company's overall resolution or other contingency planning process.").

This provision provides the agencies the authority to set forth the expectation that a resolution plan include information about the firm's derivatives and trading activities, including derivatives and trading activities originated from U.S. entities that are booked directly into a non-U.S. affiliate, because those activities occur in material part in the United States. Accordingly, the proposed guidance was consistent with the Rule and Title I of the Dodd-Frank Act.

However, after considering commenters' views, and in an effort to more closely align expectations with the current business and risk profiles of the Specified FBOs, the final guidance does not include expectations concerning derivatives and trading activities that originate from U.S. entities but are booked into non-U.S. affiliates. Because the booking of U.S. derivatives and trading activities regularly occurs across jurisdictions and creates interconnections and interdependencies among and between a firm's U.S. entities and its non-U.S. affiliates, the agencies expect to coordinate with home country authorities to collect information about derivatives booking activities that occur across jurisdictions in order to understand any related risks to the execution of the firm's U.S. resolution strategy. This approach is consistent with the 2018 Title I feedback letters to some Specified FBOs, in which the agencies indicated their intent to engage with the FBO and home authorities regarding derivatives booking practices.

The agencies also have made several adjustments and clarifications in the final guidance to address other matters raised by the commenters. Commenters argued that the proposal inappropriately applied the derivatives guidance to non-derivatives trading activities (*e.g.*, securities financing transactions). The agencies acknowledge that the Specified FBOs have drastically decreased their exposures to securities financing transactions, while the U.S. G-SIBs have increased their exposures. Therefore, the final guidance only covers derivatives and linked non-derivatives.

Commenters also suggested that a Proposed FBO should be allowed to define linked non-derivatives trading positions based on its overall business and resolution strategy trading positions. The agencies agree with this comment, and the final guidance allows for linked non-derivatives trading positions to be defined based on the Specified FBO's overall business and resolution strategy. Finally, some commenters suggested that the scope for

³⁶ See 12 CFR 243.5(a)(2)(ii); 12 CFR 381.5(a)(2)(ii).

the prime brokerage subsection of the proposal was either unclear or overly broad. As suggested, the final guidance clarifies that a U.S. prime brokerage client should be a client who signs a prime brokerage agreement with a U.S. material entity. Further, the agencies are not finalizing aspects of the proposed guidance regarding requests for information and reporting related to prime brokerage activities that are booked to non-U.S. entities, as stated above.

Some commenters recommended the agencies adjust certain expectations that are not specified in the proposed guidance. The agencies have determined not to modify the guidance in these instances. For example, commenters stated that development of a plan for resolution of positions of non-U.S. affiliates is beyond the scope of the Rule. The agencies note, as described above, that the proposed guidance did not set out expectations that the Proposed FBOs develop a plan for the resolution of derivatives and trading activities booked to non-U.S. entities. The scope of the stabilization and de-risking strategy subsection applies only to U.S. derivatives portfolios booked to U.S. entities.

The agencies received comments related to tailoring derivatives expectations. For example, commenters suggested the segmentation analysis and analysis of de-risking strategy provisions of the proposal were neither warranted nor sufficiently clear for Proposed FBOs because their derivatives exposures are significantly smaller than those of U.S. G-SIBs. After considering multiple relevant factors, the agencies have not modified the guidance in response to these comments. The ability to identify, quickly and reliably, problematic derivatives positions and portfolios is foundational to minimizing uncertainty and estimating resource needs for an orderly resolution of a firm's U.S. entities. Further, in the event of material financial distress or failure, the resolvability risks related to a firm's U.S. derivatives and trading activities could be a key obstacle to the firm's orderly resolution of any U.S. IHC subsidiary with a derivatives portfolio. As a result, the final guidance confirms that a firm's plan should provide a detailed analysis of its strategy to stabilize and de-risk any derivatives portfolio of any U.S. IHC subsidiary that continues to operate after the U.S. IHC enters into a U.S. bankruptcy proceeding. The agencies also note that the portfolio segmentation subsection applies only to U.S. derivatives

positions that are booked to U.S. entities.

Finally, commenters suggested tailoring the scope of applicability of the derivatives section using a threshold, such as the Volcker Rule's proprietary trading categories. The agencies do not believe that the compliance thresholds and the associated calculation methodology (total trading assets and liabilities) established under the Volcker Rule accurately capture the size and complexity of a firm's derivatives activities for resolution purposes and thus are an inappropriate scoping mechanism for the guidance. Therefore, the final guidance does not incorporate compliance thresholds, such as those established by the Volcker Rule.

k. Additional Comments

i. Comments About the Development of the Proposal

The agencies received several general comments about the development of the proposed guidance. The agencies have considered these commenters' input but have made no modifications to the final guidance.

One commenter claimed that the agencies' proposed guidance did not reflect internationally agreed upon approaches to home and host authority responsibility with regard to resolution planning, with the proposal's continued emphasis on a separate U.S. strategy, which the commenter argued is largely duplicative of home country requirements. Other commenters criticized the proposed guidance for not reflecting any reliance on supervisory colleges and crisis management groups, or on the capital markets and resolution rules and requirements of the Securities and Exchange Commission, Financial Industry Regulatory Authority, or the Commodity Futures Trading Commission.

The agencies do not agree with these comments. Since the enactment of section 165(d) of the Dodd-Frank Act, the agencies have worked bilaterally and multilaterally with relevant domestic and foreign authorities and in various international fora to understand risks to the firms' orderly resolution under the U.S. Bankruptcy Code, as well as to share resolution planning expertise. In addition, the agencies have established resolution-related information-sharing arrangements with both domestic and foreign authorities in an effort to enhance the prospects for a successful cross-border resolution of the Specified FBOs. Moreover, the agencies note that both section 165(d) of the Dodd-Frank Act and the Rule require all

large bank holding companies, including FBOs, to file resolution plans.

Another commenter encouraged the agencies to consider aligning their guidance with the resolution-related guidance issued by the European Single Resolution Board. The agencies recognize that international coordination in resolution-related matters is important to ensuring that home and host country regulators have sufficient understanding of the resolvability of internationally active financial companies. The purpose and general subject matter of the final guidance are generally consistent with those of the Single Resolution Board's Expectations for Banks. Both the final guidance and the Single Resolution Board document describe the respective authorities' expectations regarding a number of key vulnerabilities in resolution (e.g., governance mechanisms, operational, capital, liquidity, and legal entity rationalization). The agencies will continue to work with international counterparts to build a shared understanding around resolution-related matters through participation in firm-specific, cross-border crisis management groups, as both home authorities and host authorities.

Other commenters suggested that the proposed guidance did not adequately recognize foreign parents as sources of strength to the U.S. operations of Proposed FBOs, but instead appeared to treat the non-U.S. parent and affiliates only as sources of risk for U.S. material entities. The agencies understand that the preferred resolution outcome for many Specified FBOs is a successful home country resolution using a SPOE resolution strategy where U.S. material entities are provided with sufficient capital and liquidity resources to allow them to stay out of resolution proceedings and maintain continuity of operations throughout the parent's resolution. The Rule balances this recognition with the concern that support from a foreign parent in stress cannot be ensured. The final guidance, in turn, lays out expectations that reflect a number of key vulnerabilities associated with an orderly resolution under the U.S. Bankruptcy Code.

Certain commenters suggested that the agencies streamline plan submissions to make the documents more actionable and reduce the time the agencies may need to review and challenge the submissions. These commenters also encouraged the agencies to leverage information provided by firms through existing bank supervision and exam processes to collect information relevant to the

agencies' review of resolution planning. The agencies note that the scope and informational content of resolution plan submissions are dictated by the Rule. That said, the agencies have endeavored in this final guidance to tailor expectations for the Specified FBOs' resolution plans to be commensurate to and address risks posed by key vulnerabilities of the Specified FBOs in resolution. The agencies also have made a number of modifications to the final guidance with the express purpose of streamlining plan expectations and, where appropriate, leveraging existing supervisory relationships with home and host country authorities to collaboratively obtain information about the resolution planning and resolvability of the firms.

ii. Comments About General Concerns With the Proposal

Some commenters asserted that the proposed guidance exceeded the scope of the Rule or Title I of the Dodd-Frank Act, introduced definitions and expectations that were inconsistent with the Rule, and created issues of extraterritoriality and duplication of information that may already be covered under home country regulations. Some commenters also objected to expectations pertaining to the identification, assessment, or reporting of indirect relationships through non-U.S. affiliates, or risk transfer arrangements with non-U.S. affiliates. These comments are addressed in the individual sections of this preamble to which they relate.

Another commenter recommended modifying resolution guidance and requirements to emphasize firms maintaining resolution capabilities that remain available during business as usual. This comment generally aligns with the agencies' approach to resolution planning expectations, and the final guidance emphasizes that the Specified FBOs should have effective capabilities and well-developed plans. That said, the agencies do not believe that any specific revisions are necessary to respond to this comment; rather, the agencies will continue to deliberate how to ensure that resolution planning can be facilitated by and integrated into the firm's business-as-usual practices.

iii. Comments About Resolution Planning Generally

The agencies received several comments about the broader supervisory landscape related to resolution planning. Certain commenters recommended that the agencies, in addition to deepening home and host country regulatory

relationships, engage bilaterally with the Proposed FBOs to clarify outstanding concerns about the resolvability of the firms' U.S. operations, as well as any concerns about the firms' reliance on home country resolution strategies.

These comments do not directly relate to the guidance and, as a result, the agencies are not making any changes to the final guidance. Relatedly, one commenter asked the agencies to clearly identify residual concerns with respect to each Proposed FBO and then tie resolution planning guidance to those concerns. The agencies expect that overall engagement and ongoing dialog and feedback with each of the Specified FBOs will continue to provide clarity on any outstanding concerns with respect to resolution capabilities. The agencies also note that the final guidance takes into consideration the agencies' experience in reviewing prior resolution plan submissions. No specific changes have been made to the final guidance in response to this comment.

iv. Comments Outside the Scope of Guidance-Making

One commenter requested that the agencies also incorporate that commenter's thoughts into future changes to guidance for U.S. G-SIBs, while another commenter argued for the removal of the Proposed FBOs from the Board's Large Institution Supervision Coordinating Committee (LISCC) portfolio. The final guidance does not apply to U.S. G-SIBs, who remain subject to heightened resolution plan supervisory expectations given their size and risk profile, and the composition of the LISCC portfolio of firms is similarly outside the scope of this final guidance. Accordingly, the agencies have not made any changes to the guidance to address these comments.³⁹

IV. Paperwork Reduction Act

Certain provisions of the guidance contain "collection of information" provisions within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The agencies reviewed the final guidance and

determined that it would revise the reporting provisions that have been previously approved by OMB under the Board's OMB control number 7100–0346 (Reporting Requirements Associated with Regulation QQ; FR QQ) and the FDIC's control number 3064–0210 (Reporting Requirements Associated with Resolution Planning). The Board has reviewed the final guidance under the authority delegated to the Board by OMB. The agencies' information collections will be extended for three years, with revision.

Current Actions

The proposed guidance stated that the proposed changes to the 2018 FBO guidance would not revise the reporting provisions that have been previously cleared by the OMB under the Board's control number 7100–0346 and the FDIC's control number 3064–0210. The agencies did not receive any comments on the PRA determination in the proposed guidance.

However, as indicated above, the final guidance includes certain modifications and clarifications to the proposed guidance. In particular, the scope, capital, liquidity, governance mechanisms, PCS, and derivatives and trading activities sections of the final guidance reflect changes from the proposal. Other sections or sub-sections, such as group resolution plan, management information systems, QFCs, separability, and mapping of branch activities, were determined not to be necessary as they are duplicative of existing regulatory requirements or not reflective of the Specified FBOs' current business models and accordingly have been eliminated from the guidance. The intent of these changes is to clarify expectations, more closely align expectations with the current business and risk profiles of the Specified FBOs' U.S. operations, and recognize that the preferred resolution strategy for the Specified FBOs is a successful home country resolution. The final guidance also eliminates expectations for information that, in the agencies' experience, may be obtained through other existing and effective mechanisms.

As a result of these changes, the final guidance reduces the existing estimated burden for a triennial full complex filer from 13,135 hours to 9,916 hours per year. This reduction is driven mainly by significant reductions in the burdens related to capital, liquidity, separability, and governance mechanisms. These burden savings are borne by the Proposed FBOs.

One FBO is no longer classified as a triennial full complex filer and thus

³⁹ The agencies note that, on November 6, 2020, the Board announced that it is updating the list of firms supervised by the LISCC Program. See <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20201106a.htm>.

saves the total burden associated with filing a triennial full complex resolution plan. However, another FBO is newly classified as a triennial full complex filer and must bear the burden. The agencies estimate the annual burden for this new triennial full complex filer as 9,767 hours per year. This estimate differs from the burden for the Proposed FBOs for primarily two reasons: (1) The agencies estimate that the new triennial full complex filer will incur some start-up costs in preparing its first full resolution plan that is subject to the final guidance; and (2) the agencies estimate that the burden for the new triennial full complex filer's 2021 targeted resolution plan will be less than the burdens for the three Proposed FBOs because the new triennial complex filer will not be expected to consider the final guidance for its 2021 targeted resolution plan (unlike the three other covered companies).

Historically, the Board and the FDIC have split the respondents for purposes of PRA clearances. As such, the agencies will split the change in burden as well. The FDIC has agreed to take the burden of the new triennial full complex filer and one Proposed FBO whereas the Board will take the burden for the remaining two Proposed FBOs. Specially, as a result of this split and these revisions, there will be a net decrease in the overall estimated burden of 6,438 hours for the Board and 6,587 hours for the FDIC. Therefore, the total Board estimated burden for its entire information collection (7100-0346) is 209,168 hours and the total FDIC estimated burden for its entire information collection (3064-0210) is 203,332 hours.

Proposed Information Collection

Title of Information Collection: Reporting Requirements Associated with Resolution Planning.

Agency Form Number: FR QQ.
Frequency of Response: Biennially, Triennially.

Respondents: Bank holding companies (including any foreign bank or company that is, or is treated as, a bank holding company under section 8(a) of the International Banking Act of 1978, and meets the relevant total consolidated assets threshold) with total consolidated assets of \$250 billion or more, bank holding companies with \$100 billion or more in total consolidated assets with certain characteristics, and nonbank financial firms designated by the Financial Stability Oversight Council for supervision by the Board.

The following table presents only the change in the estimated burden hours, as amended by this final guidance, broken out by agency. The table does not include a discussion of the remaining estimated burden hours, which remain unchanged.

TABLE 1—BURDEN HOUR ESTIMATES UNDER CURRENT REGULATIONS AND UNDER THE FINAL GUIDANCE

| FR QQ | Number of respondents | Annual frequency | Estimated average hours per response * | Estimated annual burden hours |
|--|-----------------------|------------------|--|-------------------------------|
| Board Burdens | | | | |
| 2019 Rule Revisions: | | | | |
| Triennial Full Complex Foreign | 2 | 1 | 13,135 | 26,270 |
| Board Total | | | | 26,270 |
| Final Guidance: | | | | |
| Triennial Full Complex Foreign | 2 | 1 | 9,916 | 19,832 |
| Board Total | | | | 19,832 |
| FDIC Burdens | | | | |
| 2019 Rule Revisions: | | | | |
| Triennial Full Complex Foreign | 2 | 1 | 13,135 | 26,270 |
| FDIC Total | | | | 26,270 |
| Final Guidance: | | | | |
| Triennial Full Complex Foreign | 1 | 1 | 9,916 | 9,916 |
| Triennial Full Complex Foreign (new) | 1 | 1 | **9,767 | 9,767 |
| FDIC Total | | | | 19,683 |

* Hours are calculated as the hours to prepare and submit one full resolution plan and one targeted resolution plan, annualized over 6 years.
** Includes one-time start-up burdens for new triennial full complex foreign filers and excludes guidance-based burdens for the new triennial full complex filer's 2021 targeted resolution plan, as the filer is not expected to consider the guidance for that plan.

V. Final Guidance

Guidance for Resolution Plan Submissions of Certain Foreign-Based Covered Companies

- I. Introduction
- II. Capital
- III. Liquidity
- IV. Governance Mechanisms
 - a. Playbooks
- V. Operational
 - a. Payment, Clearing and Settlement Activities

- b. Managing, Identifying, and Valuing Collateral
- c. Shared and Outsourced Services
- VI. Branches
- VII. Legal Entity Rationalization
- VIII. Derivatives and Trading Activities
- IX. Format and Structure of Plans
- X. Public Section
- Appendix: Frequently Asked Questions

I. Introduction

Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5365(d))

requires certain financial companies to report periodically to the Board of Governors of the Federal Reserve System (the Federal Reserve or Board) and the Federal Deposit Insurance Corporation (the FDIC) (together the Agencies) their plans for rapid and orderly resolution in the event of material financial distress or failure. On November 1, 2011, the Agencies promulgated a joint rule implementing

the provisions of Section 165(d).¹ Subsequently, in November 2019, the Agencies finalized amendments to the joint rule addressing amendments to the Dodd-Frank Act made by the Economic Growth, Regulatory Relief, and Consumer Protection Act and improving certain aspects of the joint rule based on the Agencies' experience implementing the joint rule since its adoption.² Financial companies meeting criteria set out in the Rule must file a resolution plan (Plan) according to the schedule specified in the Rule.

This document is intended to provide guidance to certain foreign banking organizations (FBOs) that are required to submit Plans regarding development of their respective U.S. resolution strategies (Specified FBOs or firms). Specifically, the guidance applies to any FBO that is subject to Category II standards according to its combined U.S. operations in accordance with the Board's tailoring rule³ and that is required to form an intermediate holding company.⁴

When an FBO first becomes a Specified FBO,⁵ this document will apply to the firm's next resolution plan submission that is due at least 12 months after the date the firm becomes a Specified FBO. If a Specified FBO ceases to be subject to Category II standards or to the Board's requirement to form an intermediate holding company, it will no longer be a Specified FBO, and this document will no longer apply to that firm.

The document is intended to assist these firms in further developing their U.S. resolution strategies. The document does not have the force and effect of law. Rather, it describes the Agencies' expectations and priorities regarding these firms' Plans and the Agencies' general views regarding specific areas where additional detail should be provided and where certain capabilities or optionality should be developed and maintained to demonstrate that each firm has considered fully, and is able to mitigate, obstacles to the successful

implementation of their U.S. resolution strategy.⁶

The Agencies are providing guidance to the Specified FBOs to assist their further development of a resolution plan for their U.S. operations for their 2021 and subsequent resolution plan submissions. This guidance for Specified FBOs builds upon the guidance issued in December 2018 for certain U.S.-based covered companies, taking into account the circumstances under which a U.S. resolution plan is most likely to be relevant for an FBO. The U.S. resolution plan for a Specified FBO would address a scenario where the U.S. operations experience material financial distress and the foreign parent is unable or unwilling to provide sufficient financial support for the continuation of U.S. operations, and at least the top tier U.S. Intermediate Holding Company (U.S. IHC) files for bankruptcy under Title 11, United States Code. Under such a scenario, the Plan should provide for the orderly resolution of the Specified FBO's U.S. material entities⁷ and operations.

In general, this document is organized around a number of key vulnerabilities in resolution (e.g., capital; liquidity; governance mechanisms; operational; legal entity rationalization; and derivatives and trading activities) that apply across resolution plans. Additional vulnerabilities or obstacles may arise based on a firm's particular structure, operations, or resolution strategy. Each firm is expected to satisfactorily address these vulnerabilities in its Plan—e.g., by developing sensitivity analysis for certain underlying assumptions,

enhancing capabilities, providing detailed analysis, or increasing optionality development, as indicated below.

Under the Rule, the Agencies will review the Plan to determine if it satisfactorily addresses key potential vulnerabilities, including those specified below. If the Agencies jointly decide that these matters are not satisfactorily addressed in the Plan, the Agencies may determine jointly that the Plan is not credible or would not facilitate an orderly resolution under the U.S. Bankruptcy Code.

II. Capital

The firm should have the capital capabilities necessary to execute its U.S. resolution strategy, including the model and estimation process described below.

To the extent required by the firm's U.S. resolution strategy, U.S. non-branch material entities need to be recapitalized to a level that allows for an orderly resolution. The firm should have a methodology for periodically estimating the amount of capital that may be needed to support each U.S. IHC subsidiary after the U.S. IHC bankruptcy filing (Resolution Capital Execution Need or RCEN). The firm's positioning of IHC total loss absorbing capacity (TLAC)⁸ should be able to support the RCEN estimates.

The firm's RCEN methodology should use conservative forecasts for losses and risk-weighted assets and incorporate estimates of potential additional capital needs through the resolution period,⁹ consistent with the firm's resolution strategy for its U.S. operations. The methodology is not required to produce aggregate losses that are greater than the amount of IHC TLAC that would be required for the firm under the Board's final rule.¹⁰ The RCEN methodology should be calibrated such that recapitalized U.S. IHC subsidiaries have sufficient capital to maintain market confidence as required under the U.S. resolution strategy. Capital levels should meet or exceed all applicable regulatory capital requirements for "well-capitalized" status and meet estimated additional capital needs throughout resolution. U.S. IHC subsidiaries that are not subject to capital requirements may be considered

¹ 76 FR 67323 (November 1, 2011), codified at 12 CFR parts 243 and 381.

² Resolution Plans Required, 84 FR 59194 (November 1, 2019). The amendments became effective December 31, 2019. "Rule" means the joint rule as amended in 2019. Capitalized terms not defined herein have the meanings set forth in the Rule.

³ Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and Foreign Banking Organizations, 84 FR 59032 (Nov. 1, 2019).

⁴ See 12 CFR part 252.

⁵ See 12 CFR 252.5(c).

⁶ This guidance consolidates the *Guidance for 2018 § 165(d) Annual Resolution Plan Submissions by Foreign-Based Covered Companies that Submitted Resolution Plans in July 2015*; the *July 2017 Resolution Plan Frequently Asked Questions*; feedback letters issued to Barclays PLC, Credit Suisse Group AG, Deutsche Bank AG, and UBS AG in December 2018 and in August 2014 and feedback letters issued to Mitsubishi UFJ Financial Group in July 2019, January 2018, and July 2015; the communications the Agencies made to certain foreign-based Covered Companies in February 2015; and the *Guidance for 2013 § 165(d) Annual Resolution Plan Submissions by Foreign-Based Covered Companies that Submitted Initial Resolution Plans in 2012* (taken together, prior guidance). To the extent not incorporated in or appended to this guidance, prior guidance is superseded.

⁷ The terms "material entities," "identified critical operations," and "core business lines" have the same meaning as in the Rule. The term "U.S. material entity" means any subsidiary, branch, or agency that is a material entity and is domiciled in the United States. The term "U.S. non-branch material entity" means a material entity organized or incorporated in the U.S. including, in all cases, the U.S. IHC. The term "U.S. IHC subsidiaries" means all U.S. non-branch material entities other than the U.S. IHC.

⁸ Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U.S. Bank Holding Companies and Intermediate Holding Companies of Systemically Important Foreign Banking Organizations, 82 FR 8266 (January 24, 2017).

⁹ The resolution period begins immediately after the U.S. IHC bankruptcy filing and extends through the completion of the U.S. resolution strategy.

¹⁰ 82 FR 8266 (January 24, 2017).

sufficiently recapitalized when they have achieved capital levels typically required to obtain an investment-grade credit rating or, if the entity is not rated, an equivalent level of financial soundness. Finally, the methodology should be independently reviewed, consistent with the firm's corporate governance processes and controls for the use of models and methodologies.

III. Liquidity

The firm should have the liquidity capabilities necessary to execute its U.S. resolution strategy. In particular, the firm should have a methodology for estimating the liquidity needed after the U.S. IHC's bankruptcy filing to stabilize any surviving U.S. IHC subsidiaries and to allow those entities to operate post-filing, in accordance with the U.S. strategy (Resolution Liquidity Execution Need or RLEN).

The firm's RLEN methodology should:

(A) Estimate the minimum operating liquidity (MOL) needed at each U.S. IHC subsidiary to ensure those entities could continue to operate, to the extent relied upon in the U.S. resolution strategy, after implementation of the U.S. resolution strategy and/or to support a wind-down strategy;

(B) Provide daily cash flow forecasts by U.S. IHC subsidiary to support estimation of peak funding needs to stabilize each entity under resolution;

(C) Provide a comprehensive breakout of all inter-affiliate transactions and arrangements that could impact the MOL or peak funding needs estimates for the U.S. IHC subsidiaries; and

(D) Estimate the minimum amount of liquidity required at each U.S. IHC subsidiary to meet the MOL and peak needs noted above, which would inform the provision of financial resources from the foreign parent to the U.S. IHC, or if the foreign parent is unable or unwilling to provide such financial support, any preparatory resolution-related actions.

The MOL estimates should capture U.S. IHC subsidiaries' intraday liquidity requirements, operating expenses, working capital needs, and inter-affiliate funding frictions to ensure that U.S. IHC subsidiaries could operate without disruption during the resolution.

The peak funding needs estimates should be projected for each U.S. IHC subsidiary and cover the length of time the firm expects it would take to stabilize that U.S. IHC subsidiary. Inter-affiliate funding frictions should be taken into account in the estimation process.

The firm's forecasts of MOL and peak funding needs should ensure that U.S. IHC subsidiaries could operate through resolution consistent with regulatory

requirements, market expectations, and the firm's post-failure strategy. These forecasts should inform the RLEN estimate, *i.e.*, the minimum amount of high-quality liquid assets (HQLA) required to facilitate the execution of the firm's strategy for the U.S. IHC subsidiaries.

For non-surviving U.S. IHC subsidiaries, the firm should provide analysis and an explanation of how the material entity's resolution could be accomplished within a reasonable period of time and in a manner that substantially mitigates the risk of serious adverse effects on U.S. financial stability. For example, if a U.S. IHC subsidiary that is a broker-dealer is assumed to fail and enter resolution under the Securities Investor Protection Act, the firm should provide an analysis of the potential impacts on funding and asset markets and on prime brokerage clients, bearing in mind the objective of an orderly resolution.

IV. Governance Mechanisms

A firm should identify the governance mechanisms that would ensure that communication and coordination occurs between the boards of the U.S. IHC or a U.S. IHC subsidiary and the foreign parent to facilitate the provision of financial support, or if not forthcoming, any preparatory resolution-related actions to facilitate an orderly resolution.

Playbooks: Governance playbooks should detail the board and senior management actions of U.S. non-branch material entities that would be needed under the firm's U.S. resolution strategy. The governance playbooks should also include a discussion of (A) the firm's proposed U.S. communications strategy, both internal and external;¹¹ (B) the fiduciary responsibilities of the applicable board(s) of directors or other similar governing bodies and how planned actions would be consistent with such responsibilities applicable at the time actions are expected to be taken; (C) potential conflicts of interest, including interlocking boards of directors; (D) any employee retention policy; and (E) any other limitations on the authority of the U.S. IHC and the U.S. IHC subsidiary boards and senior management to implement the U.S. resolution strategy. All responsible parties and timeframes for action should be identified. Governance playbooks should be updated periodically for each entity whose governing body would

¹¹ External communications include those with U.S. and foreign authorities and other external stakeholders.

need to act under the firm's U.S. resolution strategy.

In order to meet liquidity needs at the U.S. non-branch material entities, the firm may either fully pre-position liquidity in the U.S. non-branch material entities or develop a mechanism for planned foreign parent support, of any amount not pre-positioned, for the successful execution of the U.S. strategy. Mechanisms to support readily available liquidity may include a term liquidity facility between the U.S. IHC and the foreign parent that can be drawn as needed and as informed by the firm's RLEN estimates and liquidity positioning. The plan should include analysis of how the U.S. IHC/foreign parent facility is funded or buffered for by the foreign parent. The sufficiency of the liquidity should be informed by the firm's RLEN estimate for the U.S. non-branch material entities.

V. Operational

Payment, Clearing, and Settlement Activities

Framework. Maintaining continuity of payment, clearing, and settlement (PCS) services is critical for the orderly resolution of firms that are either users or providers,¹² or both, of PCS services. A firm should demonstrate capabilities for continued access to PCS services essential to an orderly resolution under its U.S. resolution strategy through a framework to support such access by:

- Identifying clients,¹³ financial market utilities (FMUs), and agent banks as key from the firm's perspective for the firm's U.S. material entities, identified critical operations, and core business lines, using both quantitative (volume and value)¹⁴ and qualitative criteria;

¹² A firm is a user of PCS services if it accesses PCS services through an agent bank or it uses the services of an FMU through its membership in that FMU or through an agent bank. A firm is a provider of PCS services if it provides PCS services to clients as an agent bank or it provides clients with access to an FMU or agent bank through the firm's membership in or relationship with that service provider. A firm is also a provider if it provides clients with PCS services through the firm's own operations in the United States (*e.g.*, payment services or custody services).

¹³ For purposes of this section V, a client is an individual or entity, including affiliates of the firm, to whom the firm provides PCS services and, if credit or liquidity is offered, any related credit or liquidity offered in connection with those services.

¹⁴ In identifying entities as key, examples of quantitative criteria may include: For a client, transaction volume/value, market value of exposures, assets under custody, usage of PCS services, and if credit or liquidity is offered, any extension of related intraday credit or liquidity; for an FMU, the aggregate volumes and values of all transactions processed through such FMU; and for an agent bank, assets under custody, the value of

- Mapping U.S. material entities, identified critical operations, core business lines, and key clients of the firm's U.S. operations to both key FMUs and key agent banks; and

- Developing a playbook for each key FMU and key agent bank essential to an orderly resolution under its U.S. resolution strategy that reflects the firm's role(s) as a user and/or provider of PCS services.

The framework should address direct relationships (e.g., a firm's direct membership in an FMU, a firm's provision of clients with PCS services through its own operations in the United States, or a firm's contractual relationship with an agent bank) and indirect relationships (e.g., a firm's provision of clients with access to the relevant FMU or agent bank through the firm's membership in or relationship with that FMU or agent bank, or a firm's U.S. affiliate and branch provision of U.S. material entities and key clients of the firm's U.S. operations with access to an FMU or agent bank). The framework also should address the potential impact of any disruption to, curtailment of, or termination of such direct and indirect relationships on the firm's U.S. material entities, identified critical operations, and core business lines, as well as any corresponding impact on key clients of the firm's U.S. operations.

Playbooks for Continued Access to PCS Services. The firm is expected to provide a playbook for each key FMU and key agent bank that addresses considerations that would assist the firm and key clients of the firm's U.S. operations in maintaining continued access to PCS services in the period leading up to and including the firm's resolution under its U.S. resolution strategy. Each playbook should provide analysis of the financial and operational impact of adverse actions that may be taken by a key FMU or a key agent bank and contingency actions that may be taken by the firm. Each playbook also should discuss any possible alternative arrangements that would allow continued access to PCS services for the firm's U.S. material entities, identified critical operations and core business lines, and key clients of the firm's U.S. operations, while the firm is in resolution under its U.S. resolution strategy. The firm is not expected to incorporate a scenario in which it loses key FMU or key agent bank access into its U.S. resolution strategy or its RLEN and RCEN estimates. The firm should continue to engage with key FMUs, key agent banks, and key clients of the

cash and securities settled, and extensions of intraday credit.

firm's U.S. operations, and playbooks should reflect any feedback received during such ongoing outreach.

Content Related to Users of PCS Services. Individual key FMU and key agent bank playbooks should include:

- Descriptions of the firm's relationship as a user, including through indirect access, with the key FMU or key agent bank and the identification and mapping of PCS services to the firm's U.S. material entities, identified critical operations, and core business lines that use those PCS services;

- Discussion of the potential range of adverse actions that may be taken by that key FMU or key agent bank when the firm is in resolution under its U.S. resolution strategy,¹⁵ the operational and financial impact of such actions on the firm's U.S. material entities, identified critical operations, and core business lines, and contingency arrangements that may be initiated by the firm in response to potential adverse actions by the key FMU or key agent bank; and

- Discussion of PCS-related liquidity sources and uses in business-as-usual (BAU), in stress, and in the resolution period, presented by currency type (with U.S. dollar equivalent) and by U.S. material entity.

- *PCS Liquidity Sources:* These may include the amounts of intraday extensions of credit, liquidity buffer, inflows from FMU participants, and prefunded amounts of key clients of the firm's U.S. operations in BAU, in stress, and in the resolution period. The playbook also should describe intraday credit arrangements (e.g., facilities of the key FMU, key agent bank, or a central bank) and any similar custodial arrangements that allow ready access to a firm's funds for PCS-related key FMU and key agent bank obligations (including margin requirements) in all currencies relevant to the firm's participation, including placements of firm liquidity at central banks, key FMUs, and key agent banks.

- *PCS Liquidity Uses:* These may include margin and prefunding by the firm and key clients of the firm's U.S. operations, and intraday extensions of credit, including incremental amounts required during resolution.

- *Intraday Liquidity Inflows and Outflows:* The playbook should describe the firm's ability to control intraday liquidity inflows and outflows and to identify and prioritize time-specific payments. The playbook also should

¹⁵ Examples of potential adverse actions may include increased collateral and margin requirements and enhanced reporting and monitoring.

describe any account features that might restrict the firm's ready access to its liquidity sources.

*Content Related to Providers of PCS Services.*¹⁶ Individual key FMU and key agent bank playbooks should include:

- Identification and mapping of PCS services to the firm's U.S. material entities, identified critical operations, and core business lines that provide those PCS services, and a description of the scale and the way in which each provides PCS services;

- Identification and mapping of PCS services to key clients of the firm's U.S. operations to whom the firm's U.S. material entities, identified critical operations, and core business lines provide such PCS services and any related credit or liquidity offered in connection with such services;

- Discussion of the potential range of firm contingency arrangements available to minimize disruption to the provision of PCS services to key clients of the firm's U.S. operations, including the viability of transferring activity and any related assets of key clients of the firm's U.S. operations, as well as any alternative arrangements that would allow the key clients of the firm's U.S. operations continued access to PCS services if the firm could no longer provide such access (e.g., due to the firm's loss of key FMU or key agent bank access), and the financial and operational impacts of such arrangements from the firm's perspective;

- Descriptions of the range of contingency actions that the firm may take concerning its provision of intraday credit to key clients of the firm's U.S. operations, including analysis quantifying the potential liquidity the firm could generate by taking such actions in stress and in the resolution period, such as (i) requiring key clients of the firm's U.S. operations to designate or appropriately pre-position liquidity, including through prefunding of settlement activity, for PCS-related key FMU and key agent bank obligations at specific material entities of the firm (e.g., direct members of key FMUs) or any similar custodial arrangements that allow ready access to funds for such obligations in all relevant currencies of key clients of the firm's U.S. operations; (ii) delaying or restricting PCS activity

¹⁶ Where a firm is a provider of PCS services through the firm's own operations in the United States, the firm is expected to produce a playbook for the U.S. material entities that provide those services, addressing each of the items described under "Content Related to Providers of PCS Services," which include contingency arrangements to permit the firm's key clients of the firm's U.S. operations to maintain continued access to PCS services.

of key clients of the firm's U.S. operations; and (iii) restricting, imposing conditions upon (e.g., requiring collateral), or eliminating the provision of intraday credit or liquidity to key clients of the firm's U.S. operations; and

- Descriptions of how the firm will communicate to key clients of the firm's U.S. operations the potential impacts of implementation of any identified contingency arrangements or alternatives, including a description of the firm's methodology for determining whether any additional communication should be provided to some or all key clients of the firm's U.S. operations (e.g., due to BAU usage of that access and/or related intraday credit or liquidity of the key client of the firm's U.S. operations), and the expected timing and form of such communication.

Capabilities. Firms are expected to have and describe capabilities to understand, for each U.S. material entity, its obligations and exposures associated with PCS activities, including contractual obligations and commitments. For example, firms should be able to:

- Track the following items by U.S. material entity and, with respect to customers, counterparties, and agents and service providers, by location/jurisdiction:

- PCS activities, with each activity mapped to the relevant material entities and core business lines;¹⁷

- Customers and counterparties for PCS activities, including values and volumes of various transaction types, as well as used and unused capacity for all lines of credit;¹⁸

- Exposures to and volumes transacted with FMUs, nostro agents, and custodians; and¹⁹

- Services provided and service level agreements, as applicable, for other current agents and service providers (internal and external).²⁰

- Assess the potential effects of adverse actions by FMUs, nostro agents, custodians, and other agents and service providers, including suspension or termination of membership or services, on the firm's U.S. operations and customers and counterparties of those U.S. operations;²¹

- Develop contingency arrangements in the event of such adverse actions;²² and

- Quantify the liquidity needs and operational capacity required to meet all

PCS obligations, including any change in demand for and sources of liquidity needed to meet such obligations.

Managing, Identifying, and Valuing Collateral: The firm is expected to have and describe its capabilities to manage, identify, and value the collateral that the U.S. non-branch material entities receive from and post to external parties and affiliates. Specifically, the firm should:

- Be able to query and provide aggregate statistics for all qualified financial contracts concerning cross-default clauses, downgrade triggers, and other key collateral-related contract terms—not just those terms that may be impacted in an adverse economic environment—across contract types, business lines, legal entities, and jurisdictions;

- Be able to track both firm collateral sources (i.e., counterparties that have pledged collateral) and uses (i.e., counterparties to whom collateral has been pledged) at the CUSIP level on at least a t+1 basis;

- Have robust risk measurements for cross-entity and cross-contract netting, including consideration of where collateral is held and pledged;

- Be able to identify CUSIP and asset class level information on collateral pledged to specific central counterparties by legal entity on at least a t+1 basis;

- Be able to track and report on inter-branch collateral pledged and received on at least a t+1 basis and have clear policies explaining the rationale for such inter-branch pledges, including any regulatory considerations; and
- Have a comprehensive collateral management policy that outlines how the firm as a whole approaches collateral and serves as a single source for governance.²³

In addition, as of the conclusion of any business day, the firm should be able to:

- Identify the legal entity and geographic jurisdiction where counterparty collateral is held;
- Document all netting and re-hypothecation arrangements with affiliates and external parties, by legal entity; and

- Track and manage collateral requirements associated with counterparty credit risk exposures between affiliates, including foreign branches.

At least on a quarterly basis, the firm should be able to:

- Review the material terms and provisions of International Swaps and

Derivatives Association Master Agreements and the Credit Support Annexes, such as termination events, for triggers that may be breached as a result of changes in market conditions;

- Identify legal and operational differences and potential challenges in managing collateral within specific jurisdictions, agreement types, counterparty types, collateral forms, or other distinguishing characteristics; and
- Forecast changes in collateral requirements and cash and non-cash collateral flows under a variety of stress scenarios.

Shared and Outsourced Services: The firm should maintain a fully actionable implementation plan to ensure the continuity of shared services that support identified critical operations²⁴ and robust arrangements to support the continuity of shared and outsourced services, including, without limitation, appropriate plans to retain key personnel relevant to the execution of the firm's strategy. If a material entity provides shared services that support identified critical operations,²⁵ and the continuity of these shared services relies on the assumed cooperation, forbearance, or other non-intervention of regulator(s) in any jurisdiction, the Plan should discuss the extent to which the resolution or insolvency of any other group entities operating in that same jurisdiction may adversely affect the assumed cooperation, forbearance, or other regulatory non-intervention. If a material entity providing shared services that support identified critical operations is located outside of the United States, the Plan should discuss how the firm will ensure the operational continuity of such shared services through resolution.

The firm should (A) maintain an identification of all shared services that support identified critical operations; (B) maintain a mapping of how/where these services support U.S. core business lines and identified critical operations; (C) incorporate such mapping into legal entity rationalization criteria and implementation efforts; and (D) mitigate identified continuity risks through establishment of service-level agreements (SLAs) for all critical shared services.

SLAs should fully describe the services provided, reflect pricing considerations on an arm's-length basis where appropriate, and incorporate

²⁴ "Shared services that support identified critical operations" or "critical shared services" are those that support identified critical operations conducted in whole or in material part in the United States.

²⁵ This should be interpreted to include data access and intellectual property rights.

¹⁷ 12 CFR 243.5(e)(12); 12 CFR 381.5(e)(12).

¹⁸ *Id.*

¹⁹ 12 CFR 252.156(g).

²⁰ 12 CFR 243.5(f)(1)(i); 12 CFR 381.5(f)(1)(i).

²¹ 12 CFR 252.156(e).

²² *Id.*

²³ The policy may reference subsidiary or related policies already in place, as implementation may differ based on business line or other factors.

appropriate terms and conditions to (A) prevent automatic termination upon certain resolution-related events and (B) achieve continued provision of such services during resolution.²⁶ The firm should also store SLAs in a central repository or repositories located in or immediately accessible from the U.S. at all times, including in resolution (and subject to enforceable access arrangements) in a searchable format. In addition, the firm should ensure the financial resilience of internal shared service providers by maintaining working capital for six months (or through the period of stabilization as required in the firm's U.S. resolution strategy) in such entities sufficient to cover contract costs, consistent with the U.S. resolution strategy. The firm should demonstrate that such working capital is held in a manner that ensures its availability for its intended purpose.

The firm should identify all service providers and critical outsourced services that support identified critical operations and identify any that could not be promptly substituted. The firm should (A) evaluate the agreements governing these services to determine whether there are any that could be terminated upon commencement of any resolution despite continued performance; and (B) update contracts to incorporate appropriate terms and conditions to prevent automatic termination upon commencement of any resolution proceeding and facilitate continued provision of such services. Relying on entities projected to survive during resolution to avoid contract termination is insufficient to ensure continuity. In the Plan, the firm should document the amendment of any such agreements governing these services. The Plan must also discuss arrangements to ensure the operational continuity of shared services that support identified critical operations in resolution in the event of the disruption of those shared services.

A firm is expected to have robust arrangements in place for the continued provision of shared or outsourced services needed to maintain identified critical operations. For example, firms should:

- Evaluate internal and external dependencies and develop documented strategies and contingency arrangements for the continuity or replacement of the shared and outsourced services that are necessary to maintain identified critical

operations.²⁷ Examples may include personnel, facilities, systems, data warehouses, and intellectual property; and

- Maintain current cost estimates for implementing such strategies and contingency arrangements.

VI. Branches

Continuity of Operations: If the Plan assumes that federal or state regulators, as applicable, do not take possession of any U.S. branch that is a material entity, the Plan must support that assumption.

For any U.S. branch that is significant to the activities of an identified critical operation, the Plan should describe and demonstrate how the branch would continue to facilitate FMU access for identified critical operations and meet funding needs. Such a U.S. branch would also be required to describe how it would meet supervisory requirements imposed by state regulators or the appropriate Federal banking agency, as appropriate, including maintaining a net due to position and complying with heightened asset maintenance requirements.²⁸ In addition, the plan should describe how such a U.S. branch's third-party creditors would be protected such that the state regulator or appropriate Federal banking agency would allow the branch to continue operations.

Impact of the Cessation of Operations: The firm must provide an analysis of the impact of the cessation of operations of any U.S. branch that is significant to the activities of an identified critical operation on the firm's FMU access and identified critical operations, even if such scenario is not contemplated as part of the U.S. resolution strategy. The analysis should include a description of how identified critical operations could be transferred to a U.S. IHC subsidiary or sold in resolution, the obstacles presented by the cessation of shared services that support identified critical operations provided by any U.S. branch that is a material entity, and mitigants that could address such obstacles in a timely manner.

VII. Legal Entity Rationalization

Legal Entity Rationalization Criteria (LER Criteria): A firm should develop and implement legal entity rationalization criteria that support the firm's U.S. resolution strategy and minimize risk to U.S. financial stability in the event of resolution. LER Criteria should consider the best alignment of

legal entities and business lines to improve the resolvability of U.S. operations under different market conditions. LER Criteria should govern the corporate structure and arrangements between the U.S. subsidiaries and U.S. branches in a way that facilitates resolvability of the firm's U.S. operations as the firm's U.S. activities, technology, business models, or geographic footprint change over time.

Specifically, application of the criteria should:

(A) Ensure that the allocation of activities across the firm's U.S. branches and U.S. non-branch material entities support the firm's U.S. resolution strategy and minimize risk to U.S. financial stability in the event of resolution;

(B) Facilitate the recapitalization and liquidity support of U.S. IHC subsidiaries, as required by the firm's U.S. resolution strategy. Such criteria should include clean lines of ownership and clean funding pathways between the foreign parent, the U.S. IHC, and U.S. IHC subsidiaries;

(C) Facilitate the sale, transfer, or wind-down of certain discrete operations within a timeframe that would meaningfully increase the likelihood of an orderly resolution in the United States, including provisions for the continuity of associated services and mitigation of financial, operational, and legal challenges to separation and disposition;

(D) Adequately protect U.S. subsidiary insured depository institutions from risks arising from the activities of any nonbank U.S. subsidiaries (other than those that are subsidiaries of an insured depository institution); and

(E) Minimize complexity that could impede an orderly resolution in the United States and minimize redundant and dormant entities.

These criteria should be built into the firm's ongoing process for creating, maintaining, and optimizing the firm's U.S. structure and operations on a continuous basis.

VIII. Derivatives and Trading Activities

A Specified FBO's plan should address the following areas.

Booking Practices

A firm should have booking practices commensurate with the size, scope, and complexity of its U.S. derivatives and trading activities.²⁹ The following

²⁶ The firm should consider whether these SLAs should be governed by the laws of a U.S. state and expressly subject to the jurisdiction of a court in the U.S.

²⁷ 12 CFR 243.5(g); 12 CFR 381.5(g).

²⁸ Firms should take into consideration historical practice, by applicable regulators, regarding asset maintenance requirements imposed during stress.

²⁹ "U.S. derivatives and trading activities", means all derivatives and linked non-derivatives trading

booking practices-related capabilities should be addressed in a firm's resolution plan:

Derivatives and trading booking framework. A firm should have a comprehensive booking model framework that articulates the principles, rationales, and approach to implementing its booking practices for all of its U.S. derivatives and trading activities. The framework and its underlying components should be documented and adequately supported by internal controls (e.g., procedures, systems, processes). Taken together, the booking framework and its components should provide transparency with respect to (i) what is being booked (e.g., product, counterparty), (ii) where it is being originated and booked (e.g., legal entity), (iii) by whom it is booked (e.g., business or trading desk), (iv) why it is booked that way (e.g., drivers or rationales for that arrangement), and (v) what controls the firm has in place to monitor and manage those practices (e.g., governance or information systems).³⁰

The firm's resolution plan should include detailed descriptions of the framework and each of its material components. In particular, a firm's resolution plan should include descriptions of documented booking models covering its U.S. derivatives and trading activities.³¹ These descriptions should provide clarity with respect to the underlying booking flows (e.g., the mapping of trade flows based on multiple trade characteristics as decision points that determine on which entity a trade is directly booked and the applicability of any risk transfer arrangements). Furthermore, a firm's resolution plan should describe its end-to-end booking and reporting processes, including a description of the current scope of automation (e.g., automated trade flows, detective monitoring) of the systems controls applied to the firm's documented booking models. The plan should also discuss why the firm believes its current (or planned) scope of automation is sufficient for managing

activities conducted on behalf of the firm, its clients, or its counterparties that are booked into the firm's U.S. IHC subsidiaries and material entity branches (U.S. entities). The firm may define linked non-derivatives trading activities based on its overall business and resolution strategy.

³⁰ The description of controls should include any components of any market, credit, or liquidity risk management framework that is material to the management of the firm's U.S. derivatives and trading activities.

³¹ The booking models should represent the vast majority (e.g., 95 percent) of a firm's U.S. derivatives and trading activities, measured by, for example, trade notional and gross market value (for derivatives) and client positions and balances (for prime brokerage client accounts).

its U.S. derivatives and trading activities during the execution of its U.S. resolution strategy.³²

Derivatives and trading entity analysis and reporting. A firm should have the ability to identify, assess, and report on each U.S. entity that originates or otherwise conducts (in whole or in material part) any significant aspect of the firm's U.S. derivatives and trading activities (a derivatives or trading entity). First, the firm's resolution plan should describe its method (which may include both qualitative and quantitative criteria) for evaluating the significance of each derivatives or trading entity both with respect to the firm's current U.S. derivatives and trading activities and its U.S. resolution strategy.³³ Second, a firm's resolution plan should demonstrate (including through use of illustrative samples) the firm's ability to readily generate current derivatives or trading entity profiles that (i) cover all derivatives or trading entities, (ii) are reportable in a consistent manner, and (iii) include information regarding current legal ownership structure, business activities and volume, and risk profile of the entity (including relevant risk transfer arrangements).

U.S. Activities Monitoring

A firm should be able to assess how the management of U.S. derivatives and trading activities could be affected in the period leading up to and during the execution of its U.S. resolution strategy, including disruptions that could affect materially the funding or operations of the U.S. entities that conduct the U.S. derivatives and trading activities or their clients and counterparties. Therefore, a firm should have capabilities to provide timely transparency into the management of its U.S. derivatives and trading activities,

³² Effective preventative (up-front) and detective (post-booking) controls embedded in a firm's booking processes can help avoid and/or timely remediate trades that do not align with a documented booking model or related risk limit. Firms typically use a combination of manual and automated control functions. Although automation may not be best suited for all control functions, as compared to manual methods, it can improve consistency and traceability with respect to booking practices. However, non-automated methods also can be effective when supported by other internal controls (e.g., robust detective monitoring, escalation protocols).

³³ The firm should leverage any existing methods and criteria it uses for other entity assessments (e.g., legal entity rationalization or the prepositioning of internal loss-absorbing resources). The firm's method for determining the significance of derivatives or trading entities may diverge from the parameters for material entity designation under the Rule (i.e., entities significant to the activities of an identified critical operation or core business line); however, any differences should be adequately supported and explained.

in the period leading up to and during the execution of its U.S. resolution strategy by maintaining a monitoring framework for U.S. derivatives and trading activities, which consists of at least the following two components:

1. A method for identifying U.S. derivatives and trading activities, and measuring, monitoring, and reporting on those activities on a business line and legal entity basis; and
2. A method for identifying, assessing, and reporting the potential impact on (i) clients and counterparties of U.S. entities that conduct the U.S. derivatives and trading activities and (ii) any related risk transfer arrangements³⁴ among and between U.S. entities and their non-U.S. affiliates.

Prime Brokerage Customer Account Transfers

A firm should have the operational capacity to facilitate the orderly transfer of U.S. prime brokerage accounts,³⁵ to peer prime brokers in periods of material financial distress and during the execution of its U.S. resolution strategy. The firm's plan should include an assessment of how it would transfer such accounts. This assessment should be informed by clients' relationships with other prime brokers, the use of automated and manual transaction processes, clients' overall long and short positions as facilitated by the firm, and the liquidity of clients' portfolios. The assessment should also analyze the risks and loss mitigants of customer-to-customer internalization (e.g., the inability to fund customer longs with customer shorts) and operational challenges (including insufficient staffing) that the firm may experience in effecting the scale and speed of prime brokerage account transfers envisioned under the firm's U.S. resolution strategy.

In addition, a firm should describe and demonstrate its ability to segment and analyze the quality and composition of U.S. prime brokerage account balances based on a set of well-defined and consistently applied segmentation criteria (e.g., size, single-prime, platform, use of leverage, non-rehypothecatable securities, liquidity of underlying assets). The capabilities should cover U.S. prime brokerage account balances and the resulting segments should represent a range in

³⁴ For example, risk transfer arrangements might include transfer pricing, profit sharing, loss limiting, or intragroup hedging arrangements.

³⁵ "U.S. prime brokerage account" or "U.S. prime brokerage account balances" should include the account positions and balances of a client of the firm's U.S. prime brokerage business who signs a prime brokerage agreement with a U.S. material entity.

potential transfer speed (e.g., from fastest to longest to transfer, from most liquid to least liquid). The selected segmentation criteria should reflect characteristics³⁶ that the firm believes could affect the speed at which the U.S. prime brokerage account would be transferred to an alternate prime broker.

Portfolio Segmentation

A firm should have the capabilities to produce analysis that reflects derivatives portfolio³⁷ segmentation and differentiation of assumptions, taking into account trade-level characteristics. More specifically, a firm should have systems capabilities that would allow it to produce a spectrum of derivatives portfolio segmentation analysis using multiple segmentation dimensions for each U.S. entity with a derivatives portfolio—namely, (1) trading desk or product, (2) cleared vs. clearable vs. non-clearable trades, (3) counterparty type, (4) currency, (5) maturity, (6) level of collateralization, and (7) netting set.³⁸ A firm should also have the capabilities to segment and analyze the full contractual maturity (run-off) profile of the derivatives portfolios in its U.S. entities. The firm's resolution plan should describe and demonstrate the firm's ability to segment and analyze the derivatives portfolios booked into its U.S. entities using the relevant segmentation dimensions and to report the results of such segmentation and analysis.

Derivatives Stabilization and De-Risking Strategy

To the extent the U.S. resolution strategy assumes the continuation of a U.S. IHC subsidiary with a derivatives portfolio after the entry of the U.S. IHC into a U.S. bankruptcy proceeding (surviving derivatives subsidiary), the firm's plan should provide a detailed analysis of the strategy to stabilize and de-risk any derivatives portfolio of the surviving derivatives subsidiary (U.S. derivatives strategy) that has been incorporated into its U.S. resolution strategy.³⁹ In developing its U.S.

derivatives strategy, a firm should apply the following assumption constraints:

- *OTC derivatives market access:* At or before the start of the resolution period, each surviving derivatives subsidiary should be assumed to lack an investment grade credit rating (e.g., unrated or downgraded below investment grade). Each surviving derivatives subsidiary also should be assumed to have failed to establish or reestablish investment grade status for the duration of the resolution period, unless the plan provides well-supported analysis to the contrary. As the subsidiary is not investment grade, it further should be assumed that each surviving derivatives subsidiary has no access to bilateral OTC derivatives markets and must use exchange-traded or centrally cleared instruments for any new hedging needs that arise during the resolution period. Nevertheless, a firm may assume the ability to engage in certain risk-reducing derivatives trades with bilateral OTC derivatives counterparties during the resolution period to facilitate novations with third parties and to close out inter-affiliate trades.⁴⁰

- *Early exits (break clauses):* A firm should assume that counterparties (both external and affiliates) will exercise any contractual termination or other right, including any rights stayed by contract (including amendments) or in compliance with the rules establishing restrictions on qualified financial contracts of the Board, the FDIC, or the Office of the Comptroller of the Currency⁴¹ or any other regulatory requirements, (i) that is available to the counterparty at or following the start of

(e.g., active wind-down) or an alternative, third strategy so long as the firm's resolution plan adequately supports the execution of the chosen strategy. For example, a firm may choose a going-concern scenario (e.g., surviving derivatives subsidiary reestablishes investment grade status and does not enter any wind-down) as its derivatives strategy. Likewise, a firm may choose to adopt a combination of going-concern and accelerated de-risking scenarios as its U.S. derivatives strategy. For example, the U.S. derivatives strategy could be a stabilization scenario for the U.S. bank entity and an accelerated de-risking scenario for U.S. broker-dealer entities.

⁴⁰ A firm may engage in bilateral OTC derivatives trades with, for example, (i) external counterparties, to effect the novation of the firm's side of a derivatives contract to a new, acquiring counterparty; and (ii) inter-affiliate counterparties, where the trades with inter-affiliate counterparties do not materially increase either the credit exposure of any participating counterparty or the market risk of any such counterparty on a standalone basis, after taking into account any hedging with exchange-traded and centrally cleared instruments. The firm should provide analysis to support the risk of the trade on the basis of information that would be known to the firm at the time of the transaction.

⁴¹ See 12 CFR part 47 (OCC); part 252, subpart I (Board); part 382 (FDIC).

the resolution period; and (ii) if exercising such right would economically benefit the counterparty (counterparty-initiated termination).

- *Time horizon:* The duration of the resolution period should be between 12 and 24 months. The resolution period begins immediately after the U.S. IHC bankruptcy filing and extends through the completion of the U.S. resolution strategy.⁴²

A firm's analysis of its U.S. derivatives strategy should take into account (i) the starting profile of any derivatives portfolio of each surviving derivatives subsidiary (e.g., nature, concentration, maturity, clearability, liquidity of positions); (ii) the profile and function of any surviving derivatives subsidiary during the resolution period; (iii) the means, challenges, and capacity of the surviving derivatives subsidiary to manage and de-risk its derivatives portfolios (e.g., method for timely segmenting, packaging, and selling the derivatives positions; challenges with novating less liquid positions; re-hedging strategy); (iv) the financial and operational resources required to effect the derivatives strategy; and (v) any potential residual portfolio (further discussed below). In addition, the firm's resolution plan should address the following areas in the analysis of its derivatives strategy:

Forecasts of resource needs. The forecasts of capital and liquidity resource needs of U.S. IHC subsidiaries required to support adequately the firm's U.S. derivatives strategy should be incorporated into the firm's RCEN and RLEN estimates for its overall U.S. resolution strategy. These include, for example, the costs and liquidity flows resulting from (i) the close-out of OTC derivatives, (ii) the hedging of derivatives portfolios, (iii) the quantified losses that could be incurred due to basis and other risks that would result from hedging with only exchange-traded and centrally cleared instruments in a severely adverse stress environment, and (iv) operational costs.⁴³

Sensitivity analysis. A firm should have a method to apply sensitivity

⁴² The firm may consider a resolution period of less than 12 months as long as the length of the resolution period is adequately supported by the firm's analysis of the size, composition, complexity, and maturity profile of the derivatives portfolios in its U.S. IHC subsidiaries.

⁴³ A firm may choose not to isolate and separately model the operational costs solely related to executing its derivatives strategy. However, the firm should provide transparency around operational cost estimation at a more granular level than material entity (e.g., business line level within a material entity, subject to wind-down).

³⁶ For example, relevant characteristics might include product, size, clearability, currency, maturity, level of collateralization, and other risk characteristics.

³⁷ A firm's derivatives portfolios include its derivatives positions and linked non-derivatives trading positions.

³⁸ The enumerated segmentation dimensions are not intended as an exhaustive list of relevant dimensions. With respect to any product or asset class, a firm may have reasons for not capturing data on (or not using) one or more of the enumerated segmentation dimensions. In that case, however, the firm should explain those reasons.

³⁹ Subject to the relevant constraints, a firm's U.S. derivatives strategy may take the form of a going-concern strategy, an accelerated de-risking strategy

analyses to the key drivers of the derivatives-related costs and liquidity flows under its U.S. resolution strategy. A firm's resolution plan should describe its method for (i) evaluating the materiality of assumptions and (ii) identifying those assumptions (or combinations of assumptions) that constitute the key drivers for its forecasts of derivatives-related operational and financial resource needs under the U.S. resolution strategy. In addition, using its U.S. resolution strategy as a baseline, the firm's resolution plan should describe and demonstrate its approach to testing the sensitivities of the identified key drivers and the potential impact on its forecasts of resource needs.⁴⁴

Potential residual derivatives portfolio. A firm's resolution plan should include a method for estimating the composition of any potential residual derivatives portfolio transactions booked in a U.S. IHC subsidiary remaining at the end of the resolution period under its U.S. resolution strategy. The firm's plan also should provide detailed descriptions of the trade characteristics used to identify such potential residual portfolio and of the resulting trades (or categories of trades).⁴⁵ A firm should assess the risk profile of such potential residual portfolio (including its anticipated size, composition, complexity, and counterparties), and the potential counterparty and market impacts of non-performance by the firm on the stability of U.S. financial markets (e.g., on funding markets, on underlying asset markets, on clients and counterparties).

Non-surviving entity analysis. To the extent the U.S. resolution strategy assumes a U.S. IHC subsidiary with a derivatives portfolio enters its own resolution proceeding after the entry of the U.S. IHC into a U.S. bankruptcy proceeding (a non-surviving derivatives subsidiary), the firm should provide a detailed analysis of how the non-surviving derivatives subsidiary's resolution can be accomplished within a reasonable period of time and in a manner that substantially mitigates the

risk of serious adverse effects on U.S. financial stability and on the orderly execution of the firm's U.S. resolution strategy. In particular, the firm should provide an analysis of the potential impacts on funding markets, on underlying asset markets, on clients and counterparties (including affiliates), and on the firm's U.S. resolution strategy.

IX. Format and Structure of Plans

Format of Plan

Executive Summary. The Plan should contain an executive summary consistent with the Rule, which must include, among other things, a concise description of the key elements of the firm's U.S. strategy for an orderly resolution. In addition, the executive summary should include a discussion of the firm's assessment of any impediments to the firm's U.S. resolution strategy and its execution, as well as the steps it has taken to address any identified impediments.

Narrative. The Plan should include a strategic analysis consistent with the Rule. This analysis should take the form of a concise narrative that enhances the readability and understanding of the firm's discussion of its U.S. strategy for orderly resolution in bankruptcy or other applicable insolvency regimes (Narrative). The Narrative also should include a high-level discussion of how the firm is addressing key vulnerabilities jointly identified by the Agencies. This is not an exhaustive list and does not preclude identification of further vulnerabilities or impediments.

Appendices. The Plan should contain a sufficient level of detail and analysis to substantiate and support the strategy described in the Narrative. Such detail and analysis should be included in appendices that are distinct from and clearly referenced in the related parts of the Narrative (Appendices).

Public Section. The Plan must be divided into a public section and a confidential section consistent with the requirements of the Rule.

Other Informational Requirements. The Plan must comply with all other informational requirements of the Rule. The firm may incorporate by reference previously submitted information as provided in the Rule.

Guidance Regarding Assumptions

1. The Plan should be based on the current state of the applicable legal and policy frameworks. Pending legislation or regulatory actions may be discussed as additional considerations.

2. The firm must submit a plan that does not rely on the provision of extraordinary support by the United

States or any other government to the firm or its subsidiaries to prevent the failure of the firm.

3. The firm should not assume that it will be able to sell identified critical operations or core business lines, or that unsecured funding will be available immediately prior to filing for bankruptcy.

4. The Plan should assume the Dodd-Frank Act Stress Test (DFAST) severely adverse scenario for the first quarter of the calendar year in which the Plan is submitted is the domestic and international economic environment at the time of the firm's failure and throughout the resolution process.

5. The resolution strategy may be based on an idiosyncratic event or action. The firm should justify use of that assumption, consistent with the conditions of the economic scenario.

6. Within the context of the applicable idiosyncratic scenario, markets are functioning and competitors are in a position to take on business. If a firm's Plan assumes the sale of assets, the firm should take into account all issues surrounding its ability to sell in market conditions present in the applicable economic condition at the time of sale (i.e., the firm should take into consideration the size and scale of its operations as well as issues of separation and transfer.)

7. The firm should not assume any waivers of section 23A or 23B of the Federal Reserve Act in connection with the actions proposed to be taken prior to or in resolution.

8. The firm may assume that its depository institutions will have access to the Discount Window only for a few days after the point of failure to facilitate orderly resolution. However, the firm should not assume its subsidiary depository institutions will have access to the Discount Window while critically undercapitalized, in FDIC receivership, or operating as a bridge bank, nor should it assume any lending from a Federal Reserve credit facility to a non-bank affiliate.

Financial Statements and Projections

The Plan should include the actual balance sheet for each material entity and the consolidating balance sheet adjustments between material entities as well as pro forma balance sheets for each material entity at the point of failure and at key junctures in the execution of the resolution strategy. It should also include projected statements of sources and uses of funds for the interim periods. The pro forma financial statements and accompanying notes in the Plan must clearly evidence the failure trigger event; the Plan's

⁴⁴ For example, key drivers of derivatives-related costs and liquidity flows might include the timing of derivatives unwind, cost of capital-related assumptions (e.g., target return on equity, discount rate, weighted average life, capital constraints, tax rate), operational cost reduction rate, and operational capacity for novations. Other examples of key drivers likely also include central counterparty margin flow assumptions and risk-weighted asset forecast assumptions.

⁴⁵ If, under the firm's U.S. resolution strategy, any derivatives portfolios are transferred during the resolution period by way of a line of business sale (or similar transaction), then those portfolios nonetheless should be included within the firm's potential residual portfolio analysis.

assumptions; and any transactions that are critical to the execution of the Plan's preferred strategy, such as recapitalizations, the creation of new legal entities, transfers of assets, and asset sales and unwinds.

Material Entities

Material entities should encompass those entities, including subsidiaries, branches and agencies (collectively, Offices), which are significant to the activities of an identified critical operation or core business line. If the abrupt disruption or cessation of a core business line might have systemic consequences to U.S. financial stability, the entities essential to the continuation of such core business line should be considered for material entity designation. Material entities should include the following types of entities:

a. Any Office, wherever located, that is significant to the activities of an identified critical operation.

b. Any Office, wherever located, whose provision or support of global treasury operations, funding, or liquidity activities (inclusive of intercompany transactions) is significant to the activities of an identified critical operation.

c. Any Office, wherever located, that would provide material operational support in resolution (key personnel, information technology, data centers, real estate or other shared services) to the activities of an identified critical operation.

d. Any Office, wherever located, that is engaged in derivatives booking activity that is significant to the activities of an identified critical operation, including those that conduct either the internal hedge side or the client-facing side of a transaction.

e. Any Office, wherever located, engaged in asset custody or asset management that are significant to the activities of an identified critical operation.

f. Any Office, wherever located, holding licenses or memberships in clearinghouses, exchanges, or other FMUs that are significant to the activities of an identified critical operation.

For each material entity (including a branch), the Plan should enumerate, on a jurisdiction-by-jurisdiction basis, the specific mandatory and discretionary actions or forbearances that regulatory and resolution authorities would take during resolution, including any regulatory filings and notifications that would be required as part of the U.S. resolution strategy, and explain how the Plan addresses the actions and forbearances. The Plan should describe

the consequences for the firm's U.S. resolution strategy if specific actions in each jurisdiction were not taken, delayed, or forgone, as relevant.

X. Public Section

The purpose of the public section is to inform the public's understanding of the firm's resolution strategy and how it works.

The public section should discuss the steps that the firm is taking to improve resolvability under the U.S. Bankruptcy Code. The public section should provide background information on each material entity and should be enhanced by including the firm's rationale for designating material entities. The public section should also discuss, at a high level, the firm's intra-group financial and operational interconnectedness (including the types of guarantees or support obligations in place that could impact the execution of the firm's strategy). There should also be a high-level discussion of the liquidity resources and loss-absorbing capacity of the U.S. IHC.

The discussion of strategy in the public section should broadly explain how the firm has addressed any deficiencies, shortcomings, and other key vulnerabilities that the Agencies have identified in prior Plan submissions. For each material entity, it should be clear how the strategy provides for continuity, transfer, or orderly wind-down of the entity and its operations. There should also be a description of the resulting organization upon completion of the resolution process.

The public section may note that the resolution plan is not binding on a bankruptcy court or other resolution authority and that the proposed failure scenario and associated assumptions are hypothetical and do not necessarily reflect an event or events to which the firm is or may become subject.

Appendix: Frequently Asked Questions

In March 2017, the Agencies issued guidance for use in developing the 2018 resolution plan submissions by certain foreign banking organizations.

In response to frequently asked questions regarding that guidance from the recipients of that guidance, Board and FDIC staff jointly developed answers and provided those answers to the guidance recipients in 2017 so that they could take this information into account in developing their next resolution plan submissions.⁴⁶

⁴⁶ The FAQs represent the views of staff of the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation and do not bind the Board or the FDIC.

The questions in this Appendix:

- Comprise common questions asked by different covered companies. Not every question is applicable to every firm; not every aspect of the guidance applies to each firm's preferred strategy/structure; and

- Reflect updated references to correspond to this final guidance for the Specified FBOs (Final Guidance).

As indicated below, those questions and answers that are deemed to be no longer meaningful or relevant have not been consolidated in this Appendix and are superseded.

Capital

CAP 1. Not consolidated

CAP 2. Definition of "Well-Capitalized" Status

Q. How should firms apply the term "well-capitalized"?

A. U.S. non-branch material entities must comply with the capital requirements and expectations of their primary regulator. U.S. non-branch material entities should be recapitalized to meet jurisdictional requirements and to maintain market confidence as required under the U.S. resolution strategy.

CAP 3. RCEN Relationship to DFAST Severely Adverse Scenario

Q. How should the firm's RCEN and RLEN estimates relate to the DFAST Severely Adverse scenario? Can those estimates be recalibrated in actual stress conditions?

A. For resolution plan submission purposes, the estimation of RLEN and RCEN should assume macroeconomic conditions consistent with the DFAST Severely Adverse scenario. However, the RLEN and RCEN methodologies should have the flexibility to incorporate macroeconomic conditions that may deviate from the DFAST Severely Adverse scenario in order to facilitate execution of the U.S. resolution strategy.

CAP 4. Not Consolidated

Liquidity

LIQ 1. Inter-Company "Frictions"

Q. Can the Agencies clarify what kinds of frictions might occur between affiliates beyond regulatory ring-fencing?

A. Frictions are any impediments to the free flow of funds, collateral and other transactions between material entities. Examples include regulatory, legal, financial (*i.e.*, tax consequences), market, or operational constraints or requirements.

LIQ 2. Distinction between Liquidity Forecasting Periods

Q1. How long is the stabilization period?

A1. The stabilization period begins immediately after the U.S. IHC bankruptcy filing and extends until each material entity reestablishes market confidence. The stabilization period may not be less than 30 days. The reestablishment of market confidence may be reflected by the maintaining, reestablishing, or establishing of investment grade ratings or the equivalent financial condition for each entity. The stabilization period may vary by material entity, given differences in regulatory, counterparty, and other stakeholder interests in each entity.

Q2. Not Consolidated.

Q3. What is the resolution period?

A3. The resolution period begins immediately after the U.S. IHC's bankruptcy filing and extends through the completion of the U.S. strategy. After the stabilization period (see "LIQ 2. Distinction between Liquidity Forecasting Periods," Question 1, regarding "stabilization period"), financial statements and projections may be provided at quarterly intervals through the remainder of the resolution period.

LIQ 3. Inter-Affiliate Transaction Assumptions

Q. Does inter-affiliate funding refer to all kinds of intercompany transactions, including both unsecured and secured?

A. Yes.

LIQ 4. RLEN and Minimum Operating Liquidity (MOL)

Q1. How should firms distinguish liquidity (MOL) and peak funding needs during the RLEN period?

A1. The peak funding needs represent the peak cumulative net out-flows during the stabilization period. The components of peak funding needs, including the monetization of assets and other management actions, should be transparent in the RLEN projections. The peak funding needs should be supported by projections of daily sources and uses of cash for each U.S. IHC subsidiary, incorporating inter-affiliate and third-party exposures. In mathematical terms, $RLEN = MOL +$ peak funding needs during the stabilization period. RLEN should also incorporate liquidity execution needs of the U.S. resolution strategy for derivatives (see Derivatives and Trading Activities section).

Q2. Should the MOL per entity make explicit the allocation for intraday liquidity requirements, inter-affiliate and other funding frictions, operating expenses, and working capital needs?

A2. Yes, the components of the MOL estimates for each surviving U.S. IHC subsidiary should be transparent and supported.

Q3. Can MOLs decrease as surviving U.S. IHC subsidiaries wind down?

A3. MOL estimates can decline as long as they are sufficiently supported by the firm's methodology and assumptions.

LIQ 5. Not Consolidated

LIQ 6. Inter-Affiliate Transactions with Optionality

Q. How should firms treat an inter-affiliate transaction with an embedded option that may affect the contractual maturity date?

A. For the purpose of calculating a firm's net liquidity position at a material entity, the RLEN model should assume that these transactions mature at the earliest possible exercise date; this adjusted maturity should be applied symmetrically to both material entities involved in the transaction.

LIQ 7. Stabilization and Regulatory Liquidity Requirements

Q. As it relates to the RLEN model and actions necessary to re-establish market confidence, what assumptions should firms make regarding compliance with regulatory liquidity requirements?

A. Firms should consider the applicable regulatory expectations for each U.S. IHC subsidiary to achieve the stabilization needed to execute the U.S. resolution strategy. Firms' assumptions in the RLEN model regarding the actions necessary to reestablish market confidence during the stabilization period may vary by U.S. IHC subsidiary, for example, based on differences in regulatory, counterparty, other stakeholder interests, and based on the U.S. resolution strategy for each U.S. IHC subsidiary. See also "LIQ 2. Distinction between Liquidity Forecasting Periods."

LIQ 8. HQLA and Assets Not Eligible as HQLA in the RLEN Model

Q. The Final Guidance states the RLEN estimate should be based on the minimum amount of HQLA required to facilitate the execution of the firm's U.S. resolution strategy. How should firms incorporate any expected liquidity value of assets that are not eligible as HQLA (non-HQLA) into the RLEN model?

A. For a firm's RLEN model, firms may incorporate conservative estimates of potential liquidity that may be generated through the monetization of non-HQLA. The estimated liquidity value of non-HQLA should be supported by thorough analysis of the potential market constraints and asset

value haircuts that may be required. Assumptions for the monetization of non-HQLA should be consistent with the U.S. resolution strategy for each U.S. IHC subsidiary.

LIQ 9. Components of Minimum Operating Liquidity

Q. Do the agencies have particular definitions of the "intraday liquidity requirements," "operating expenses," and "working capital needs" components of minimum operating liquidity (MOL) estimates?

A. No. A firm may use its internal definitions of the components of MOL estimates. The components of MOL estimates should be well-supported by a firm's internal methodologies and calibrated to the specifics of each U.S. IHC subsidiary.

LIQ 10. RLEN Model and Net Revenue Recognition

Q. Can firms assume in the RLEN model that cash-based net revenue generated by U.S. IHC subsidiaries after the U.S. IHC's bankruptcy filing is available to offset estimated liquidity needs?

A. Yes. Firms may incorporate cash revenue generated by U.S. IHC subsidiaries in the RLEN model. Cash revenue projections should be conservatively estimated and consistent with the operating environment and the U.S. strategy for each U.S. IHC subsidiary.

LIQ 11. RLEN Model and Inter-Affiliate Frictions

Q. Can a firm modify its assumptions regarding one or more inter-affiliate frictions during the stabilization or post-stabilization period in the RLEN model?

A. Once a U.S. IHC subsidiary has achieved market confidence necessary for stabilization consistent with the U.S. resolution strategy, a firm may modify one or more inter-affiliate frictions, provided the firm provides sufficient analysis to support this assumption.

LIQ 12. RLEN Relationship to DFAST Severely Adverse scenario

(See "CAP 3. RCEN Relationship to DFAST Severely Adverse Scenario" in the Capital section.)

LIQ 13. Liquidity Positioning and Foreign Parent Support

Q1. May firms consider available liquidity at the foreign parent for meeting RLEN estimates for U.S. non-branch material entities?

A1. To meet the liquidity needs informed by the RLEN methodology, firms may either fully pre-position liquidity in the U.S. non-branch material entities or develop a mechanism for planned foreign parent support of any amount not pre-

positioned for the successful execution of the U.S. strategy. Mechanisms to support readily available liquidity may include a term liquidity facility between the U.S. IHC and the foreign parent that can be drawn as needed. If a firm's plan relies on foreign parent support, the plan should include analysis of how the U.S. IHC/foreign parent facility is funded or buffered for by the foreign parent.

LIQ 14. Not consolidated

LIQ 15. Not consolidated

LIQ 16. Not consolidated

Operational: Shared Services

OPS SS 1. Not Consolidated

OPS SS 2. Working Capital

Q1. Must working capital be maintained for third party and internal shared service costs?

A1. Where a firm maintains shared service companies to provide services to affiliates, working capital should be maintained in those entities sufficient to permit those entities to continue to provide services for six months or through the period of stabilization as required in the firm's U.S. resolution strategy.

Costs related to third-party vendors and inter-affiliate services should be captured through the working capital element of the MOL estimate (RLEN).

Q2. When does the six month working capital requirement period begin?

A2. The measurement of the six month working capital expectation begins upon the bankruptcy filing of the U.S. IHC. The expectation for maintaining the working capital is effective upon the July 2018 submission.

OPS SS 3. Not Consolidated

OPS SS 4. Not Consolidated

Operations: Payments, Clearing and Settlement

To the extent relevant, the PCS FAQs have been consolidated into the updated section of the Final Guidance.

Legal Entity Rationalization

LER 1. Not consolidated

LER 2. Legal Entity Rationalization Criteria

Q. Is it acceptable to take into account business-related criteria, in addition to the resolution requirements, so that the LER Criteria can be used for both resolution planning and business operations purposes?

A. Yes, LER criteria may incorporate both business and resolution considerations. In determining the best alignment of legal entities and business lines to improve the firm's resolvability under different market conditions, business considerations should not be prioritized over resolution needs.

LER 3. Creation of Additional Legal Entities

Q. Is the addition of legal entities acceptable, so long as it is consistent with the LER criteria?

A. Yes.

LER 4. Clean Funding Pathways

Q1. Can you provide additional context around what is meant by clean lines of ownership and clean funding pathways in the legal entity rationalization criteria? Additionally, what types of funding are covered by the requirements?

A1. The funding pathways between the foreign parent, U.S. IHC, and U.S. IHC subsidiaries should minimize uncertainty in the provision of funds and facilitate recapitalization. Also, the complexity of ownership should not impede the flow of funding to a U.S. non-branch material entity under the firm's U.S. resolution strategy. Potential sources of additional complexity could include, for example, multiple intermediate holding companies, tenor mismatches, or complicated ownership structures (including those involving multiple jurisdictions or fractional ownerships). Ownership should be as clean and simple as practicable, supporting the U.S. strategy and actionable sales, transfers, or wind-downs under varying market conditions. The clean funding pathways expectation applies to all funding provided to a U.S. non-branch material entity regardless of type and should not be viewed solely to apply to internal TLAC.

Q2. The Final Guidance regarding legal entity rationalization criteria discusses "clean lines of ownership" and "clean funding pathways." Does this statement mean that firms' legal entity rationalization criteria should require funding pathways and recapitalization to always follow lines of ownership?

A2. No. However, the firm should identify and address or mitigate any legal, regulatory, financial, operational, and other factors that could complicate the recapitalization and/or liquidity support of U.S. non-branch material entities.

LER 5. Not consolidated

LER 6. Not consolidated

LER 7. Application of Legal Entity Rationalization Criteria

Q1. Which legal entities should be covered under the LER framework?

A1. The scope of a firm's LER criteria should apply to the entire U.S. operations.

Q2. To the extent a firm has a large number of similar U.S. non-material entities (such as single-purpose entities

formed for Community Reinvestment Act purposes), may a firm apply its legal entity rationalization criteria to these entities as a group, rather than at the individual entity level?

A2. Yes.

LER 8. Application of LER Criteria.

Q. Under the Final Guidance, is there an expectation that the LER criteria be applied to the legal structure outside of the U.S. operations (e.g., outside of the U.S. IHC or U.S. branch)?

A. The LER criteria serve to govern the corporate structure and arrangements between U.S. subsidiaries and U.S. branches in a manner that facilitates the resolvability of U.S. operations. The Final Guidance is not intended to govern the corporate structure in jurisdictions outside the U.S. The application of the LER criteria should, among other things, ensure that the allocation of activities across the firm's U.S. branches and U.S. non-branch material entities support the firm's US resolution strategy and minimize risk to US financial stability in the event of resolution.

Moreover, LER works with other components to improve resolvability. For example, with regard to shared services the firm should identify all shared services that support identified critical operations, maintain a mapping of how/where these services support core business lines and identified critical operations, and include this mapping into the legal rationalization criteria and implementation efforts.

Derivatives and Trading Activities

To the extent relevant, the derivatives and trading FAQs have been consolidated into the updated section of the Final Guidance.

Legal

LEG 1. Not consolidated.

LEG 2. Contractually Binding Mechanisms

The Final Guidance does not specifically reference consideration of a contractually binding mechanism. However, the following questions and answers may be useful to a firm that chooses to consider a contractually binding mechanism as a mitigant to the potential challenges to the planned Support.

Q1. Do the Agencies have any preference as to whether capital is down-streamed to key subsidiaries (including an IDI subsidiary) in the form of capital contributions vs. forgiveness of debt?

A1. No. The Agencies do not have a preference as to the form of capital contribution or liquidity support.

Q2. Should a contractually binding mechanism relate to the provision of capital or liquidity? What classes of assets would be deemed to provide capital vs. liquidity?

A2. Contractually binding mechanism is a generic term and includes the down-streaming of capital and/or liquidity as contemplated by the U.S. resolution strategy. Furthermore, it is up to the firm, as informed by any relevant guidance of the Agencies, to identify what assets would satisfy a U.S. affiliate's need for capital and/or liquidity.

Q3. Is there a minimum acceptable duration for a contractually binding mechanism? Would an "evergreen" arrangement, renewable on a periodic basis (and with notice to the Agencies), be acceptable?

A3. To the extent a firm utilizes a contractually binding mechanism, such mechanism, including its duration, should be appropriate for the firm's U.S. resolution strategy, including adequately addressing relevant financial, operational, and legal requirements and challenges.

Q4. Not consolidated.

Q5. Not consolidated.

Q6. The firm may need to amend its contractually binding mechanism from time to time resulting potentially from changes in relevant law, new or different regulatory expectations, etc. Is a firm able to do this as long as there is no undue risk to the enforceability (e.g., no signs of financial stress sufficient to unduly threaten the agreement's enforceability as a result of fraudulent transfer)?

A6. Yes, however the Agencies should be informed of the proposed duration of the agreement, as well as any terms and conditions on renewal and/or amendment. Any amendments should be identified and discussed as part of the firm's next U.S. resolution plan submission.

Q7. Not consolidated.

Q8. Should firms include a formal regulatory trigger by which the Agencies can directly trigger a contractually binding mechanism?

A8. No

General

None of the general FAQs were consolidated.

By order of the Board of Governors of the Federal Reserve System.

Ann Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.
By order of the Board of Directors.

Dated at Washington, DC, on or about December 7, 2020.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2020-28155 Filed 12-21-20; 8:45 am]

BILLING CODE 6210-01- 6714-01-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 January 6, 2021.

A. Federal Reserve Bank of Minneapolis (Chris P. Wangen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *Steven and Laurel Klefstad, Forman, North Dakota*; to join the McLaen family shareholder group, a group acting in concert, to retain voting shares of Napoleon Bancorporation, Inc., Napoleon, North Dakota, and thereby indirectly retain voting shares of Stock Growers Bank, Forman, North Dakota.

Board of Governors of the Federal Reserve System, December 17, 2020.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2020-28199 Filed 12-21-20; 8:45 am]

BILLING CODE 6210-01-P

GENERAL SERVICES ADMINISTRATION

[Notice-PBS-2020-11; Docket No. 2020-0002; Sequence No. 41]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Master Plan for the U.S. Food and Drug Administration Muirkirk Road Campus (Prince George's County, Laurel, MD)

AGENCY: National Capital Region, General Services Administration (GSA).

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: Pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality Regulations, GSA Order, ADM 1095.1F, Environmental Considerations in Decision Making, dated October 19, 1999, and the GSA Public Buildings Service NEPA Desk Guide, GSA plans to prepare an EIS for a proposed Master Plan for the U.S. Food and Drug Administration's (FDA) Muirkirk Road Campus (MRC), in Laurel, Maryland, located in Prince George's County. The Master Plan will provide FDA with a structured framework for developing the MRC over the next 20 years.

DATES: *Applicable:* December 22, 2020.

FOR FURTHER INFORMATION CONTACT: Marshall Popkin, Office of Planning and Design Quality, Public Buildings Service, GSA, National Capital Region, at 202-919-0026.

SUPPLEMENTARY INFORMATION: The GSA intends to prepare an EIS to analyze the potential impacts resulting from the proposed Master Plan to support the FDA MRC, in Laurel, Maryland, located in Prince George's County. GSA will analyze four alternatives for the proposed MRC Master Plan: (1) No Action Alternative; (2) Development at the Mod 1/Mod 2 site; (3) Hybrid of Alternatives 2 and 4; and (4) Development at the Beltsville Research Facility site. The proposed action is anticipated to impact soils and topography; traffic and transit; water resources; vegetation; wildlife; air quality; greenhouse gases and climate; utilities; and waste management. No permits are required to adopt the Master Plan. Implementation of the Master Plan in the future could require the following permits and authorizations:

- Dredge or fill permit under Section 404 of the Clean Water Act
- Coastal Zone Management Consistency Determination
- State and local permits, including water and wastewater permits,

building permits, sediment and erosion control permits, grading permits, and stormwater management permits.

Background

In 1981, GSA completed an EIS that analyzed the impacts from the construction of new laboratory space at the MRC and the consolidation of four facilities in the Washington, DC, metro area and other sites in St. Louis, MO, and Cincinnati, OH. In 1990, Congress enacted the Food and Drug Revitalization Act that gave GSA the authority to grant contracts to consolidate FDA facilities. To accommodate future growth and further consolidate FDA operations, GSA is preparing an EIS to assess the impacts of development on the MRC and an increase in the employee population of up to approximately 1,800 employees, over a period of 20 years.

The purpose of the proposed action is to provide a Master Plan for the MRC to guide future site development. The proposed action is needed to accommodate projected growth at the MRC and provide the necessary office and laboratory space for FDA to conduct complex and comprehensive research and reviews.

Schedule for Decision-Making

A Draft EIS is expected to be released for public review in June 2021. The GSA will hold a public hearing on the impacts of the proposed action in July 2021, and will seek preliminary approval of the MRC Master Plan from the National Capital Planning Commission (NCPC) at NCPC's September 2021 hearing. A Final EIS will be prepared that will take into consideration all comments received on the Draft EIS, and a Record of Decision is anticipated in spring 2022. Pending completion of NEPA compliance and review by NCPC, GSA anticipates adopting the MRC Master Plan in spring 2022.

Scoping Process

In accordance with NEPA, a scoping process will be conducted to aid in determining the alternatives to be considered and the scope of issues to be addressed, as well as for identifying the significant issues related to the proposed MRC Master Plan. Scoping will be accomplished through a virtual public scoping meeting; direct mail correspondence to potentially interested persons, agencies, and organizations; and meetings with agencies having an interest in the Master Plan. It is important that Federal, regional, State, and local agencies, and interested

individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS.

Public Scoping Meeting

Due to the ongoing COVID-19 pandemic and state/local requirements for social distancing, a pre-recorded presentation will be available at www.gsa.gov/ncrnepa in lieu of a traditional in-person public scoping meeting. A project phone line [410-777-9537] has also been set up to listen to the presentation and to leave comments on the proposed Master Plan. The pre-recorded presentation and phone line will be available from January 4, 2021, through February 11, 2021. The GSA is publishing notices in the Washington Post and Prince George's Post announcing the meeting.

Written Comments

Agencies and the public are encouraged to provide comments on identification of potential alternatives, information, and analyses relevant to the proposed action. Comments may be provided in writing via mail or email. Verbal comments may also be provided via the project phone line. Written comments regarding the environmental analysis for the proposed MRC Master Plan must be postmarked by February 11, 2021, and sent to the following: Mr. Marshall Popkin, NEPA Compliance Specialist, Office of Planning and Design Quality, Public Buildings Service, U.S. General Services Administration, 1800 F Street NW, Room 4400, Washington, DC 20405.

Email: marshall.popkin@gsa.gov using the subject line: FDA MRC Master Plan EIS Comment.

Kristi Tunstall Williams,

Deputy Director, Office of Planning and Design Quality, Public Buildings Service, National Capital Region, U.S. General Services Administration.

[FR Doc. 2020-28212 Filed 12-21-20; 8:45 am]

BILLING CODE 6820-Y1-P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090-0163; Docket No. 2020-0001; Sequence No. 11]

Submission for OMB Review; General Services Acquisition Regulation; Information Specific to a Contract or Contracting Action (Not Required by Regulation)

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB information collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding information specific to a contract or contracting action that is not required by regulation.

DATES: Submit comments on or before: January 21, 2021.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Mr. Clarence Harrison, Procurement Analyst, GSA Acquisition Policy Division, at telephone 202-227-7051 or email GSARPolicy@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

GSA has various mission responsibilities related to the acquisition and provision of supplies, transportation, information technology, telecommunications, real property management, and disposal of real and personal property. These mission responsibilities generate requirements that are realized through the solicitation and award of public contracts.

Most GSA procurement-related information collections are required by the Federal Acquisition Regulation (FAR) or General Services Administration Acquisition Regulation (GSAR); each clause requiring such a collection must be individually approved by OMB. However, some solicitations require contractors to submit information specific to that contracting action, such as information needed to evaluate offers (e.g. specific instructions for technical and price proposals, references for past performance) or data used to administer resulting contracts (e.g. project management plans).

This information collection is currently associated with GSA's information collection requirements contained in solicitations issued in accordance with the Uniform Contract Format under FAR Part 14, Sealed Bidding (see GSAR 514.201-1); FAR

Part 15, Contracting by Negotiation (see GSAR 552.215–73); and solicitations under FAR Part 12, Acquisition of Commercial Items (see GSAR 512.301). This includes information collection requirements found in GSA Federal Supply Schedule (FSS) solicitations.

B. Annual Reporting Burden

Respondents: 2,597,377.

Responses per Respondent: 1.

Total Responses: 2,597,377.

Hours Per Response: .40.

Total Burden Hours: 1,038,950.

C. Public Comments

A notice was published in the **Federal Register** at 85 FR 62731 on October 5, 2020. Two comments were received. No changes were made to the information collection requirements or supporting statement as a result of the public comments, because they were not applicable to the policy.

Obtaining Copies of Proposals:

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. 3090–0163, Information Specific to a Contract or Contracting Action (Not Required by Regulation), in all correspondence.

Jeffrey Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2020–28187 Filed 12–21–20; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Solicitation for Nominations for Members of the U.S. Preventive Services Task Force (USPSTF)

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Solicits nominations for new members of the USPSTF.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) invites nominations of individuals qualified to serve as members of the U.S. Preventive Services Task Force (USPSTF).

DATES: Nominations must be received electronically by March 15th of a given year to be considered for appointment to begin in January of the following year.

ADDRESSES: Submit your responses electronically via: <https://uspstfnominations.ahrq.gov/register>.

FOR FURTHER INFORMATION CONTACT: Lydia Hill at coordinator@uspstf.net; 301–427–1587.

SUPPLEMENTARY INFORMATION:

Arrangement for Public Inspection

Nominations and applications are kept on file at the Center for Evidence and Practice Improvement, AHRQ, and are available for review during business hours. AHRQ does not reply to individual nominations, but considers all nominations in selecting members. Information regarded as private and personal, such as a nominee's social security number, home and email addresses, home telephone and fax numbers, or names of family members will not be disclosed to the public in accord with the Freedom of Information Act. 5 U.S.C. 552(b)(6); 45 CFR 5.31(f).

Nomination Submissions

Nominations must be submitted electronically, and should include:

1. The applicant's current curriculum vitae and contact information, including mailing address, and email address; and
2. A letter explaining how this individual meets the qualification requirements and how he or she would contribute to the USPSTF. The letter should also attest to the nominee's willingness to serve as a member of the USPSTF.

AHRQ will later ask people under serious consideration for USPSTF membership to provide detailed information that will permit evaluation of possible significant conflicts of interest. Such information will concern matters such as financial holdings, consultancies, non-financial scientific interests, and research grants or contracts.

To obtain a diversity of perspectives, AHRQ particularly encourages nominations of women, members of underrepresented populations, and persons with disabilities. Interested individuals can nominate themselves. Organizations and individuals may nominate one or more people qualified for membership on the USPSTF at any time. Individuals nominated prior to March 15, 2020, who continue to have interest in serving on the USPSTF should be re-nominated.

Qualification Requirements

To qualify for the USPSTF and support its mission, an applicant or nominee should, at a minimum, demonstrate knowledge, expertise and national leadership in the following areas:

1. The critical evaluation of research published in peer-reviewed literature and in the methods of evidence review;

2. Clinical prevention, health promotion and primary health care; and
3. Implementation of evidence-based recommendations in clinical practice including at the clinician-patient level, practice level, and health-system level.

Additionally, the Task Force benefits from members with expertise in the following areas:

- Public Health.
- Health Equity and The Reduction Of Health Disparities.
- Application of Science to Health Policy.
- Dissemination and Implementation.
- Behavioral Medicine/Clinical Health Psychology.
- Communication of Scientific Findings to Multiple Audiences Including Health Care Professionals, Policy Makers and the General Public.

Candidates with experience and skills in any of these areas should highlight them in their nomination materials.

Applicants must have no substantial conflicts of interest, whether financial, professional, or intellectual, that would impair the scientific integrity of the work of the USPSTF and must be willing to complete regular conflict of interest disclosures.

Applicants must have the ability to work collaboratively with a team of diverse professionals who support the mission of the USPSTF. Applicants must have adequate time to contribute substantively to the work products of the USPSTF.

Nominee Selection

Nominated individuals will be selected for the USPSTF on the basis of how well they meet the required qualifications and the current expertise needs of the USPSTF. It is anticipated that new members will be invited to serve on the USPSTF beginning in January, 2022. All nominated individuals will be considered; however, strongest consideration will be given to individuals with demonstrated training and expertise in the areas of Family Medicine, Internal Medicine, Pediatrics, Obstetrics and Gynecology, and Advanced Practice Nursing. AHRQ will retain and may consider for future vacancies nominations received this year and not selected during this cycle.

Some USPSTF members without primary health care clinical experience may be selected based on their expertise in methodological issues such as meta-analysis, analytic modeling, or clinical epidemiology. For individuals with clinical expertise in primary health care, additional qualifications in methodology would enhance their candidacy.

Background

Under Title IX of the Public Health Service Act, AHRQ is charged with enhancing the quality, appropriateness, and effectiveness of health care services and access to such services. 42 U.S.C. 299(b). AHRQ accomplishes these goals through scientific research and promotion of improvements in clinical practice, including clinical prevention of diseases and other health conditions. See 42 U.S.C. 299(b).

The USPSTF, an independent body of experts in prevention and evidence-based medicine, works to improve the health of all Americans by making evidence-based recommendations about the effectiveness of clinical preventive services and health promotion. The recommendations made by the USPSTF address clinical preventive services for adults and children, and include screening tests, counseling services, and preventive medications.

The USPSTF was first established in 1984 under the auspices of the U.S. Public Health Service. Currently, the USPSTF is convened by the Director of AHRQ, and AHRQ provides ongoing scientific, administrative, and dissemination support for the USPSTF's operation. USPSTF members serve four year terms. New members are selected each year to replace those members who are completing their appointments.

The USPSTF is charged with rigorously evaluating the effectiveness, appropriateness and cost-effectiveness of clinical preventive services and formulating or updating recommendations regarding the appropriate provision of preventive services. See 42 U.S.C. 299b-4(a)(1). Current USPSTF recommendations and associated evidence reviews are available on the internet (www.uspreventiveservicestaskforce.org). USPSTF members currently meet three times a year for two days in the Washington, DC area. A significant portion of the USPSTF's work occurs between meetings during conference calls and via email discussions. Member duties include prioritizing topics, designing research plans, reviewing and commenting on systematic evidence reviews of evidence, discussing and

making recommendations on preventive services, reviewing stakeholder comments, drafting final recommendation documents, and participating in workgroups on specific topics and methods. Members can expect to receive frequent emails, can expect to participate in multiple conference calls each month, and can expect to have periodic interaction with stakeholders. AHRQ estimates that members devote approximately 200 hours a year outside of in-person meetings to their USPSTF duties. The members are all volunteers and do not receive any compensation beyond support for travel to in person meetings.

Dated: December 16, 2020.

Marquita Cullom,

Associate Director.

[FR Doc. 2020-28131 Filed 12-21-20; 8:45 am]

BILLING CODE 4160-90-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB #0970-0004]

Proposed Information Collection Activity; Annual Statistical Report on Children in Foster Homes and Children in Families Receiving Payment in Excess of the Poverty Income Level From a State Program Funded Under Part A of Title IV of the Social Security Act

AGENCY: Office of Family Assistance, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Family Assistance (OFA), Administration for Children and Families, is requesting a 3-year extension of the form ACF-4125: Annual Statistical Report on Children in Foster Homes and Children in Families Receiving Payment in Excess of the Poverty Income Level from a State Program Funded Under Part A of Title IV of the Social Security Act (OMB #0970-0004, expiration 3/21/2021).

There are no changes requested to the form.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing infocollection@acf.hhs.gov. Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation (OPRE), 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The Elementary and Secondary Education Act of 1965 (ESEA), section 1124 of Title I, as amended by Public Law 114-95, requires the Secretary of Health and Human Services to determine the number of children aged 5 to 17, inclusive, that (1) are being supported in foster homes with public funds; or (2) are from families receiving assistance payments in excess of the current poverty income level for a family of four. The information gathered is to be passed on to the Secretary of Education for purposes of allocating grants authorized under this law. The statute requires that the formula to allocate these grants and distribute funds be based, in part, on October caseload data on the number of children in foster care or in families receiving payments from state programs funded under Title IV-A of the Social Security Act [Temporary Assistance for Needy Families]. The purpose of this annual survey is to provide annually updated data so that funds may be allocated in accordance with the ESEA.

Respondents: State agencies (including the District of Columbia and Puerto Rico) administering child welfare and public assistance programs.

ANNUAL BURDEN ESTIMATES

| Instrument | Total number of respondents | Annual number of responses per respondent | Average burden hours per response | Total annual burden hours |
|---|-----------------------------|---|-----------------------------------|---------------------------|
| Annual Statistical Report on Children in Foster Homes and Children Receiving Payments | 52 | 1 | 264.35 | 13,746.20 |

Estimated Total Annual Burden Hours: 13,746.20.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Public Law 107-110 Sec. 1124(c)(4) and Pub. L. 104-193 Sec. 110(j).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2020-28252 Filed 12-21-20; 8:45 am]

BILLING CODE 4184-36-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB #0970-0462]

Proposed Information Collection Activity; National and Tribal Evaluation of the 2nd Generation of the Health Profession Opportunity Grants

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Health Profession Opportunity Grants (HPOG) Program provides healthcare occupational training for Temporary Assistance for Needy Families recipients and other low-income people. The Office of Management and Budget (OMB) has approved various data collection activities for the National and Tribal Evaluation of the 2nd Generation of HPOG (HPOG 2.0 National and Tribal Evaluation) under OMB #0970-0462. Due to the profound effects the COVID-19 pandemic has had on the U.S. economy, on families nationwide and on HPOG 2.0 programs, the Office of Planning, Research, and Evaluation (OPRE) is considering surveying study participants who applied to the HPOG Program after the onset of the pandemic. This notice provides a summary for public review and comment of the use and burden associated with a new information collection for this "COVID Cohort" Survey.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing OPREinfocollection@acf.hhs.gov. Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research,

and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The COVID-19 pandemic has had profound effects on the U.S. economy, on the healthcare sector and on individuals and families across the country. The pandemic has also had broad implications for HPOG 2.0 programs—on how and how much healthcare training is delivered, on demand for healthcare workers, on interest in working in health care, and on the labor market more broadly. OPRE seeks to understand the particular experiences of those who apply for the HPOG Program during this period by surveying study participants enrolled after the onset of the pandemic. The COVID Cohort Survey would collect important information on participant experiences 15 months after randomization and would allow the impact study to compare impacts for pre-COVID participants with impacts for those enrolled after the onset the pandemic.

Respondents: HPOG impact study participants from the 27 non-tribal HPOG 2.0 grantees (treatment and control group members who enroll between May 2020 and September 2021).

Annual Burden Estimates

This request is specific to the COVID Cohort Survey. Currently approved materials and associated burden can be found at: https://www.reginfo.gov/public/do/PRAICList?ref_nbr=201904-0970-006.

| Instrument | Number of respondents (total over request period) | Number of responses per respondent (total over request period) | Average burden per response (in hours) | Total burden (in hours) | Annual burden (in hours) |
|---|---|--|--|-------------------------|--------------------------|
| Instrument 21: COVID-19 Cohort Survey | 5,120 | 1 | 1 | 5,120 | 1,707 |

Estimated Total Annual Burden Hours: 1,707.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the

burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Section 2008 of the Social Security Act as enacted by Section 5507 of the Affordable Care Act and Section

413 of the Social Security Act, 42 U.S.C. 613.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2020-28246 Filed 12-21-20; 8:45 am]

BILLING CODE 4184-72-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Submission for OMB Review; Public Comment Request; Title III Supplemental Form to Financial Status Report (SF-425), OMB #0985-0004

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living is announcing that the proposed collection of information listed above has been submitted to the Office of Management and Budget (OMB) for review and clearance as required under section 506(c)(2)(A) of the Paperwork Reduction Act of 1995. This 30-day notice collects comments on the information collection requirements related to the proposed information collection, Title III Supplemental Form to Financial Status Report (SF-425) OMB 0985-0004.

DATES: Submit written comments on the collection of information by 11:59 p.m. (EST) or postmarked by January 21, 2021.

ADDRESSES: Submit written comments on the collection of information by:

(a) Email to: OIRA_submission@omb.eop.gov, Attn: OMB Desk Officer for ACL;

(b) Fax to 202.395.5806, Attn: OMB Desk Officer for ACL; or

(c) By mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW, Rm. 10235, Washington, DC 20503, Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT:

Alice Kelsey, Administration for Community Living, Washington, DC 20201, (202) 795-7342 Alice.Kelsey@ACL.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, ACL has submitted the following proposed collection of information to OMB for review and clearance. The Title III Supplemental Form to the Financial Status Report (SF-425) is used by ACL/AoA for all grantees to obtain a more detailed understanding of how projects funded under Title III of the Older Americans Act (OAA) of 1965, as amended, are being administered, and to ensure compliance with legislative requirements, pertinent Federal

regulations and other applicable instructions and guidelines issued by the ACL. The level of data detail necessary is not available through the SF-425 form. The Supplemental Form provides necessary details on non-federal required match, administration expenditures, and Long Term Care Ombudsman expenditures.

Comments in Response to the 60-Day Federal Register Notice

ACL published a 60-day **Federal Register** Notice in the **Federal Register** soliciting public comments on this request. The 60-day FRN published on August 19, 2020 Volume 85, Number 161, pages 51033-51034; ACL did not receive any public comments during the 60-day FRN period. The proposed data collection tools are on the ACL website for review and public comment, please visit <https://www.acl.gov/about-acl/public-input>.

Estimated Program Burden: ACL estimates the burden associated with this collection of information as follows: 56 State Units on Aging (SUA) respond semi-annually which have an average estimated burden of 2 hours per grantee for a total of 224 hours annually.

| Respondent/data collection activity | Number of respondents | Responses per respondent | Hours per response | Annual burden hours |
|--|-----------------------|--------------------------|--------------------|---------------------|
| Title III Supplemental Form to the Financial Status Report | 56 | 2 | 2 | 224 |
| Total | 56 | 2 | 2 | 224 |

Dated: November 27, 2020.

Mary Lazare,
Principal Deputy Administrator.

[FR Doc. 2020-28157 Filed 12-21-20; 8:45 am]

BILLING CODE 4154-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the Advisory Committee on Infant Mortality

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces that the Advisory Committee on Infant Mortality (ACIM) has scheduled a public meeting. Information about ACIM and the agenda for this meeting can be found on the

ACIM website at <https://www.hrsa.gov/advisory-committees/infant-mortality/index.html>.

DATES: January 25, 2021, 11:00 a.m.–6:00 p.m. Eastern Time (ET) and January 26, 2021, 11:00 a.m.–3:30 p.m. ET.

ADDRESSES: This meeting will be held via webinar. *The webinar link and login information will be available at ACIM's website before the meeting:* <https://www.hrsa.gov/advisory-committees/infant-mortality/index.html>.

FOR FURTHER INFORMATION CONTACT:

David S. de la Cruz, Ph.D., MPH, Designated Federal Official, Maternal and Child Health Bureau (MCHB), HRSA, 5600 Fishers Lane, Room 18N25, Rockville, Maryland 20857; 301-443-0543; or SACIM@hrsa.gov.

SUPPLEMENTARY INFORMATION: The ACIM is authorized by section 222 of the Public Health Service Act (42 U.S.C. 217a), as amended. The Committee is governed by provisions of Public Law 92-463, as amended, (5 U.S.C. App. 2), which sets forth standards for the

formation and use of Advisory Committees.

The ACIM advises the Secretary of HHS on department activities and programs directed at reducing infant mortality and improving the health status of pregnant women and infants. The ACIM represents a public-private partnership at the highest level to provide guidance and focus attention on the policies and resources required to address the reduction of infant mortality and the improvement of the health status of pregnant women and infants. With a focus on life course, the ACIM addresses disparities in maternal health to improve maternal health outcomes, including preventing and reducing maternal mortality and severe maternal morbidity. The ACIM provides advice on how best to coordinate myriad federal, state, local, and private programs and efforts that are designed to deal with the health and social problems impacting infant mortality and maternal health, including implementation of the Healthy Start

program and maternal and infant health objectives from the National Health Promotion and Disease Prevention Objectives (*i.e.*, Healthy People 2030).

The agenda for the January 25 and 26, 2021, meeting is being finalized and may include the following: Updates from HRSA, MCHB, and other federal agencies; continued discussion of the impact of COVID-19 on infant and maternal health; immigrant maternal and child health issues; environmental contributions to infant mortality and maternal mortality; and updates on priority topic areas for ACIM to address (equity, data, access, and quality of care). Agenda items are subject to change as priorities dictate. Refer to the ACIM website for any updated information concerning the meeting.

Members of the public will have the opportunity to provide written or oral comments. Requests to submit a written statement or make oral comments to the ACIM should be sent to David S. de la Cruz, using the email address above at least 3 business days prior to the meeting. Public participants may submit written statements in advance of the scheduled meeting by emailing SACIM@hrsa.gov. Oral comments will be honored in the order they are requested and may be limited as time allows.

Individuals who plan to attend and need special assistance or another reasonable accommodation should notify David S. de la Cruz at the contact information listed above at least 10 business days prior to the meeting.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2020-28163 Filed 12-21-20; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; 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 Fogarty International Center Advisory Board.

The meeting will be open to the public via online meeting. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations should notify the Contact Person listed below in advance of the virtual 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: Fogarty International Center Advisory Board.

Date: February 8–9, 2021.

Closed: February 08, 2021, 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate the second level of grant applications.

Place: Fogarty International Center, National Institutes of Health, 31 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Open: February 9, 2021, 12:00 p.m. to 2:30 p.m.

Agenda: Update and discussion of current and planned Fogarty International Center activities.

Place: Fogarty International Center, National Institutes of Health, 31 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Meeting Access: <https://www.fic.nih.gov/About/Advisory/Pages/default.aspx>.

Contact Person: Kristen Weymouth, Executive Secretary, Fogarty International Center, National Institutes of Health, 31 Center Drive, Room B2C02, Bethesda, MD 20892-7952, 301-496-1415, kristen.weymouth@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.fic.nih.gov/About/Advisory/Pages/default.aspx>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.106, Minority International Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome; 93.168, International Cooperative Biodiversity Groups Program; 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health, HHS)

Dated: December 16, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020-28169 Filed 12-21-20; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2020-0485]

Notification of the Removal of Conditions of Entry on Vessels Arriving From the Republic of Liberia

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that it is removing the conditions of entry on vessels arriving from the country of the Republic of Liberia.

DATES: The policy announced in this notice is effective on December 22, 2020.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email D.R. McBryde, International Port Security Evaluation Division, United States Coast Guard, telephone 202-372-1213, doris.r.mcbride@uscg.mil.

SUPPLEMENTARY INFORMATION:

Discussion: The authority for this notice is 5 U.S.C. 552(a) (“Administrative Procedure Act”), 46 U.S.C. 70110 (“Maritime Transportation Security Act”), and Department of Homeland Security Delegation No. 0170.1(II)(97.f). As delegated, section 70110(a) authorizes the Coast Guard to impose conditions of entry on vessels arriving in U.S. waters from ports that the Coast Guard has not found to maintain effective anti-terrorism measures. It also requires public notice of the ineffective anti-terrorism measures. The Secretary has delegated to the Coast Guard authority to carry out the provisions of this section.

On May 2, 2005 the the Coast Guard published a Notice in the **Federal Register**, (70 FR 22668), announcing that it had determined that effective anti-terrorism measures were not in place in the ports of the Republic of Liberia. Accordingly, conditions of entry were imposed on vessels that visited the Republic of Liberia in their last five port calls. Based on recent assessments conducted in 2018, the Coast Guard has determined that the Republic of Liberia is maintaining effective anti-terrorism measures, and is accordingly removing the conditions of entry announced in the previously published Notice. With this notice, the current list of countries assessed and not maintaining effective anti-terrorism measures is as follows: Cambodia, Cameroon, Comoros, Cote d'Ivoire, Djibouti, Equatorial Guinea, The Gambia, Guinea-Bissau, Iran, Iraq, Libya, Madagascar, Micronesia, Nauru,

Nigeria, Republic of Seychelles, Sao Tome and Principe, Syria, Timor-Leste, Venezuela, Yemen. The current Port Security Advisory is available at: <http://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/International-Domestic-Port-Assessment/>.

Dated: December 16, 2020.

Scott A. Buschman,
Vice Admiral, Deputy Commandant for Operations, U.S. Coast Guard.

[FR Doc. 2020-28162 Filed 12-21-20; 8:45 am]

BILLING CODE 9110-04-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: Maricopa (FEMA Docket No.: B-2054). | Town of Gilbert (20-09-0521P). | The Honorable Jenn Daniels, Mayor, Town of Gilbert, 50 East Civic Center Drive, Gilbert, AZ 85296. | Development Services Department, 90 East Civic Center Drive, Gilbert, AZ 85296. | Nov. 13, 2020 | 040044 |
| Colorado: | | | | | |
| Denver (FEMA Docket No.: B-2049). | City and County of Denver (20-08-0456P). | The Honorable Michael B. Hancock, Mayor, City and County of Denver, 1437 North Bannock Street, Room 350, Denver, CO 80202. | Department of Public Works, 201 West Colfax Avenue, Denver, CO 80202. | Nov. 23, 2020 | 080046 |
| Jefferson (FEMA Docket No.: B-2054). | City of Lakewood (20-08-0105P). | The Honorable Adam Paul, Mayor, City of Lakewood, 480 South Allison Parkway, Lakewood, CO 80226. | City Hall, 480 South Allison Parkway, Lakewood, CO 80226. | Nov. 20, 2020 | 085075 |
| Florida: | | | | | |
| Collier (FEMA Docket No.: B-2049). | City of Marco Island (20-04-2874P). | Mr. Michael T. McNeese, Manager, City of Marco Island, 50 Bald Eagle Drive, Marco Island, FL 34145. | Building Services Department, 50 Bald Eagle Drive, Marco Island, FL 34145. | Nov. 9, 2020 | 120426 |
| Duval (FEMA Docket No.: B-2049). | City of Jacksonville (20-04-0754P). | The Honorable Lenny Curry, Mayor, City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, FL 32202. | Development Services Division, 214 North Hogan Street, Jacksonville, FL 32202. | Nov. 10, 2020 | 120077 |
| Miami-Dade (FEMA Docket No.: B-2054). | City of Florida City (19-04-6515P). | The Honorable Otis T. Wallace, Mayor, City of Florida City, 404 West Palm Drive, Florida City, FL 33034. | Building and Zoning Department, 404 West Palm Drive, Florida City, FL 33034. | Nov. 18, 2020 | 120641 |

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Date of modification | Community No. |
|--|--|--|---|----------------------|---------------|
| Miami-Dade (FEMA Docket No.: B-2054). | City of Homestead (19-04-6515P). | The Honorable Steven D. Losner, Mayor, City of Homestead, 100 Civic Court, Homestead, FL 33030. | Development Services Department, 100 Civic Court, Homestead, FL 33030. | Nov. 18, 2020 | 120645 |
| Miami-Dade (FEMA Docket No.: B-2054). | City of Sunny Isles Beach (20-04-4036P). | The Honorable George "Bud" Scholl, Mayor, City of Sunny Isles Beach, 18070 Collins Avenue, Sunny Isles Beach, FL 33160. | Building Department, 18070 Collins Avenue, Sunny Isles Beach, FL 33160. | Nov. 19, 2020 | 120688 |
| Miami-Dade (FEMA Docket No.: B-2054). | Unincorporated areas of Miami-Dade County (19-04-6515P). | The Honorable Carlos A. Gimenez, Mayor, Miami-Dade County, 111 Northwest 1st Street, 29th Floor, Miami, FL 33128. | Miami-Dade County Environmental Resources Management Department, 701 Northwest 1st Court, Suite 500, Miami, FL 33136. | Nov. 18, 2020 | 120635 |
| Sarasota (FEMA Docket No.: B-2052). | City of Sarasota (20-04-2373P). | The Honorable Jennifer Ahearn-Koch, Mayor, City of Sarasota, 1565 1st Street, Room 101, Sarasota, FL 34236. | Development Services Department, 1565 1st Street, Sarasota, FL 34236. | Nov. 23, 2020 | 125150 |
| Georgia: Gwinnett (FEMA Docket No.: B-2054). | City of Duluth (20-04-1631P). | Mr. James Riker, Manager, City of Duluth, 3167 Main Street, Duluth, GA 30096. | Department of Planning and Development, 3167 Main Street, Duluth, GA 30096. | Nov. 19, 2020 | 130098 |
| Maine: | | | | | |
| Washington (FEMA Docket No.: B-2049). | Town of Addison (20-01-0671P). | The Honorable Verlan R. Lenfestey Jr., Chairman, Town of Addison Board of Selectmen, P.O. Box 142, Addison, ME 04606. | Town Hall, 334 Water Street, Addison, ME 04606. | Nov. 12, 2020 | 230132 |
| Washington (FEMA Docket No.: B-2049). | Town of Cherryfield (20-01-0670P). | The Honorable Arthur Tatangelo, Chairman, Town of Cherryfield Board of Selectmen, P.O. Box 58, Cherryfield, ME 04622. | Town Hall, 12 Municipal Way, Cherryfield, ME 04622. | Nov. 12, 2020 | 230135 |
| Washington (FEMA Docket No.: B-2049). | Town of Columbia (20-01-0671P). | The Honorable Harry Beal, Jr., Chairman, Town of Columbia Board of Selectmen, 106 Epping Road, Columbia, ME 04623. | Town Hall, 106 Epping Road, Columbia, ME 04623. | Nov. 12, 2020 | 230307 |
| Washington (FEMA Docket No.: B-2049). | Town of Columbia Falls (20-01-0671P). | The Honorable Nancy Bagley, Chair, Town of Columbia Falls Board of Selectmen, P.O. Box 100, Columbia Falls, ME 04623. | Town Hall, 8 Point Street, Columbia Falls, ME 04623. | Nov. 12, 2020 | 230308 |
| Washington (FEMA Docket No.: B-2049). | Town of East Machias (20-01-0668P). | The Honorable Kenneth Davis, Jr., Chairman, Town of East Machias Board of Selectmen, P.O. Box 117, East Machias, ME 04630. | Town Hall, 32 Cutler Road, East Machias, ME 04630. | Nov. 12, 2020 | 230313 |
| Washington (FEMA Docket No.: B-2049). | Town of Harrington (20-01-0671P). | The Honorable Joel Strout, Chairman, Town of Harrington Board of Selectmen, P.O. Box 142, Harrington, ME 04643. | Town Hall, 114 East Main Street, Harrington, ME 04643. | Nov. 12, 2020 | 230314 |
| Washington (FEMA Docket No.: B-2049). | Town of Jonesboro (20-01-0668P). | The Honorable Michael Schoppee, Chairman, Town of Jonesboro Board of Selectmen, P.O. Box 86, Jonesboro, ME 04684. | Town Hall, 23 Station Road, Jonesboro, ME 04684. | Nov. 12, 2020 | 230315 |
| Washington (FEMA Docket No.: B-2049). | Town of Jonesboro (20-01-0671P). | The Honorable Michael Schoppee, Chairman, Town of Jonesboro Board of Selectmen, P.O. Box 86, Jonesboro, ME 04684. | Town Hall, 23 Station Road, Jonesboro, ME 04684. | Nov. 12, 2020 | 230315 |
| Washington (FEMA Docket No.: B-2049). | Town of Marshfield (20-01-0668P). | The Honorable Robert Carter, Chairman, Town of Marshfield Board of Selectmen, 187 Northfield Road, Marshfield, ME 04654. | Town Hall, 187 Northfield Road, Marshfield, ME 04654. | Nov. 12, 2020 | 230316 |
| Washington (FEMA Docket No.: B-2049). | Town of Steuben (20-01-0670P). | The Honorable Larry Pinkham, Chairman, Town of Steuben Board of Selectmen, 294 U.S. Route 1, Steuben, ME 04680. | Town Hall, 294 U.S. Route 1, Steuben, ME 04680. | Nov. 12, 2020 | 230323 |
| Washington (FEMA Docket No.: B-2049). | Town of Whitneyville (20-01-0668P). | The Honorable Nate Perry, Chairman, Town of Whitneyville Board of Selectmen, 42 South Main Street, Whitneyville, ME 04654. | Town Hall, 42 South Main Street, Whitneyville, ME 04654. | Nov. 12, 2020 | 230329 |
| New Hampshire: Hillsborough (FEMA Docket No.: B-2049). | City of Manchester (20-01-0142P). | The Honorable Joyce Craig, Mayor, City of Manchester, One City Hall Plaza, Manchester, NH 03101. | City Hall, One City Hall Plaza, Manchester, NH 03101. | Nov. 9, 2020 | 330169 |
| North Carolina: Henderson (FEMA Docket No.: B-2067). | Unincorporated areas of Henderson County (20-04-2036P). | The Honorable Grady Hawkins, Chairman, Henderson County Board of Commissioners, 1 Historic Courthouse Square, Suite 1, Hendersonville, NC 27102. | Henderson County Administration Building, 100 North King Street, Hendersonville, NC 28792. | Nov. 17, 2020 | 370125 |
| Texas: | | | | | |
| Collin (FEMA Docket No.: B-2052). | City of Celina (20-06-0459P). | The Honorable Sean Terry, Mayor, City of Celina, 142 North Ohio Street, Celina, TX 75009. | City Hall, 142 North Ohio Street, Celina, TX 75009. | Nov. 16, 2020 | 480133 |
| Collin (FEMA Docket No.: B-2052). | City of Lucas (20-06-0100P). | Ms. Joni Clarke, Manager, City of Lucas, 665 Country Club Road, Lucas, TX 75002. | Public Works and Engineering Department, 665 Country Club Road, Lucas, TX 75002. | Nov. 23, 2020 | 481545 |

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Date of modification | Community No. |
|---|---|---|---|----------------------|---------------|
| Denton (FEMA Docket No.: B-2052). | City of Aubrey (20-06-0957P). | The Honorable Janet Meyers, Mayor, City of Aubrey, 107 South Main Street, Aubrey, TX 76227. | Denton County GIS Department, 701 Kimberly Drive, Suite A285, Denton, TX 76208. | Nov. 18, 2020 | 480776 |
| Gillespie (FEMA Docket No.: B-2054). | City of Fredericksburg (19-06-2756P). | The Honorable Gary Neffendorf, Mayor, City of Fredericksburg, 126 West Main Street, Fredericksburg, TX 78624. | City Hall, 126 West Main Street, Fredericksburg, TX 78624. | Nov. 19, 2020 | 480252 |
| Johnson (FEMA Docket No.: B-2052). | City of Burleson (19-06-3252P). | The Honorable Ken Shetter, Mayor, City of Burleson, 141 West Renfro Street, Burleson, TX 76028. | City Hall, 141 West Renfro Street, Burleson, TX 76028. | Nov. 23, 2020 | 485459 |
| Montgomery (FEMA Docket No.: B-2052). | City of Conroe (19-06-2853P). | The Honorable Toby Powell, Mayor, City of Conroe, P.O. Box 3066, Conroe, TX 77305. | City Hall, 300 West Davis Street, Conroe, TX 77301. | Nov. 12, 2020 | 480484 |
| Tarrant (FEMA Docket No.: B-2049). | City of Colleyville (20-06-1166P). | The Honorable Richard Newton, Mayor, City of Colleyville, 100 Main Street, Colleyville, TX 76034. | City Hall, 100 Main Street, Colleyville, TX 76034. | Nov. 12, 2020 | 480590 |
| Tarrant (FEMA Docket No.: B-2052). | City of Mansfield (20-06-0705P). | Mr. Clayton Chandler, Manager, City of Mansfield, 1200 East Broad Street, Mansfield, TX 76063. | Geographic Information Systems (GIS) Department, 1200 East Broad Street, Mansfield, TX 76063. | Nov. 9, 2020 | 480606 |
| Utah: Grand (FEMA Docket No.: B-2052). | Unincorporated areas of Grand County (20-08-0298P). | The Honorable Mary McGann, Chair, Grand County Council, 125 East Center Street, Moab, UT 84532. | Grand County Courthouse, 125 East Center Street, Moab, UT 84532. | Nov. 13, 2020 | 490232 |
| Virginia: Independent City (FEMA Docket No.: B-2052). | City of Fairfax (20-03-0228P). | Mr. Robert A. Stalzer, Manager, City of Fairfax, 10455 Armstrong Street, Room 316, Fairfax, VA 22030. | Public Works Department, 10455 Armstrong Street, Fairfax, VA 22030. | Nov. 16, 2020 | 515524 |

[FR Doc. 2020-28221 Filed 12-21-20; 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-2077]

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 March 22, 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-2077, to Rick Sacibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacibit@fema.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Rick Sacibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacibit@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 |
|---|---|
| Monroe County, Florida and Incorporated Areas Project: 15-04-4157S Preliminary Date: December 27, 2019 | |
| City of Key Colony Beach | Building and Planning Department, 600 West Ocean Drive, Key Colony Beach, FL 33051. |
| City of Key West | Building Department, 1300 White Street, Key West, FL 33040. |
| City of Layton | Layton Building Department, 68260 Overseas Highway, Long Key, FL 33001. |
| City of Marathon | Planning Department, 9805 Overseas Highway, Marathon, FL 33050. |
| Unincorporated Areas of Monroe County | Monroe County Building and Permitting Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050. |
| Village of Islamorada | Building and Planning Department, 86800 Overseas Highway, Islamorada, FL 33036. |
| Jones County, North Carolina and Incorporated Areas Project: 11-04-7660S Preliminary Date: November 30, 2018 | |
| Unincorporated Areas of Jones County | Jones County Government Office, 418 Highway 58 North, Trenton, NC 28585. |
| Tyrrell County, North Carolina and Incorporated Areas Project: 11-04-8218S Preliminary Date: November 30, 2018 | |
| Unincorporated Areas of Tyrrell County | Tyrrell County Planning Department, 108 South Water Street, Columbia, NC 27925. |

[FR Doc. 2020-28223 Filed 12-21-20; 8:45 am]

BILLING CODE 9110-12-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. |
|--|--|---|--|----------------------|---------------|
| Alaska: City and Borough of Sitka (FEMA Docket No.: B-2024). | City and Borough of Sitka (20-10-0299P). | The Honorable Gary Paxton, Mayor, City and Borough of Sitka, 100 Lincoln Street, Sitka, AK 99835. | Sitka United States Post Office and Court House, 100 Lincoln Street, Sitka, AK 99835. | Jun. 4, 2020 | 020006 |
| Arizona: Cochise (FEMA Docket No.: B-2024). | City of Sierra Vista (18-09-2056P). | The Honorable Rick Mueller, Mayor, City of Sierra Vista, 1011 North Coronado Drive, Sierra Vista, AZ 85635. | Community Development Department, 1011 North Coronado Drive, Sierra Vista, AZ 85635. | Jun. 5, 2020 | 040017 |
| Maricopa (FEMA Docket, No.: B-2041). | City of Buckeye (20-09-1324P). | The Honorable Jackie A. Meck, Mayor, City of Buckeye, 530 East Monroe Avenue, Buckeye, AZ 85326. | Engineering Department, 530 East Monroe Avenue, Buckeye, AZ 85326. | Oct. 2, 2020 | 040039 |
| Maricopa (FEMA Docket, No.: B-2041). | City of Chandler (19-09-1713P). | The Honorable Kevin Hartke, Mayor, City of Chandler, 175 South Arizona Avenue, Chandler, AZ 85225. | Transportation & Development Department, 215 East Buffalo Street, Chandler, AZ 85225. | Oct. 2, 2020 | 040040 |
| Maricopa (FEMA Docket, No.: B-2041). | City of Glendale (20-09-1322P). | The Honorable Jerry Weiers, Mayor, City of Glendale, 5850 West Glendale Avenue, Glendale, AZ 85301. | City Hall, 5850 West Glendale Avenue, Glendale, AZ 85301. | Oct. 2, 2020 | 040045 |
| Maricopa (FEMA Docket, No.: B-2046 and B-2056). | City of Litchfield Park (20-09-0240P). | The Honorable Thomas L. Schoaf, Mayor, City of Litchfield Park, 214 West Wigwam Boulevard, Litchfield Park, AZ 85340. | City Hall, 214 West Wigwam Boulevard, Litchfield Park, AZ 85340. | Oct. 20, 2020 | 040128 |
| Maricopa (FEMA Docket, No.: B-2046). | City of Peoria (20-09-0149P). | The Honorable Cathy Carlat, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, AZ 85345. | City Hall, 8401 West Monroe Street, Peoria, AZ 85345. | Sep. 18, 2020 | 040050 |
| Maricopa (FEMA Docket No.: B-2024). | City of Peoria (20-09-0216P). | The Honorable Cathy Carlat, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, AZ 85345. | City Hall, 8401 West Monroe Street, Peoria, AZ 85345. | Jul. 10, 2020 | 040050 |
| Maricopa (FEMA Docket, No.: B-2041). | City of Peoria (20-09-1322P). | The Honorable Cathy Carlat, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, AZ 85345. | City Hall, 8401 West Monroe Street, Peoria, AZ 85345. | Oct. 2, 2020 | 040050 |
| Maricopa (FEMA Docket, No.: B-2046). | City of Phoenix (20-09-1323P). | The Honorable Kate Gallego, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, AZ 85003. | Street Transportation Department, 200 West Washington Street, 5th Floor, Phoenix, AZ 85003. | Oct. 16, 2020 | 040051 |
| Maricopa (FEMA Docket, No.: B-2046). | City of Surprise (20-09-0147P). | The Honorable Skip Hall, Mayor, City of Surprise, 16000 North Civic Center Plaza, Surprise, AZ 85374. | Public Works Department, Engineering Development Services, 16000 North Civic Center Plaza, Surprise, AZ 85374. | Sep. 18, 2020 | 040053 |
| Maricopa (FEMA Docket, No.: B-2046). | City of Surprise (20-09-0619P). | The Honorable Skip Hall, Mayor, City of Surprise, 16000 North Civic Center Plaza, Surprise, AZ 85374. | Public Works Department, Engineering Development Services, 16000 North Civic Center Plaza, Surprise, AZ 85374. | Sep. 18, 2020 | 040053 |
| Maricopa (FEMA Docket, No.: B-2041). | City of Surprise (20-09-1326P). | The Honorable Skip Hall, Mayor, City of Surprise, 16000 North Civic Center Plaza, Surprise, AZ 85374. | Public Works Department, Engineering Development Services, 16000 North Civic Center Plaza, Surprise, AZ 85374. | Oct. 9, 2020 | 040053 |

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Date of modification | Community No. |
|--|---|--|--|----------------------|---------------|
| Maricopa (FEMA Docket, No.: B-2046). | City of Tempe (20-09-1323P). | The Honorable Mark Mitchell, Mayor, City of Tempe, P.O. Box 5002, Tempe, AZ 85280. | City Hall, Engineering Department, 31 East 5th Street, Tempe, AZ 85281. | Oct. 16, 2020 | 040054 |
| Maricopa (FEMA Docket, No.: B-2041). | Town of Fountain Hills (20-09-1325P). | 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. | Oct. 1, 2020 | 040135 |
| Maricopa (FEMA Docket No.: B-2024). | Unincorporated Areas of Maricopa County (19-09-1002P). | The Honorable Clint L. Hickman, Chairman, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003. | Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009. | Jul. 10, 2020 | 040037 |
| Maricopa (FEMA Docket, No.: B-2046). | Unincorporated Areas of Maricopa County (20-09-0020P). | The Honorable Clint L. Hickman, Chairman, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003. | Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009. | Sep. 18, 2020 | 040037 |
| Maricopa (FEMA Docket, No.: B-2041). | Unincorporated Areas of Maricopa County (20-09-1322P). | The Honorable Clint L. Hickman, Chairman, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003. | Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009. | Oct. 2, 2020 | 040037 |
| Yavapai (FEMA Docket, No.: B-2041). | Town of Prescott Valley (20-09-0224P). | 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. | Sep. 21, 2020 | 040121 |
| California: | | | | | |
| Los Angeles (FEMA Docket, No.: B-2046 and B-2056). | City of Santa Clarita (20-09-0137P). | The Honorable Cameron Smyth, Mayor, City of Santa Clarita, 23920 Valencia Boulevard, Suite 300, Santa Clarita, CA 91355. | City Hall, Planning Department, 23920 Valencia Boulevard, Suite 300, Santa Clarita, CA 91355. | Sep. 23, 2020 | 060729 |
| Plumas (FEMA Docket, No.: B-2041). | Unincorporated Areas of Plumas County (19-09-2233P). | The Honorable Kevin Goss, Chairman, Board of Supervisors, Plumas County, 520 Main Street, Room 309, Quincy, CA 95971. | Plumas County Courthouse, 520 Main Street, Quincy, CA 95971. | Oct. 9, 2020 | 060244 |
| Riverside (FEMA Docket, No.: B-2046). | City of Banning (19-09-2247P). | The Honorable Daniela Andrade, Mayor, City of Banning, 99 East Ramsey Street, Banning, CA 92220. | Public Works Department, 99 East Ramsey Street, Banning, CA 92220. | Sep. 23, 2020 | 060246 |
| Riverside (FEMA Docket No.: B-2024). | City of Indio (19-09-1450P). | The Honorable Glenn A. Miller, Mayor, City of Indio, City Hall, 100 Civic Center Mall, Indio, CA 92201. | Engineering Services Division, 100 Civic Center Mall, Indio, CA 92202. | Jun. 26, 2020 | 060255 |
| Riverside (FEMA Docket, No.: B-2041). | City of Moreno Valley (20-09-0154P). | The Honorable Yxstian A. Gutierrez, Mayor, City of Moreno Valley, 14177 Frederick Street, Moreno Valley, CA 92553. | Public Works Department, 14177 Frederick Street, Moreno Valley, CA 92553. | Sep. 25, 2020 | 065074 |
| Riverside (FEMA Docket No.: B-2024). | Unincorporated Areas of Riverside County (19-09-1450P). | The Honorable V. Manuel Perez, Chairman, Board of Supervisors, Riverside County, 4080 Lemon Street, 5th Floor, Riverside, CA 92501. | Riverside County Flood Control and Water Conservation District, 1995 Market Street, Riverside, CA 92501. | Jun. 26, 2020 | 060245 |
| Sacramento (FEMA Docket, No.: B-2046). | City of Elk Grove (20-09-0792P). | The Honorable Steve Ly, Mayor, City of Elk Grove, 8401 Laguna Palms Way, Elk Grove, CA 95758. | Public Works Department, 8401 Laguna Palms Way, Elk Grove, CA 95758. | Oct. 27, 2020 | 060767 |
| San Diego (FEMA Docket, No.: B-2046). | City of San Marcos (20-09-0211P). | The Honorable Rebecca Jones, Mayor, City of San Marcos, 1 Civic Center Drive, San Marcos, CA 92069. | City Hall, 1 Civic Center Drive, San Marcos, CA 92069. | Oct. 16, 2020 | 060296 |
| San Diego (FEMA Docket, No.: B-2046). | City of Vista (20-09-0048P). | The Honorable Judy Ritter, Mayor, City of Vista, 200 Civic Center Drive, Vista, CA 92084. | City Hall, 200 Civic Center Drive, Vista, CA 92084. | Sep. 23, 2020 | 060297 |
| Ventura (FEMA Docket, No.: B-2046). | City of Simi Valley (18-09-0918P). | The Honorable Keith L. Mashburn, Mayor, City of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, CA 93063. | City Hall, 2929 Tapo Canyon Road, Simi Valley, CA 93063. | Sep. 23, 2020 | 060421 |
| Ventura (FEMA Docket, No.: B-2046). | City of Simi Valley (18-09-2061P). | The Honorable Keith L. Mashburn, Mayor, City of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, CA 93063. | City Hall, 2929 Tapo Canyon Road, Simi Valley, CA 93063. | Nov. 6, 2020 | 060421 |
| Ventura (FEMA Docket No.: B-2024). | City of Simi Valley (19-09-1889P). | The Honorable Keith L. Mashburn, Mayor, City of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, CA 93063. | City Hall, 2929 Tapo Canyon Road, Simi Valley, CA 93063. | Jul. 1, 2020 | 060421 |
| Ventura (FEMA Docket, No.: B-2041). | City of Thousand Oaks (19-09-1687P). | The Honorable Al Adam, Mayor, City of Thousand Oaks, 2100 Thousand Oaks Boulevard, Thousand Oaks, CA 91362. | City Hall, 2100 East Thousand Oaks Boulevard, Thousand Oaks, CA 91362. | Oct. 8, 2020 | 060422 |
| Florida: | | | | | |
| Duval (FEMA Docket No.: B-2041). | City of Jacksonville (20-04-0139P). | The Honorable Lenny Curry, Mayor, City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, FL 32202. | City Hall, 117 West Duval Street, Jacksonville, FL 32202. | Sep. 25, 2020 | 120077 |
| Pasco (FEMA Docket No.: B-2041). | Unincorporated Areas of Pasco County (19-04-6976P). | Mr. Mike Moore, Chairman, Pasco County, Board of County Commissioners, 8731 Citizens Drive, New Port Richey, FL 34654. | Pasco County Development Services Branch, 8731 Citizens Drive, New Port Richey, FL 34654. | Sep. 18, 2020 | 120230 |

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Date of modification | Community No. |
|--------------------------------------|---|--|--|----------------------|---------------|
| Idaho: | | | | | |
| Ada (FEMA Docket No.: B-2041). | City of Eagle (19-10-0717P). | The Honorable Jason Pierce, Mayor, City of Eagle, City Hall, 660 East Civic Lane, Eagle, ID 83616. | City Hall, 660 East Civic Lane, Eagle, ID 83616. | Sep. 25, 2020 | 160003 |
| Ada (FEMA Docket No.: B-2041). | Unincorporated Areas of Ada County (19-10-0717P). | The Honorable Kendra Kenyon, Chair, Board of Ada County Commissioners Ada County Courthouse, 200 West Front Street, 3rd Floor, Boise, ID 83702. | Ada County Courthouse, 200 West Front Street, Boise, ID 83702. | Sep. 25, 2020 | 160001 |
| Iowa: | | | | | |
| Polk (FEMA Docket No.: B-2046). | City of Johnston (20-07-0961P). | The Honorable Paula Dierenfeld, Mayor, City of Johnston, 6221 Merle Hay Road, Johnston, IA 50131. | City Hall, 6221 Merle Hay Road, Johnston, IA 50131. | Oct. 21, 2020 | 190745 |
| Polk (FEMA Docket No.: B-2046). | Unincorporated Areas of Polk County (20-07-0961P). | Mr. Tom Hockensmith, Supervisor, Board of Polk County Supervisors, Polk County Administration Building, 111 Court Avenue, Room 300, Des Moines, IA 50309. | Polk County Public Works, 5885 Northeast 14th Street, Des Moines, IA 50313. | Oct. 21, 2020 | 190901 |
| Illinois: | | | | | |
| Champaign (FEMA Docket No.: B-2056). | City of Champaign (18-05-1977P). | The Honorable Deborah Frank Feinen, Mayor, City of Champaign, 102 North Neil Street, Champaign, IL 61820. | City Hall, 102 North Neil Street, Champaign, IL 61820. | Nov. 12, 2020 | 170026 |
| Kane (FEMA Docket No.: B-2041). | City of Aurora (20-05-2946P). | The Honorable Richard C. Irvin, Mayor, City of Aurora, 44 East Downer Place 3rd Floor, Aurora, IL 60505. | City Hall, Engineering Department, 44 East Downer Place, Aurora, IL 60505. | Sep. 25, 2020 | 170320 |
| Kane (FEMA Docket No.: B-2041). | Unincorporated Areas of Kane County (20-05-2947P). | The Honorable Christopher Lauzen, Chairman, Kane County Board, Kane County Government Center Building A, 719 South Batavia Avenue, Geneva, IL 60134. | Kane County Government Center, Building A, Water Resources Department, 719 South Batavia Avenue, Geneva, IL 60134. | Sep. 25, 2020 | 170896 |
| Indiana: | | | | | |
| Allen (FEMA Docket No.: B-2041). | City of Fort Wayne (20-05-2000P). | The Honorable Tom Henry, Mayor, City of Fort Wayne, Citizens Square Building, 200 East Berry Street, Suite 420, Fort Wayne, IN 46802. | Department of Planning Services, 200 East Berry Street, Suite 150, Fort Wayne, IN 46802. | Oct. 8, 2020 | 180003 |
| LaPorte (FEMA Docket No.: B-2041). | City of La Porte (19-05-4383P). | The Honorable Tom Dermody, Mayor, City of La Porte, 801 Michigan Avenue, LaPorte, IN 46350. | City Hall, 801 Michigan Avenue, LaPorte, IN 46350. | Sep. 25, 2020 | 180490 |
| LaPorte (FEMA Docket No.: B-2041). | Unincorporated Areas of LaPorte County (19-05-4383P). | Ms. Sheila Matias, President, Commissioner, 555 Michigan Avenue, Suite 202, LaPorte, IN 46350. | LaPorte County Plan Commission, County Government Complex, Suite 503A, 809 State Street, La Porte, IN 46350. | Sep. 25, 2020 | 180144 |
| Scott (FEMA Docket No.: B-2041). | Unincorporated Areas of Scott County (19-05-2009P). | Mr. Robert Tobias, President, County Commissioner District 1, Scott County Courthouse, Suite 130, 1 East McClain Avenue, Scottsburg, IN 47170. | Scott County Area Plan Commission, 1 East McClain Avenue, Suite G40, Scottsburg, IN 47170. | Jul. 16, 2020 | 180474 |
| Michigan: | | | | | |
| Kent (FEMA Docket No.: B-2041). | City of Kentwood (19-05-5009P). | The Honorable Stephen Kepley, Mayor, City of Kentwood, P.O. Box 8848, Kentwood, MI 49518. | City Hall, 4900 Breton Avenue Southeast, Kentwood, MI 49508. | Oct. 9, 2020 | 260107 |
| Oakland (FEMA Docket No.: B-2024). | Township of Bloomfield (19-05-2978P). | Mr. Leo Savoie, Township of Bloomfield Supervisor, P.O. Box 489, Bloomfield Hills, MI 48303. | Bloomfield Township Clerk's Office, 4200 Telegraph Road, Bloomfield Hills, MI 48303. | Jun. 29, 2020 | 2 260169 |
| Wayne (FEMA Docket No.: B-2041). | Charter Township of Brownstown (19-05-2936P). | The Honorable Andrew Linko, Supervisor, Charter Township of Brownstown, 21313 Telegraph Road, Brownstown, MI 48183. | Charter Township Offices, 21313 Telegraph Road, Brownstown, MI 48183. | Sep. 24, 2020 | 260218 |
| Wayne (FEMA Docket No.: B-2041). | City of Taylor (19-05-2936P). | The Honorable Rick Sollars, Mayor, City of Taylor, Municipal Offices, 23555 Goddard Road, Taylor, MI 48180. | Department of Public Works, 25605 Northline Road, Taylor, MI 48180. | Sep. 24, 2020 | 260728 |
| Nebraska: | | | | | |
| Hall (FEMA Docket No.: B-2041). | City of Grand Island (19-07-1260P). | The Honorable Roger Steele, Mayor, City of Grand Island, City Hall, 100 East 1st Street, Grand Island, NE 68801. | Regional Planning Department, 100 East 1st Street, Grand Island, NE 68801. | Sep. 25, 2020 | 310103 |
| Hall (FEMA Docket No.: B-2041). | Unincorporated Areas of Hall County (19-07-1260P). | The Honorable Pamela E. Lancaster, Chair, Hall County Board of County Commissioners Administration Building, 121 Street Pine Street, Grand Island, NE 68801. | Hall County Regional Planning Department, 100 East 1st Street, Grand Island, NE 68801. | Sep. 25, 2020 | 310100 |
| Lancaster (FEMA Docket No.: B-2046). | City of Lincoln (20-07-0142P). | The Honorable Leirion Gaylor Baird, Mayor, City of Lincoln, 555 South 10th Street, Suite 301, Lincoln, NE 68508. | Building & Safety Department, 555 South 10th Street, Lincoln, NE 68508. | Sep. 25, 2020 | 315273 |
| Nevada: | | | | | |
| Clark (FEMA Docket No.: B-2041). | City of Mesquite (20-09-1320P). | The Honorable Allan Litman, Mayor, City of Mesquite, 10 East Mesquite Boulevard, Mesquite, NV 89027. | Office of The City Engineer, 10 East Mesquite Boulevard, Mesquite, NV 89027. | Oct. 5, 2020 | 320035 |

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Date of modification | Community No. |
|--|--|--|--|----------------------|---------------|
| Clark (FEMA Docket No.: B-2024). | Unincorporated Areas of Clark County (19-09-1371P). | The Honorable Marilyn Kirkpatrick, Chair, Board of Commissioners, Clark County, 500 South Grand Central Parkway, 6th Floor, Las Vegas, NV 89106. | Clark County Office of the Director of Public Works, 500 South Grand Central Parkway, 2nd Floor, Las Vegas, NV 89155. | Jul. 3, 2020 | 320003 |
| Nye (FEMA Docket No.: B-2041). | Unincorporated Areas of Nye County (20-09-1321P). | The Honorable John Koenig, Chairman, Board of Commissioners, Nye County, 2100 East Walt Williams Drive, Suite 100, Pahrump, NV 89048. | Nye County Department of Planning, 250 North Highway 160 Suite 1, Pahrump, NV 89060. | Oct. 1, 2020 | 320018 |
| Washoe (FEMA Docket No.: B-2046). | Unincorporated Areas of Washoe County (20-09-0371P). | The Honorable Bob Lucey, Chairman, Board of Commissioners, Washoe County, 1001 East 9th Street, Building A, Reno, NV 89512. | Washoe County Administration Building, Department of Public Works, 1001 East 9th Street, Reno, NV 89512. | Oct. 8, 2020 | 320019 |
| New Jersey: | | | | | |
| Essex (FEMA Docket No.: B-2046). | Township of Belleville (19-02-0938P). | The Honorable Michael Melham, Mayor, Township of Belleville, 152 Washington Avenue #1, Belleville, NJ 07109. | Engineering Office, 152 Washington Avenue, Belleville, NJ 07109. | Sep. 25, 2020 | 340177 |
| Union (FEMA Docket No.: B-2041). | Borough of Roselle (20-02-0602X). | The Honorable Christine Dansereau, Mayor, Borough of Roselle, Borough Hall, 210 Chestnut Street, Roselle, NJ 07203. | Borough Municipal Building, 210 Chestnut Street, Roselle, NJ 07203. | Sep. 25, 2020 | 340472 |
| New York: | | | | | |
| Nassau (FEMA Docket No.: B-2024). | Village of Kings Point (19-02-0330P). | The Honorable Michael C. Kalnick, Mayor, Village of Kings Point, Village Hall, 32 Stepping Stone Lane, Kings Point, NY 11024. | Village Hall, 32 Stepping Stone Lane, Kings Point, NY 11024. | Aug. 5, 2020 | 360473 |
| Westchester (FEMA Docket No.: B-2024). | City of New Rochelle (19-02-1191P). | The Honorable Noam Bramson, Mayor, City of New Rochelle, 515 North Avenue, New Rochelle, NY 10801. | City Hall/Department of Public Works, 515 North Avenue, New Rochelle, NY 10801. | Sep. 4, 2020 | 360922 |
| Westchester (FEMA Docket No.: B-2046). | Village of Mamaroneck (20-02-0294P). | The Honorable Thomas A. Murphy, Mayor, Village of Mamaroneck, 123 Mamaroneck Avenue, Mamaroneck, NY 10543. | Building Inspector, The Regatta Building, 123 Mamaroneck Avenue, Mamaroneck, NY 10543. | Dec. 3, 2020 | 360916 |
| Ohio: | | | | | |
| Cuyahoga (FEMA Docket No.: B-2046). | City of North Olmsted (19-05-3365P). | The Honorable Kevin M. Kennedy, Mayor, City of North Olmsted, 5200 Dover Center Road, North Olmsted, OH 44070. | City Hall, 5200 Dover Center Road, North Olmsted, OH 44070. | Oct. 29, 2020 | 390120 |
| Cuyahoga (FEMA Docket No.: B-2046). | City of Westlake (19-05-3365P). | The Honorable Dennis M. Clough, Mayor, City of Westlake, 27700 Hilliard Boulevard, Westlake, OH 44145. | City Hall, 27700 Hilliard Boulevard, Westlake, OH 44145. | Oct. 29, 2020 | 390136 |
| Texas: | | | | | |
| Dallas (FEMA Docket No.: B-2041). | City of Dallas (19-06-3571P). | The Honorable Eric Johnson, Mayor, City of Dallas, 1500 Marilla Street, Room 5EN, Dallas, TX 75201. | Trinity Watershed Management Department, Flood Plain and Drainage Management, 320 East Jefferson Blvd. Room 307, Dallas, TX 75203. | Sep. 18, 2020 | 480171 |
| Dallas (FEMA Docket No.: B-2041). | City of Dallas (20-06-0582P). | The Honorable Eric Johnson, Mayor, City of Dallas, 1500 Marilla Street, Room 5EN, Dallas, TX 75201. | Trinity Watershed Management Department, Flood Plain and Drainage Management, 320 East Jefferson Blvd. Room 307, Dallas, TX 75203. | Oct. 8, 2020 | 480171 |
| Dallas (FEMA Docket No.: B-2041). | Town of Highland Park (19-06-3290P). | The Honorable Margo Goodwin, Mayor, Town of Highland Park, 4700 Drexel Drive, Highland Park, TX 75205. | Engineering Department, 4700 Drexel Drive, Highland Park, TX 75205. | Sep. 18, 2020 | 480178 |
| Tarrant (FEMA Docket No.: B-2041). | City of Arlington (18-06-3756P). | The Honorable Jeff Williams, Mayor, City of Arlington, City Hall, P.O. Box 90231, Arlington, TX 76010. | City Hall, 101 West Abram Street, Arlington, TX 76010. | Sep. 25, 2020 | 485454 |
| Tarrant (FEMA Docket No.: B-2046). | City of Arlington (19-06-0599P). | The Honorable Jeff Williams, Mayor, City of Arlington, City Hall, P.O. Box 90231, Arlington, TX 76010. | City Hall, 101 West Abram Street, Arlington, TX 76010. | Oct. 22, 2020 | 485454 |
| Tarrant (FEMA Docket No.: B-2046). | City of Arlington (20-06-2305P). | The Honorable Jeff Williams, Mayor, City of Arlington, City Hall, P.O. Box 90231, Arlington, TX 76010. | City Hall, 101 West Abram Street, Arlington, TX 76010. | Sep. 24, 2020 | 485454 |
| Tarrant (FEMA Docket No.: B-2041). | City of Fort Worth (18-06-3756P). | The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102. | Department of Transportation and Public Works, 200 Texas Street, Fort Worth, TX 76102. | Sep. 25, 2020 | 480596 |
| Tarrant (FEMA Docket No.: B-2046). | City of Grand Prairie (20-06-2305P). | The Honorable Ron Jensen, Mayor, City of Grand Prairie, P.O. Box 534045, Grand Prairie, TX 45053. | Community Development Center, 206 West Church Street, Grand Prairie, TX 75050. | Sep. 24, 2020 | 485472 |
| Washington: | | | | | |
| Clark (FEMA Docket No.: B-2041). | City of Vancouver (20-10-0406P). | The Honorable Anne McEnery-Olge, Mayor, City of Vancouver, City Hall, 415 West 6th Street, Vancouver, WA 98660. | City Hall, 415 West 6th Street, Vancouver, WA 98660. | Sep. 18, 2020 | 530027 |
| Mason (FEMA Docket No.: B-2041). | Unincorporated Areas of Mason County (20-10-0789P). | The Honorable Sharon Trask, Chair, Board of Commissioners, Mason County, 411 North 5th Street, Shelton, WA 98584. | Mason County Public Works, 100 West Public Works Drive, Shelton, WA 98584. | Oct. 16, 2020 | 530115 |

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Date of modification | Community No. |
|--|---|---|---|----------------------|---------------|
| Wisconsin: Brown (FEMA Docket No.: B-2041). | Unincorporated Areas of Brown County (19-05-3386P). | The Honorable Patrick Moynihan, Jr., Chair, County Board of Supervisors, Brown County, 305 East Walnut Street, Green Bay, WI 54305. | Brown County, Zoning Office, 305 East Walnut Street, Green Bay, WI 54305. | Sep. 18, 2020 | 550020 |
| Brown (FEMA Docket No.: B-2046) | Village of Ashwaubenon (20-05-2968P). | The Honorable Mary Kardoskee, President, Village of Ashwaubenon, Village Hall, 2155 Holmgren Way, Ashwaubenon, WI 54304. | Village Hall, 2155 Holmgren Way, Ashwaubenon, WI 54304. | Oct. 16, 2020 | 550600 |
| Jefferson (FEMA Docket No.: B-2046) | City of Jefferson (20-05-1721P). | The Honorable Dale Oppermann, Mayor, City of Jefferson, 317 South Main Street, Jefferson, WI 53549. | City Hall, 317 South Main Street, Jefferson, WI 53549. | Nov. 6, 2020 | 555561 |
| Milwaukee (FEMA Docket No.: B-2041). | City of West Allis (20-05-2969X). | The Honorable Dan Devine, Mayor, City of West Allis, 7525 West Greenfield Avenue, West Allis, WI 53214. | City Hall, 7525 West Greenfield Avenue, West Allis, WI 53214. | Oct. 15, 2020 | 550285 |
| Waukesha (FEMA Docket No.: B-2041). | City of Brookfield (20-05-1573P). | The Honorable Steven V. Ponto, Mayor, City of Brookfield, 2000 North Calhoun Road, Brookfield, WI 53005. | City Hall, 2000 North Calhoun Road, Brookfield, WI 53005. | Sep. 24, 2020 | 550478 |

[FR Doc. 2020-28222 Filed 12-21-20; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Agreement Between the Government of the United States of America and the Government of the Republic of El Salvador for Cooperation in the Examination of Protection Claims

AGENCY: Department of Homeland Security, Office of Strategy, Policy, and Plans.

ACTION: Notice of Agreement.

SUMMARY: The Department of Homeland Security is publishing the Agreement Between the Government of the United States of America and the Government of the Republic of El Salvador for Cooperation in the Examination of Protection Claims. The text of the Agreement is set out below.

Tyler Houlton,

*Assistant Secretary for International Affairs,
Office of Strategy, Policy, and Plans, U.S.
Department of Homeland Security.*

BILLING CODE 9110-9M-P

**AGREEMENT
BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE REPUBLIC OF EL SALVADOR
FOR COOPERATION IN THE EXAMINATION OF PROTECTION CLAIMS**

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF EL SALVADOR (hereinafter referred to individually as "Party," or collectively as "the Parties"),

CONSIDERING that El Salvador is a party to the 1951 Convention relating to the Status of Refugees, done at Geneva, July 28, 1951 (the "1951 Convention") and the Protocol relating to the Status of Refugees, done at New York, January 31, 1967 (the "1967 Protocol"), and the United States is party to the 1967 Protocol, and reaffirming the Parties' obligations to provide protection for eligible refugees who are physically present in their respective territories in accordance with their respective obligations under those instruments, subject to the Parties' respective reservations, understandings, and declarations;

ACKNOWLEDGING in particular the obligations of the Parties in honoring the principle of non-refoulement as set forth in the 1951 Convention and the 1967 Protocol, as well as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York, December 10, 1984 (the "Convention Against Torture"), subject to the Parties' respective reservations, understandings, and declarations and reaffirming their respective obligations to promote and protect human rights and fundamental freedoms consistent with their respective international obligations;

RECOGNIZING and respecting the obligations of each Party under its domestic laws, policies, instructions, and agreements;

EMPHASIZING that the United States and El Salvador offer systems of refugee protection that are consistent with their respective obligations under the 1951 Convention or the 1967 Protocol, and committed to the notion that cooperation and burden-sharing with respect to refugee status claimants can be enhanced;

DESIRING to uphold asylum or equivalent temporary protection as a critical instrument of the international protection of refugees, while simultaneously desiring to prevent fraud in the asylum process, which undermines its legitimate purpose, and resolved to strengthen the integrity of that institution and the public support on which it depends; and

AWARE that such sharing of responsibility must ensure in practice that persons in need of international protection are identified and that breaches of the fundamental principle of non-refoulement are avoided, and therefore determined to safeguard for each refugee status claimant eligible to pursue a refugee status claim who comes within their jurisdiction, access to a full and fair refugee status determination procedure;

AGREE as follows:

ARTICLE 1

For the purposes of this Agreement:

1. "Protection Claim" means a request from a person to the government of a Party for protection consistent with their respective obligations under the 1951 Convention or the 1967 Protocol, or the Convention Against Torture, in accordance with the Parties' respective laws and policies implementing those obligations, or any other equivalent temporary protection available under El Salvadorian migration law.
2. "Protection Claimant" means any person who makes a Protection Claim in the territory of one of the Parties.
3. "Protection Determination System" means the sum of laws and administrative and judicial practices employed by each Party's national government for the purpose of adjudicating Protection Claims. In the case of El Salvador, it means any applicable laws, regulations, decrees, or resolutions.
4. "Unaccompanied Minor" means a Protection Claimant who has not yet reached his or her eighteenth birthday and does not have a parent or legal guardian present and available to provide care and custody in the country where the Unaccompanied Minor is encountered, either in the United States or El Salvador.

ARTICLE 2

This Agreement does not apply to Protection Claimants who are citizens or nationals of El Salvador; or who, not having a country of nationality, are habitual residents of El Salvador.

ARTICLE 3

1. In order to ensure that Protection Claimants have access to a Protection Determination System, El Salvador shall not return or remove a Protection Claimant referred by the United States under the terms of Article 4 to another country until an administratively final adjudication of the person's Protection Claim has been made.
2. El Salvador shall not remove a Protection Claimant transferred to El Salvador under the terms of this Agreement pursuant to any other agreement or regulatory designation. El Salvador shall have a procedure to resolve, consistent with its domestic law and international obligations, potential abandonment of claims by individuals transferred under this agreement.
3. During the transfer process as determined in the implementation plan, individuals subject to this agreement will be the responsibility of the United States until the transfer process is complete.

ARTICLE 4

1. Responsibility for determining the Protection Claim shall rest with the United States, where the United States determines that the person:
 - a. Is an Unaccompanied Minor; or
 - b. Arrived in the territory of the United States:
 - i. With a validly issued visa or other valid admission document, other than for transit, issued by the United States; or
 - ii. Not being required to obtain a visa by the United States.
2. El Salvador shall not be required to accept the transfer of a Protection Claimant until a final determination with respect to paragraph 1 is made by the United States.

3. Subject to paragraphs 1 and 2 of this article, El Salvador shall examine, in accordance with its Protection Determination System, to determine the Protection Claim of any person who makes such claims after arriving at a port of entry, or crossing a border between ports of entry of the United States on or after the effective date of this Agreement.
4. The United States shall apply this Agreement with respect to Unaccompanied Minors consistent with its national law.
5. El Salvador shall not dispute any decision of the United States that an individual qualifies for an exception under Articles 4 and 5 of this Agreement.
6. The Parties will have procedures in place to ensure that transfers of Protection Claimants to El Salvador are consistent with the Parties respective obligations and national laws.

ARTICLE 5

Notwithstanding any provision of this Agreement, either Party may at its own discretion examine any Protection Claim made to that Party where it determines that it is in its public interest to do so.

ARTICLE 6

The Parties may:

1. Exchange such information as may be necessary for the effective implementation of this Agreement subject to national laws and regulations. That information shall not be disclosed by the Party of the receiving country except in accordance with its national laws and regulations. The Parties shall seek to ensure that information is not exchanged or disclosed in such a way as to place Protection Claimants or their families at risk in their countries of origin.
2. Exchange on a regular basis information on the laws, regulations, and practices relating to their respective Protection Determination Systems.

ARTICLE 7

1. The Parties shall develop standard operating procedures to assist with the implementation of this Agreement. These procedures shall include provisions for notification, to El Salvador, in advance of the transfer of any Protection Claimant pursuant to this Agreement. The United States shall work with El Salvador to identify appropriate individuals to be transferred pursuant to this agreement.
2. Those procedures shall include mechanisms for resolving differences respecting the interpretation and implementation of the terms of this Agreement. Issues that cannot be resolved through these mechanisms shall be settled through diplomatic channels.
3. The United States intends to cooperate with El Salvador in order to strengthen El Salvador's institutional capacities.
4. The Parties agree to review this Agreement and its implementation. The first review shall take place not later than 3 months from the date of entry into force of this Agreement and shall be jointly conducted by representatives of each Party. The Parties may invite other appropriate organizations with expertise, as agreed upon by the Parties, to participate in this initial review. The Parties may cooperate with such organizations in the monitoring of this Agreement, provided that those organizations agree to provide such consultation services.
5. Within 7 days of the entry into force of this agreement, the Parties intend to complete an initial implementation plan that seeks to address, among other things: (a) procedures necessary to effectuate the transfer of individuals under this agreement; (b) the volume or number of individuals to be transferred; and (c) institutional capacity requirements. Until the initial implementation plan is completed, the parties do not plan to operationalize this agreement.

ARTICLE 8

Both Parties shall, upon request, endeavor to assist each other in the resettlement of individuals determined to require protection in appropriate circumstances.

ARTICLE 9

1. This Agreement shall enter into force upon exchange of notes by both Parties indicating that each has completed the necessary domestic legal procedures for bringing the Agreement into force.
2. Either Party may terminate this Agreement upon six months' written notice to the other Party.

3. Either Party may, immediately upon written notice to the other Party, suspend for an initial period of up to three months' application of this Agreement. Such suspension may be renewed for additional periods of up to three months upon written notice to the other Party. Either Party may, with the written agreement of the other Party, suspend any part of this Agreement.
4. The Parties may agree on any modification of or addition to this Agreement in writing. When so agreed, and approved in accordance with the applicable legal procedures of each Party, a modification or addition shall constitute an integral part of this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective governments, have signed this Agreement.

DONE at 2:30pm, this 20th day of September 2019, in duplicate in the English and Spanish languages, each text being equally authentic.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE
REPUBLIC OF EL SALVADOR:



Kevin K. McAleenan
Acting Secretary
U.S. Department of Homeland Security



Alexandra Hill Tinoco
Minister
Ministry of Foreign Relations

[FR Doc. 2020-28136 Filed 12-21-20; 8:45 am]
BILLING CODE 9110-9M-C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7024-C-55]

30-Day Notice of Proposed Information Collection: Quality Control Requirements for Direct Endorsement Lenders; OMB Control No.: 2502-0600; Correction

AGENCY: Office of the Chief Information
Officer, HUD.

ACTION: Notice; correction.

SUMMARY: On December 17, 2020, HUD
published a 30-day information
collection notice for OMB Control No.
2502-0600. This notice is to correct the
Average Hours per Response.

ADDRESSES: Interested persons are
invited to submit comments regarding
this proposal. 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/
Start Printed Page 15501PRAMain](http://www.reginfo.gov/public/do/StartPrintedPage15501PRAMain). 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:

Colette Pollard, Reports Management
Officer, QDAM, Department of Housing
and Urban Development, 451 7th Street
SW, Washington, DC 20410; email
Colette.Pollard@
hud.gov or telephone 202-402-3400.
Persons with hearing or speech
impairments may access this number
through TTY by calling the toll-free
Federal Relay Service at (800) 877-8339.

This is not a toll-free number. Copies
of available documents submitted to
OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of December
17, 2020, in FR Doc. 2020-27771, on
page 81947, in the third column, correct
the Average Hours per Response from
25. to 0.25.

Colette Pollard,

*Department reports Management Officer,
Office of the Chief Information Officer.*

[FR Doc. 2020-28197 Filed 12-21-20; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R8-ES-2020-N152;
FXES1114080000-20212FF08ECAR00]

Endangered and Threatened Species; Receipt of an Incidental Take Permit Application for the California Condor; Availability of Draft Conservation Plan and Draft Environmental Assessment; Manzana Wind Power Project, Kern County, California

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Notice of availability; request
for public comments.

SUMMARY: We, the U.S. Fish and
Wildlife Service (Service), have received
an application from Manzanita Wind LLC
for an incidental take permit under the
Endangered Species Act of 1973, as
amended. The permit would authorize
take of the federally endangered
California condor (*Gymnogyps
californianus*) incidental to otherwise
lawful activities associated with
operation of the existing Manzanita Wind
Power Project. We invite comments on
the draft conservation plan and the draft
environmental assessment, which we
have prepared pursuant to the National

Environmental Policy Act. We will take comments into consideration before deciding whether to issue an incidental take permit.

DATES: We are extending the standard 30-day comment period by 15 days to allow additional time for public comment. Written comments should be received on or before February 5, 2021.

ADDRESSES:

To obtain documents: You may view or download copies of the draft conservation plan and draft environmental assessment at <https://www.fws.gov/carlsbad/>, or you may request hardcopies of the draft documents by contacting our Palm Springs office (see below).

To submit written comments: Please submit your written comments by either of the following methods:

- *Email:* fw8cfwocomments@fws.gov. Include “Manzana Wind Power Incidental Take Permit” in the subject line of the message.

- *U.S. Mail:* Assistant Field Supervisor, Palm Springs Fish and Wildlife Office, U.S. Fish and Wildlife Service, 777 East Tahquitz Canyon Way, Suite 208, Palm Springs, CA 92284.

We request that you send written comments by only the methods described above.

FOR FURTHER INFORMATION CONTACT:

Peter Sanzenbacher, Fish and Wildlife Biologist, by mail at Palm Springs Fish and Wildlife Office (address above), by phone at 760-322-2070, extension 425, or via email at peter_sanzenbacher@fws.gov. If you use a telecommunications device for the deaf, hard of hearing, or speech disabled, please call the Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION: We have received an application from Manzana Wind LLC (applicant) for an incidental take permit under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The application addresses the potential take of the federally endangered California condor (condor), incidental to otherwise lawful activities at the Manzana Wind Power Project (project), as described in the applicant’s draft conservation plan. The project began operations in 2012 and is in the Antelope Valley region of Kern County, California, along the southern foothills of the Tehachapi Mountains.

Background

Section 9 of the ESA (16 U.S.C. 1538) and Federal regulations promulgated pursuant to section 4(d) of the ESA (16 U.S.C. 1533) prohibit the take of endangered species without special exemption. Under section 10(a)(1)(B) of

the ESA (16 U.S.C. 1539), we may issue permits to authorize take of listed fish and wildlife species that is incidental to, and not the purpose of, carrying out an otherwise lawful activity.

Regulations governing permits for endangered and threatened species are set forth in title 50 of the Code of Federal Regulations at part 17, sections 17.22 and 17.32.

The National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) requires Federal agencies to analyze their proposed actions to determine whether the actions may significantly affect the human environment. In the NEPA analysis, the Federal agency will identify the effects, as well as possible mitigation for effects on environmental resources, that could occur with the implementation of the proposed action and alternatives. The Federal action in this case is the Service’s proposed issuance of an incidental take permit for the federally endangered California condor.

Permit Application

The applicant has submitted a draft conservation plan that describes the activities covered by the permit, such as the operation of wind turbines and other specified activities associated with project components. To minimize the risk of incidental take, the applicant will maintain a program to detect condors approaching the project and temporarily curtail operating wind turbines when appropriate; the conservation plan also includes adaptive management to allow for maintaining the protection of condors as technologies, condor behavior, and other factors change over time. To mitigate the impact of the potential incidental take, the applicant proposes to work with an existing captive breeding facility to fund the production of additional condors for release into the wild. The Service and applicant used a population viability analysis to inform the mitigation strategy and ensure that the level of potential injury or mortality of condors permitted at the project would not impede recovery of the species. The population viability analysis report is appended to the draft conservation plan and the draft environmental assessment. A “Frequently Asked Questions” document for the population viability analysis is also attached to the draft environmental assessment. The draft conservation plan and the draft environmental assessment consider alternatives to the proposed action, including a no action alternative.

Public Comments

If you wish to comment on the draft conservation plan and draft environmental assessment, you may submit comments by one of the methods in **ADDRESSES**.

Public Availability of Comments

You may submit comments by one of the methods shown under **ADDRESSES**. All comments and materials we receive in response to this request will become part of the decision 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 ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We issue this notice pursuant to section 10(c) of the ESA (16 U.S.C. 1539) and its implementing regulations (50 CFR 17.22), and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6 and 43 CFR 46.305).

Scott Sobiech,

Field Supervisor, Carlsbad Fish and Wildlife Office, Carlsbad, California.

[FR Doc. 2020-28253 Filed 12-21-20; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

**[FWS-R7-NWRS-2020-N158;
FF07R08000F-XRS-1263-0700000-201;
OMB Control Number 1018-0141]**

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Alaska Guide Service Evaluation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before January 21, 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 Review—Open for Public Comments” or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB/PERMA (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to Info_Coll@fws.gov. Please reference OMB Control Number 1018–0141 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at Info_Coll@fws.gov, or by telephone at (703) 358–2503. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance. You may also view the information collection request (ICR) at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public’s reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

On August 26, 2020, we published in the **Federal Register** (85 FR 52631) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on October 26, 2020. We received no comments in response to that notice.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed information collection request (ICR) that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including 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 response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: We collect information via FWS Form 3–2349 (Alaska Guide Service Evaluation) to help us evaluate commercial guide services on our national wildlife refuges in the State of Alaska (State). The National Wildlife Refuge Administration Act of 1966, as amended (16 U.S.C. 668dd–ee), authorizes us to permit uses, including commercial visitor services, on national wildlife refuges when we find the activity to be compatible with the purposes for which the refuge was established. With the objective of making available a variety of quality visitor services for wildlife-dependent recreation on National Wildlife Refuge System lands, we issue permits for commercial guide services, including big game hunting, sport fishing, wildlife viewing, river trips, and other guided activities. We use FWS Form 3–2349 as a method to:

- Monitor the quality of services provided by commercial guides.
- Gauge client satisfaction with the services.
- Assess the impacts of the activity on refuge resources.

The client is the best source of information on the quality of commercial guiding services. We collect:

- Client name.
- Guide name(s).
- Type of guided activity.
- Dates and location of guided activity.

- Information on the services received, such as the client’s expectations, safety, environmental impacts, and client’s overall satisfaction.

We encourage respondents to provide any additional comments that they wish regarding the guide service or refuge experience, and ask whether or not they wish to be contacted for additional information.

The above information, in combination with State-required guide activity reports and contacts with guides and clients in the field, provides a comprehensive method for monitoring permitted commercial guide activities. A regular program of client evaluation helps refuge managers detect potential problems with guide services so that we can take corrective actions promptly. In addition, we use this information during the competitive selection process for big game and sport fishing guide permits to evaluate an applicant’s ability to provide a quality guiding service.

The Service is actively reviewing the current evaluation form to identify ways to improve the information collected to:

- Provide more quantifiable and defensible data;
- Provide statistical data for each completed and submitted form;
- Provide more quantifiable rather than qualitative information; and
- Translate the client responses into useful information, in order for refuge management to make informed decisions.

The Service initially planned to submit the new form (tentatively assigned FWS Form 3–2538, “Alaska Guide Service Evaluation”) to OMB for approval to conduct usability testing under OMB Control No. 1090–0011, “DOI Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery,” in time to pretest it during the 2020 Alaska guide season. However, the pandemic significantly limited the number of guide trips during the 2020 guide season, necessitating the usability testing be conducted during the 2021 Alaska guide season (and possibly the 2022 season). At the conclusion of the usability testing, the Service will evaluate all feedback of the new evaluation form to determine whether additional updates need to be made to it. At that time, we will begin the process to initiate a revision to this information collection by publishing the required notices in the **Federal Register** announcing to the public our intention to submit the final evaluation form to OMB for approval prior to the calendar year 2023 Alaska guide season. In addition, the Service will provide the

Alaska National Interest Lands Conservation Act (ANILCA) Coordinator for the State of Alaska with a copy of the proposed new guide form for review/comment.

Title of Collection: Alaska Guide Service Evaluation.

OMB Control Number: 1018–0141.

Form Number: FWS Form 3–2349.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Clients of permitted commercial guide service providers.

Total Estimated Number of Annual Respondents: 264.

Total Estimated Number of Annual Responses: 264.

Estimated Completion Time per Response: 15 minutes.

Total Estimated Number of Annual Burden Hours: 66.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time, following use of commercial guide services.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: December 17, 2020.

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2020–28260 Filed 12–21–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2020–N161;
FXES11130800000–212–FF08E00000]

**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 January 21, 2021.

ADDRESSES: *Document availability and comment submission:* Submit requests for copies of the applications and related documents and submit 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).

- *Email:* permits8es@fws.gov.

- *U.S. Mail:* Susie Tharratt, Regional Recovery Permit Coordinator, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Susie Tharratt, via phone at 916–414–6561, via email at permits8es@fws.gov, or via the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications for permits under section 10(a)(1)(A) of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permits would allow the applicants to conduct activities intended to promote recovery of species that are listed as endangered or threatened under the ESA.

Background

With some exceptions, the ESA prohibits activities that constitute take

of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of "take" includes such activities as pursuing, harassing, trapping, capturing, or collecting, in addition to hunting, shooting, harming, wounding, or killing.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. These activities often include such prohibited actions as capture and collection. Our regulations implementing section 10(a)(1)(A) for these permits are found in the Code of Federal Regulations 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

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies.

| Application No. | Applicant, city, state | Species | Location | Take activity | Permit action |
|-----------------|--------------------------------------|--|----------|---|------------------|
| TE–115370 | Gage Dayton, Santa Cruz, California. | • Ohlone tiger beetle (<i>Cicindela ohlone</i>). | CA | Capture, handle, release, habitat enhancement, mark burrows, and translocation. | Amend. |
| TE–88650D | Joshua Goodwin, Rocklin, California. | • California tiger salamander (Santa Barbara County and Sonoma County Distinct Population Segments (DPSs)) (<i>Ambystoma californiense</i>). | CA | Capture, handle, and release | New. |
| TE–72045A | Alisa Zych, Oceanside, California. | • Southwestern willow flycatcher (<i>Empidonax traillii extimus</i>). | CA | Play taped vocalizations | Renew. |
| TE–52816B | David Davis, Barstow, California | • Southwestern willow flycatcher (<i>Empidonax traillii extimus</i>). | CA | Play taped vocalizations | Renew and Amend. |

| Application No. | Applicant, city, state | Species | Location | Take activity | Permit action |
|------------------|---|--|-----------------|---|------------------|
| TE-829554 | Barbara Kus, San Diego, California. | <ul style="list-style-type: none"> Southwestern willow flycatcher (<i>Empidonax traillii extimus</i>). Least Bell's vireo (<i>Vireo bellii pusillus</i>). | CA, NV, NM, AZ. | Play taped vocalizations, monitor nests, capture, collect genetic samples, handle, band, conduct training workshops, and remove brown-headed cowbird (<i>Molothrus ater</i>) eggs and chicks from parasitized nests. | Renew. |
| TE-29522A | Kenneth Gilliland, Ventura, California. | <ul style="list-style-type: none"> California tiger salamander (Santa Barbara County and Sonoma County Distinct Population Segments (DPSs)) (<i>Ambystoma californiense</i>). Least Bell's vireo (<i>Vireo bellii pusillus</i>). California least tern (<i>Sterna antillarum browni</i>). Arroyo (=arroyo southwestern) toad (<i>Anaxyrus californicus</i>). | CA | Capture, handle, release, monitor nests, remove brown-headed cowbird (<i>Molothrus ater</i>) eggs and chicks from parasitized nests, translocate, erect nest enclosures, collect infertile eggs, swab, mark, and attach radio transmitters. | Renew and amend. |
| PER0002114 | Scott Whitman | <ul style="list-style-type: none"> California tiger salamander (Santa Barbara County and Sonoma County Distinct Population Segments (DPSs)) (<i>Ambystoma californiense</i>). Conservancy fairy shrimp (<i>Branchinecta conservatio</i>). Longhorn fairy shrimp (<i>Branchinecta longiantenna</i>). Vernal pool tadpole shrimp (<i>Lepidurus packardii</i>). | CA | Capture, handle, release, and collect vouchers. | New. |
| TE-67253D | City of Eureka, Eureka, California. | <ul style="list-style-type: none"> Behren's silverspot butterfly (<i>Speyeria zerene behrensi</i>). | CA | Capture, handle, captive breed, captive rear, translocate, and release. | Amend. |
| PER0002166 | Danielle Dillard, College Station, Texas. | <ul style="list-style-type: none"> Giant kangaroo rat (<i>Dipodomys ingens</i>). | CA | Capture, handle, examine for mites, collect fecal samples, and humanely euthanize for disease research. | New. |

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. 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.*).

Angela Picco,

Regional Endangered Species Program Manager, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2020-28180 Filed 12-21-20; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-HQ-ES-2020-N146; FXHC11140900000-212-FF09E33000; OMB Control Number 1018-0148]

Agency Information Collection Activities; Land-Based Wind Energy Guidelines

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we,

the U.S. Fish and Wildlife Service (Service), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before February 22, 2021.

ADDRESSES: Send your comments on the information collection request (ICR) by mail to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041-3803 (mail); or by email to Info_Coll@fws.gov. Please reference Office of Management and Budget (OMB) Control Number 1018-0148 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at Info_Coll@fws.gov, or by telephone at (703) 358-2503. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1-800-877-8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act (PRA, 44 U.S.C. 3501 *et seq.*) and its implementing regulations

at 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including 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 response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: As wind energy production increased, both developers and wildlife agencies recognized the need for a system to evaluate and address the potential negative impacts of wind energy projects on species of concern. As a result, the Service worked with the wind energy industry, conservation nongovernmental organizations, Federal

and State agencies, Tribes, and academia to develop the voluntary Land-Based Wind Energy Guidelines (Guidelines; <http://www.fws.gov/windenergy>) to provide a structured, scientific process for addressing wildlife conservation concerns at all stages of land-based wind energy development. Released in 2012, the Guidelines promote effective communication among wind energy developers and Federal, State, Tribal, and local conservation agencies. When used in concert with appropriate regulatory tools, the Guidelines are the best practical approach for conserving species of concern.

The Guidelines discuss various risks to species of concern from wind energy projects, including collisions with wind turbines and associated infrastructure; loss and degradation of habitat from turbines and infrastructure; fragmentation of large habitat blocks into smaller segments that may not support sensitive species; displacement and behavioral changes; and indirect effects such as increased predator populations or introduction of invasive plants. The Guidelines assist developers in identifying species of concern that may potentially be affected by proposed projects, including but not limited to:

- Migratory birds;
- Bats;
- Bald and golden eagles, and other birds of prey;
- Prairie chickens and sage grouse; and
- Species that have been identified as candidates, or proposed or listed under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

The Guidelines follow a tiered approach. The wind energy developer begins at Tier 1 or Tier 2, which entails gathering of existing data to help identify any potential risks to wildlife and their habitats at proposed wind energy project sites. The developer then proceeds through subsequent tiers, as appropriate, to collect information in increasing detail until the level of risk is adequately ascertained to inform the developer's decision on whether or not to develop the site. Many projects may not proceed beyond Tier 1 or 2, when developers become aware of potential barriers, including high risks to wildlife. Developers would only have an interest in adhering to the Guidelines for those projects that proceed beyond Tier 1 or 2.

At each tier, wind energy developers and operators should retain documentation to provide to the Service. Such documentation may include copies of correspondence with the Service, results of pre- and post-

construction studies conducted at project sites, bird and bat conservation strategies, or any other record that supports a developer's adherence to the Guidelines. The extent of the documentation will depend on the conditions of the site being developed. Sites with greater risk of impacts to wildlife and habitats will likely involve more extensive communication with the Service and longer durations of pre- and post-construction studies than sites with little risk.

Distributed or community-scale wind energy projects are unlikely to have significant adverse impacts to wildlife and their habitats. The Guidelines recommend that developers of these small-scale projects conduct the desktop analysis described in Tier 1 or Tier 2 using publicly available information to determine whether they should communicate with the Service. Since such project designs usually include a single turbine associated with existing development, conducting a Tier 1 or Tier 2 analysis for distributed or community-scale wind energy projects should incur limited non-hour burden costs. For such projects, if there is no potential risk identified, a developer will have no need to communicate with the Service regarding the project or to conduct studies described in Tiers 3, 4, and 5.

Adherence to the Guidelines is voluntary. Following the Guidelines does not relieve any individual, company, or agency of the responsibility to comply with applicable laws and regulations (*i.e.*, species protected by the Endangered Species Act and/or Bald and Golden Eagle Protection Act (16 U.S.C. 668–668c)).

This information collection was first approved by OMB in 2012 and subsequently renewed twice, in 2015 and 2018.

Title of Collection: Land-Based Wind Energy Guidelines.

OMB Control Number: 1018–0148.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Developers and operators of wind energy facilities.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: \$36,870,000. Costs will depend on the size and complexity of issues associated with each project. These expenses may include, but are not limited to: Travel expenses for site visits, studies conducted, and meetings with the Service and other Federal and State agencies; training in survey methodologies; data management;

special transportation, such as all-terrain vehicles or helicopters; equipment needed for acoustic,

telemetry, or radar monitoring; and carcass storage.

| Requirement | Annual number of respondents | Number of responses each | Total annual responses | Completion time per response (hours) | Total annual burden hours |
|---|------------------------------|--------------------------|------------------------|--------------------------------------|---------------------------|
| Tier 1 (Desktop Analysis): | | | | | |
| Reporting | 40 | 1 | 40 | 25 | 1,000 |
| Recordkeeping | | | | 1 | 40 |
| Tier 2 (Site characterization): | | | | | |
| Reporting | 35 | 1 | 35 | 155 | 5,425 |
| Recordkeeping | | | | 3 | 105 |
| Tier 3 (Pre-construction studies): | | | | | |
| Reporting | 30 | 1 | 30 | 3,100 | 93,000 |
| Recordkeeping | | | | 5 | 150 |
| Tier 4 (Post-construction fatality monitoring and habitat studies): | | | | | |
| Reporting | 45 | 1 | 45 | 3,600 | 162,000 |
| Recordkeeping | | | | 5 | 225 |
| Tier 5 (Other post-construction studies): | | | | | |
| Reporting | 10 | 1 | 10 | 2,100 | 21,000 |
| Recordkeeping | | | | 5 | 50 |
| Totals | 160 | | 160 | | 282,995 |

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: December 17, 2020.

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2020-28259 Filed 12-21-20; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-R3-ES-2019-0101; FXES1113030000-190-FF03E00000]

Endangered and Threatened Wildlife and Plants; Draft Recovery Plan for the Ozark Hellbender

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and request for public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the draft recovery plan for the Ozark hellbender, a salamander species. We request review and comment on this draft recovery plan from local, State, and Federal agencies, and the public.

DATES: We must receive comments by January 21, 2021.

ADDRESSES:

Document availability: The draft recovery plan, along with any comments and other materials that we receive, will be available for public inspection at <http://www.regulations.gov> in Docket No. FWS-R3-ES-2019-0101.

Submitting Comments: You may submit comments by one of the following methods:

- **Internet:** <http://www.regulations.gov>. Search for and submit comments on Docket No. FWS-R3-ES-2019-0101.

- **U.S. mail or hand-delivery:** Public Comments Processing, Attn: Docket No. FWS-R3-ES-2019-0101; U.S. Fish and Wildlife Service Headquarters, MS: JAO/1N; 5275 Leesburg Pike, Falls Church, VA 22041-3803.

For more information, see Availability of Public Comments under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Karen Herrington, by phone at 573-234-2132, via email at karen_herrington@fws.gov, or via the Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the draft recovery plan for the endangered Ozark hellbender (*Cryptobranchus alleganiensis bishopi*) for public review and comment. The Ozark hellbender is a large, strictly aquatic salamander found only in southern Missouri and northern Arkansas. The draft recovery plan includes objective, measurable criteria and management actions as may be necessary for removal of the species from the Federal List of Endangered and Threatened Wildlife. We request review

and comment on this draft recovery plan from local, State, and Federal agencies, and the public.

Recovery Planning

Section 4(f) of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species. Also pursuant to section 4(f) of the Act, a recovery plan must, to the maximum extent practicable, include (1) a description of site-specific management actions as may be necessary to achieve the plan's goals for the conservation and survival of the species; (2) objective, measurable criteria that, when met, would support a determination under section 4(a)(1) that the species should be removed from the List of Endangered and Threatened Species; and (3) estimates of the time and costs required to carry out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal.

Species Background

The Ozark hellbender is endemic to the White River drainage in northern Arkansas and southern Missouri (Johnson 2000), historically occurring in portions of the Spring, White, Black, Eleven Point, and Current Rivers and some of their tributaries (Bryant Creek, the North Fork White River, and Jacks Fork) (LaClaire 1993). Currently, populations of Ozark hellbenders are known to occur in Bryant Creek, the North Fork White River, the Eleven Point River, and the Current River, with

some individuals possibly still present in the main stem of the White River, Spring River, and Jacks Fork (Briggler 2013, pers. comm.; Irwin 2013, pers. comm.).

The primary reason for Ozark hellbender population declines remains unclear. However, several potential factors have been identified and include degraded water quality, habitat loss resulting from impoundments and sedimentation, disease, illegal and/or scientific collection, and potential increased predation from some native and non-native species of stocked fish (Service 2011). Population declines have necessitated the use of captive propagation efforts to ensure the long-term survival of the species until threats are better understood and abated.

Under the Act, the Service added the Ozark hellbender to the Federal List of Endangered and Threatened Wildlife as an endangered species on October 6, 2011 (76 FR 61956). This final rule took effect on November 7, 2011.

Recovery Criteria

The draft recovery criteria are summarized below. For the recovery strategy, management actions, and estimated time and costs associated with recovery, refer to the Draft Recovery Plan for the Ozark hellbender (see **ADDRESSES** for document availability).

The ultimate recovery goal is to remove the Ozark hellbender from the Federal List of Endangered and Threatened Wildlife (“delist”) by ensuring the long-term viability of the species in the wild. In the recovery plan, we define the following criteria for reclassification (“downlisting” from endangered to threatened) and delisting based on the best available information on the species.

Downlisting Criteria

Because each of the three extant Ozark hellbender populations is genetically unique, all three populations are necessary to maintain the evolutionary potential of the species. Given the small range of each population, the persistence of all three populations is also necessary to guard against extinction from catastrophic events such as extreme flooding, drought, and chemical spills. Therefore, to downlist the Ozark hellbender, the following criteria should be achieved for each of three Ozark hellbender populations (the North Fork White River, Eleven Point River, and Current River):

1. There is a positive population trend for a 15 year period.¹
2. There is evidence of successful recruitment to maintain a sustaining population, with recruitment defined as attainment of sexual maturity by young.
3. Habitat quantity and quality are sufficient to support all life stages.
4. Within each watershed the number and distribution of occupied habitat patches and abundance of individuals within these patches is such that (1) the population is resilient to stochastic and catastrophic events and (2) connectivity and gene flow is sufficient to maintain genetic diversity and provide for natural re-establishment if a patch is extirpated.
5. Causes of population declines have been identified, and it is clear what actions are needed to address these threats.

Delisting Criteria

To delist the Ozark hellbender, the following criteria should be achieved for each of three Ozark hellbender populations (the North Fork White River, Eleven Point River, and Current River):

1. Downlisting criteria have been met.
2. Threats and causes of decline have been reduced or eliminated such that delisting criterion 1 will continue to be met into the foreseeable future.

Availability of Public Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Lori Nordstrom,

Assistant Regional Director, Ecological Services, Midwest Region.

[FR Doc. 2020–28172 Filed 12–21–20; 8:45 am]

BILLING CODE 4333–15–P

¹ Because the Ozark hellbender is a long-lived species, population trends take a longer amount of time to be realized. Thus, a longer period of time is needed to monitor population trends.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1145]

Certain Botulinum Toxin Products, Processes for Manufacturing or Relating to Same and Certain Products Containing Same Commission Final Determination Finding a Violation of Section 337; Issuance of a Limited Exclusion Order and a Cease and Desist Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 in the above-captioned investigation. The Commission has determined to issue a limited exclusion order (“LEO”) prohibiting the importation by respondents Daewoong Pharmaceuticals Co., Ltd. (“Daewoong”) of Seoul, South Korea and Evolus, Inc. (“Evolus”) of Irvine, California (collectively, “Respondents”) of certain botulinum toxin products, processes for manufacturing or relating to same and certain products containing same. The Commission has also issued a cease and desist order (“CDO”) directed to respondent Evolus. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT:

Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–4716. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (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: On March 6, 2019, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based on a complaint filed by Medytox Inc. of Seoul, South Korea; Allergan Limited of Dublin, Ireland; and Allergan, Inc. of

Irvine, California (collectively, “Complainants”). See 84 FR 8112–13 (Mar. 6, 2019). The complaint, as supplemented, alleges a violation of section 337 based upon the importation and sale in the United States of certain botulinum toxin products, processes for manufacturing or relating to same and certain products containing same by reason of misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure a domestic industry in the United States. See *id.* The notice of investigation names Daewoong and Evolus as respondents in this investigation. See *id.* The Office of Unfair Import Investigations is also a party to the investigation. See *id.*

On July 6, 2020, the Administrative Law Judge (“ALJ”) issued a final initial determination (“FID”) finding a violation of section 337 based on the importation and sale in the United States of Respondents’ botulinum neurotoxin products by reason of the misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States. See FID at 273. The ALJ issued a recommended determination (“RD”) recommending that, if a violation is found, the Commission issue: (1) An LEO barring entry of certain botulinum toxin products that are imported and/or sold by respondents Daewoong and Evolus; and (2) a CDO against Evolus. The RD also recommends that the Commission impose a bond based on price differential during the period of Presidential review.

On July 28, 2020, the Commission issued a notice requesting statements on the public interest. See 85 FR 46711 (Aug. 3, 2020) (“the PI Notice”). On August 17–18, 2020, several non-parties filed submissions in response to the PI Notice.

On September 21, 2020, the Commission issued a notice determining to review the FID in part. See 85 FR 60489–90 (Sept. 25, 2020) (“the WTR/Remedy Notice”). Specifically, the Commission determined to review the FID’s findings with respect to subject matter jurisdiction, standing, trade secret existence and misappropriation, and domestic industry, including the existence of such domestic industry as well as any actual or threatened injury thereto. See *id.* The Commission determined not to review the remainder of the FID. See *id.* The Commission’s notice also requested written submissions on remedy, the public interest, and bonding. See *id.*

On October 9, 2020, the parties, including the IA, filed written submissions in response to the WTR/Remedy Notice, and on October 16, 2020, the parties filed responses to each other’s submissions. In addition, on October 5–9, 2020, several non-parties filed submissions on the proposed remedy and/or the public interest in response to the WTR/Remedy Notice.

Having examined the record of this investigation, including the FID, the RD, and the parties’ and non-parties’ submissions, the Commission has determined to affirm the FID in part and reverse in part. Specifically, as explained in the Commission Opinion filed concurrently herewith, the Commission has determined to affirm with modification the FID’s findings with respect to subject matter jurisdiction, standing, domestic industry as to BOTOX®, and trade secret existence and misappropriation as it relates to Medytox’s manufacturing processes. The Commission has also determined to reverse the FID’s finding that a trade secret exists with respect to Medytox’s bacterial strain. All findings in the FID that are not inconsistent with the Commission’s determination are affirmed.

Accordingly, the Commission finds that there is a violation of section 337. The Commission has determined that the appropriate remedy is an LEO against Respondents’ botulinum toxin products, and a CDO against Evolus, barring Respondents’ unfair acts for a duration of 21 months. The Commission has also determined that the public interest factors enumerated in subsections 337(d)(1) and (f)(1) (19 U.S.C. 1337(d)(1), (f)(1)) do not preclude the issuance of the LEO and CDO. The Commission has further determined to set a bond during the period of Presidential review in an amount of \$441 per 100U vial of Respondents’ accused products.

The Commission’s orders and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

The investigation is terminated.

The Commission’s vote on this determination took place on December 16, 2020.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission’s Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: December 16, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–28158 Filed 12–21–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–649 and 731–TA–1523 (Final)]

Twist Ties From China; Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–649 and 731–TA–1523 (Final) pursuant to the Tariff Act of 1930 (“the Act”) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of twist ties from China, provided for in subheadings 8309.90.0000 and 5609.00.3000 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce (“Commerce”) to be subsidized and sold at less-than-fair-value.

DATES: December 3, 2020.

FOR FURTHER INFORMATION CONTACT: Christopher W. Robinson ((202) 205–2542), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission’s TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for these investigations may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Scope.—For purposes of these investigations, Commerce has defined the subject merchandise as twist ties, which are thin, bendable ties for closing containers, such as bags, bundle items, or identifying objects. A twist tie in

most circumstances is comprised of one or more metal wires encased in a covering material, which allows the tie to retain its shape and bind against itself. However, it is possible to make a twist tie with plastic and no metal wires. The metal wire that is generally used in a twist tie is stainless or galvanized steel and typically measures between the gauges of 19 (.0410" diameter) and 31 (.0132") (American Standard Wire Gauge). A twist tie usually has a width between .075" and 1" in the cross-machine direction (width of the tie—measurement perpendicular with the wire); a thickness between .015" and .045" over the wire; and a thickness between .002" and .020" in areas without wire. The scope includes an all-plastic twist tie containing a plastic core as well as a plastic covering (the wing) over the core, just like paper and/or plastic in a metal tie. An all-plastic twist tie (without metal wire) would be of the same measurements as a twist tie containing one or more metal wires. Twist ties are commonly available individually in pre-cut lengths ("singles"), wound in large spools to be cut later by machine or hand, or in perforated sheets of spooled or single twist ties that are later slit by machine or by hand ("gangs").

The covering material of a twist tie may be paper (metallic or plain), or plastic, and can be dyed in a variety of colors with or without printing. A twist tie may have the same covering material on both sides or one side of paper and one side of plastic. When comprised of two sides of paper, the paper material is bound together with an adhesive or plastic. A twist tie may also have a tag or label attached to it or a pre-applied adhesive attached to it.

Excluded from the scope of the order are twist ties packaged with bags for sale together where the quantity of twist ties does not exceed twice the number of bags in each package. Also excluded are twist ties that constitute part of the packaging of the imported product, for example, merchandise anchored/secured to a backing with twist ties in the retail package or a bag of bread that is closed with a twist tie.

Twist ties are imported into the United States under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 8309.90.00 and 5609.00.30. Subject merchandise may also be imported under HTSUS subheadings 3920.51.5000, 3923.90.0080, 3926.90.9990, 4811.59.6000, 4821.10.2000, 4821.10.4000, 4821.90.2000, 4821.90.4000, and 4823.90.8600. These HTSUS subheadings are provided for reference

only. The written description of the scope of the investigation is dispositive.

Background.—The final phase of these investigations is being scheduled pursuant to sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), as a result of affirmative preliminary determinations by Commerce that certain benefits which constitute subsidies within the meaning of § 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of twist ties, and that such products are being sold in the United States at less than fair value within the meaning of § 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on June 26, 2020, by Bedford Industries Inc., Worthington, Minnesota.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

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.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations,

provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on February 2, 2021, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on February 16, 2021. Information about the place and form of the hearing, including about how to participate in and/or view the hearing, will be posted on the Commission's website at <https://www.usitc.gov/calendarpad/calendar.html>. Interested parties should check the Commission's website periodically for updates. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before February 9, 2021. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on February 11, 2021. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is February 9, 2021. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is February 25, 2021. In addition, any person who has

not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before February 25, 2021. On March 16, 2021, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 18, 2021, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf, elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to § 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: December 16, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020-28140 Filed 12-21-20; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—CHEDE-8

Notice is hereby given that, on December 15, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), CHEDE-8 ("CHEDE-8") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Caterpillar, Inc., Peoria, IL, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CHEDE-8 intends to file additional written notifications disclosing all changes in membership.

On December 4, 2019, CHEDE-8 filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 30, 2019 (84 FR 71977).

The last notification was filed with the Department on October 20, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 19, 2020 (85 FR 73751).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020-28141 Filed 12-21-20; 8:45 am]

BILLING CODE 4410-11-P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on December 3, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), IMS Global Learning Consortium, Inc. ("IMS Global") has filed written notifications simultaneously with the Attorney

General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Australian Council for Educational Research, Camberwell, AUSTRALIA; ClassEDU Inc., Raleigh, NC; GreenLight Credentials, Dallas, TX; Magic Software Inc., New York, NY; Manabie International Pte Ltd, Singapore, SINGAPORE; Richland School District No. 2, Columbia, SC; and Virtual Virginia, Floyd, VA, have been added as parties to this venture.

Also, IBM, Cambridge, MA; Paradigm, Inc., Virginia Beach, VA; Badgewell, Giza, EGYPT; VidGrid, St. Paul, MN; and Unox Portal (Pragnya Technologies Pty), Sydney, AUSTRALIA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, IMS Global filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on September 16, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 15, 2020 (85 FR 65426).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2020-28138 Filed 12-21-20; 8:45 am]

BILLING CODE 4410-11-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-758]

Importer of Controlled Substances Application: Fresenius Kabi USA, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Fresenius Kabi USA, LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTAL INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before January 21, 2021. Such persons may also file a written request for a hearing on the application on or before January 21, 2021.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on August 7, 2020, Fresenius Kabi USA, LLC, 3159 Stanley Road, Grand Island, New York 14072-2028, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

| Controlled substance | Drug code | Schedule |
|----------------------|-----------|----------|
| Remifentanyl | 9739 | II |

The company plans to import the listed controlled substances for bulk manufacture. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2020-28177 Filed 12-21-20; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-740]

Importer of Controlled Substances Application: Yourway Transport

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Yourway Transport has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before January 21, 2021. Such persons may also file a written request for a hearing on the application on or before January 21, 2021.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on July 24, 2020, Yourway Transport, 6681 Snowdrift Road, Allentown, Pennsylvania 18106, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

| Controlled substance | Drug code | Schedule |
|----------------------|-----------|----------|
| Marihuana | 7360 | I |

The company plans to import finished dosage unit products containing Marihuana for clinical trial studies. The Marihuana compound is listed under drug code 7360. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what

is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2020-28179 Filed 12-21-20; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-757]

Importer of Controlled Substances Application: Organic Standards Solutions International, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Organic Standards Solutions International, LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before January 21, 2021. Such persons may also file a written request for a hearing on the application on or before January 21, 2021.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on October 30, 2020, Organic Standards Solutions International, LLC, 7290 Investment Drive, Unit B, North Charleston, South Carolina 29418-8305, applied to be registered as an importer of the

following basic class(es) of controlled substance(s):

| Controlled substance | Drug code | Schedule |
|---------------------------|-----------|----------|
| Marihuana Extract | 7350 | I |
| Marihuana | 7360 | I |
| Tetrahydrocannabinols ... | 7370 | I |

The company plans to import the above-listed controlled substances to produce analytical reference standards for distribution to its customers. Drug codes 7350 (Marihuana Extract) and 7360 (Marihuana) will be used for the manufacture of cannabidiol only. In reference to drug code 7370 (Tetrahydrocannabinols), the company plans to import the synthetic version of this controlled substance to produce analytical reference standards for distribution to its customers. No other activity for these drug codes is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

William T. McDermott,
Assistant Administrator.

[FR Doc. 2020-28178 Filed 12-21-20; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

U.S. Marshals Service

[OMB Number NEW]

Agency Information Collection Activities; Proposed eCollection Activities; Proposed eComments Requested; Proposed Form USM-649, Vulnerability Assessment Request

AGENCY: U.S. Marshals Service, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), U.S. Marshals Service (USMS), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until February 22, 2021.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, particularly with respect to the

estimated public burden or associated response time, have suggestions, need a copy of the proposed information collection instrument with instructions, or desire any additional information, please contact Nicole Timmons either by mail at CG-3, 10th Floor, Washington, DC 20530-0001, by email at Nicole.Timmons@usdoj.gov, or by telephone at 202-236-2646.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection (check justification or form 83):* New collection.

2. *The Title of the Form/Collection:* Form USM-649, Vulnerability Assessment Request.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): Form USM-649.

Component: U.S. Marshals Service, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State, local, and tribal organizations.

Other (if applicable): [None].

Abstract: This form should be completed by state, local and tribal government agencies to request a vulnerability assessment of a government facility by the United States Marshals Service.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 20 respondents will utilize the form, and it will take each respondent approximately 30 minutes to complete the form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 10 hours, which is equal to (20 (total # of annual responses) * .5 (30mins)).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: December 17, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020-28191 Filed 12-21-20; 8:45 am]

BILLING CODE 4410-04-P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Trade Adjustment Assistance

In accordance with the Section 223 (19 U.S.C.2273) of the Trade Act of 1974 (19 U.S.C.2271, *et seq.*) ("Act"), as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance under Chapter 2 of the Act ("TAA") for workers by (TA-W) number issued during the period of *November 1, 2020 through November 30, 2020*. (This Notice primarily follows the language of the Trade Act. In some places however, changes such as the inclusion of subheadings, a reorganization of language, or "and," "or," or other words are added for clarification.)

Section 222(a)—Workers of a Primary Firm

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements under Section 222(a) of the Act (19 U.S.C. 2272(a)) must be met, as follows:

(1) The first criterion (set forth in Section 222(a)(1) of the Act, 19 U.S.C. 2272(a)(1)) is that a significant number or proportion of the workers in such

workers' firm (or "such firm") have become totally or partially separated, or are threatened to become totally or partially separated;

AND (2)(A) or 2(B) below)

(2) The second criterion (set forth in Section 222(a)(2) of the Act, 19 U.S.C. 2272(a)(2)) may be satisfied by either (A) the Increased Imports Path, or (B) the Shift in Production or Services to a Foreign Country Path/Acquisition of Articles or Services from a Foreign Country Path, as follows:

(A) Increased Imports Path

(i) the sales or production, or both, of such firm, have decreased absolutely; AND (ii and iii below)

(ii) (I) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased; OR

(II)(aa) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased; OR

(II)(bb) imports of articles like or directly competitive with articles which are produced directly using the services supplied by such firm, have increased; OR

(III) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

AND

(iii) the increase in imports described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; OR

(B) Shift in Production or Services to a Foreign Country Path or Acquisition of Articles or Services From a Foreign Country Path

(i) (I) there has been a shift by such workers' firm to a foreign country in the production of articles or the supply of services like or directly competitive with articles which are produced or services which are supplied by such firm; OR

(II) such workers' firm has acquired from a foreign country articles or services that are like or directly competitive with articles which are

produced or services which are supplied by such firm;

AND

(ii) the shift described in clause (i)(I) or the acquisition of articles or services described in clause (i)(II) contributed importantly to such workers' separation or threat of separation.

Section 222(b)—Adversely Affected Secondary Workers

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements of Section 222(b) of the Act (19 U.S.C. 2272(b)) must be met, as follows:

(1) A significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

AND

(2) the workers' firm is a supplier or downstream producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act (19 U.S.C. 2272(a)), and such supply or production is related to the article or service that was the basis for such certification (as defined in subsection 222(c)(3) and (4) of the Act (19 U.S.C. 2272(c)(3) and (4));

AND

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; OR

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation determined under paragraph (1).

Section 222(e)—Firms identified by the International Trade Commission

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements of Section 222(e) of the Act (19 U.S.C.

2272(e)) must be met, by following criteria (1), (2), and (3) as follows:

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1) of the Act (19 U.S.C. 2252(b)(1)); OR

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1) of the Act (19 U.S.C. 2436(b)(1)); OR

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

AND

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) of the Trade Act (19 U.S.C. 2252(f)(1)) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3) (19 U.S.C. 2252(f)(3)); OR

(B) notice of an affirmative determination described in subparagraph (B) or (C) of paragraph (1) is published in the **Federal Register**;

AND

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); OR

(B) notwithstanding section 223(b) of the Act (19 U.S.C. 2273(b)), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (Increased Imports Path) of the Trade Act have been met.

| TA-W No. | Subject firm | Location | Impact date |
|---------------|--|-------------------|-------------------|
| 95,438 | North Pacific Cannery & Packers Inc., NORPAC Food Inc. | Stayton, OR | December 2, 2018. |
| 95,438A | North Pacific Cannery & Packers Inc., NORPAC Food Inc., Brooks Plant | Salem, OR | December 2, 2018. |
| 95,438B | North Pacific Cannery & Packers Inc., NORPAC Food Inc., Repack Center. | Salem, OR | December 2, 2018. |

| TA-W No. | Subject firm | Location | Impact date |
|---------------|---|------------------------|--------------------|
| 95,438C | North Pacific Cannery & Packers Inc., NORPAC Food Inc., Corporate Office. | Salem, OR | December 2, 2018. |
| 95,438D | North Pacific Cannery & Packers Inc., NORPAC Food Inc., Truck Stop .. | Salem, OR | December 2, 2018. |
| 95,538 | TMK IPSCO, IPSCO Tubular Inc., Temps Plus Staffing, Personnel Placements LLC. | Blytheville, AR | January 6, 2019. |
| 95,587 | YS Industries LLC, Anaya's Cutting, Anaya Brothers Cutting, AppleOne Employment Services, etc. | Vernon, CA | January 21, 2019. |
| 95,636 | L.A. Darling Company, Metal Division, The Marmon Group, People Source. | Paragould, AR | January 31, 2019. |
| 95,643 | MAHLE Engine Components USA, Inc., MAHLE Industries Inc., Express Personnel Services. | Russellville, AR | February 3, 2019. |
| 95,653 | Blount International, Inc., Express Employment, Aerotek | Portland, OR | February 5, 2019. |
| 95,680 | Harte Hanks Response Management/Austin Inc., Harte Hanks, Beacon Hill, Randstad, KeyStaff, ChaseSource, PeopleShare, etc. | Austin, TX | February 11, 2019. |
| 95,689 | Harte Hanks Response Management/Austin Inc., Harte Hanks, Beacon Hill, Randstad, KeyStaff, ChaseSource, PeopleShare, etc. | Texarkana, TX | February 12, 2019. |
| 95,988 | Team Industries, Team Industries, Inc., Manpower | Andrews, NC | June 12, 2019. |
| 95,993 | Beaver Falls Tubular Product LLC, Alliance Tubular Holdings LLC | Beaver Falls, PA | June 16, 2019. |
| 96,135 | Oregon Metallurgical Corporation, Allegheny Technologies, ATI Specialty Alloys and Components, etc. | Albany, OR | August 12, 2019. |
| 96,169 | Premier Processing LLC, Cadence Aerospace, Arnold Group, Summit Employment, Apprentice Personnel. | Wichita, KS | August 31, 2019. |

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (Shift in Production or Services to a Foreign Country Path or Acquisition of Articles or Services from a Foreign Country Path) of the Trade Act have been met.

| TA-W No. | Subject firm | Location | Impact date |
|---------------|--|-------------------------|--------------------|
| 95,492 | Nexxter Automotive, North America Division, Arco Staffing, Advantage Technical, Aerotek, etc. | Saginaw, MI | December 17, 2018. |
| 95,554 | AvMed Inc., Claims Processing, SantaFe Healthcare, Career Mover & Shaper, Aerotek, etc. | Gainesville, FL | January 10, 2019. |
| 95,581 | BCBSM, Inc., Blue Cross Blue Shield of Minnesota, etc | Virginia, MN | January 21, 2019. |
| 95,584 | NORMA Michigan Inc., NORMA Pennsylvania, Qualified Staffing, Craig Assembly, Impact Staffing. | Auburn Hills, MI | January 21, 2019. |
| 95,674 | Baptist Healthcare System Inc., Baptist Health Louisville, Medical Coding Unit. | Louisville, KY | January 27, 2019. |
| 95,675 | Innio Waukesha Gas Engines Inc | Waukesha, WI | May 11, 2020. |
| 95,906 | BFGoodrich Tire Manufacturing (BFG4), Michelin North America, Manufacturing, Capstone Logistics, Newbold Services. | Woodburn, IN | April 30, 2019. |
| 95,967 | Manchester Tank & Equipment Company, Forge Industrial Staffing | Elkhart, IN | June 5, 2019. |
| 95,977 | MSSC US Inc., Mitsubishi Steel Manufacturing, Luttrell, Staff Easy, Wise Staffing. | Hopkinsville, KY | June 9, 2019. |
| 96,009 | PCC Structurals, Inc., Precision Castparts Corp., Aerotek Staffing and Recruiting, etc. | Portland, OR | June 22, 2019. |
| 96,010 | PCC Structurals, Inc., Precision Castparts Corp., Aerotek Staffing and Recruiting, etc. | Clackamas, OR | June 22, 2019. |
| 96,047 | Bates Rubber LLC | Lobelville, TN | July 8, 2019. |
| 96,059 | Arauco North America, Inc., Durafake Facility, Arauco Canada, Selectemp Employment Services, etc. | Albany, OR | July 15, 2019. |
| 96,059A | Arauco North America, Inc., Albany Treating and Lamination Facility, Arauco Canada Limited, etc. | Albany, OR | July 15, 2019. |
| 96,060 | Dal-Title Corporation, Mohawk Industries, Aerotek, Carlton Staffing, Cella, The BOSS Group, etc. | Dallas, TX | July 15, 2019. |
| 96,060A | Dal-Title Corporation, Mohawk Industries, Taos Staffing, Sterling Personnel, Onin Staffing, etc. | Sunnyvale, TX | July 15, 2019. |
| 96,060B | Dal-Title Corporation, Mohawk Industries | Mesquite, TX | July 15, 2019. |
| 96,060C | Dal-Title Corporation, Pellicano Drive facility, Mohawk Industries, Trillium | El Paso, TX | July 15, 2019. |
| 96,060D | Dal-Title Corporation, Railroad Drive facility, Mohawk Industries, TruTemps Staffing Group, etc. | El Paso, TX | July 15, 2019. |
| 96,060E | Dal-Title Corporation, Mohawk Industries, Integrity Staffing Solutions, Premier USA Staffing, etc. | Muskogee, OK | July 15, 2019. |
| 96,060F | Dal-Title Corporation, Mohawk Industries | Oklahoma City, OK | July 15, 2019. |
| 96,084 | Vibracoustic North America LP, PeopleLink, Leaders Staffing, Elwood Staffing. | Ligonier, IN | July 22, 2019. |
| 96,085 | Gitman and Company/IAG, Tom James Company | Ashland, PA | July 23, 2019. |
| 96,085A | Gitman and Company/IAG, Tom James Company | New York, NY | July 23, 2019. |
| 96,087 | IQVIA Inc., IQVIA Holdings, Chief Information Office, End User Digital Experience Unit. | Overland Park, KS | July 22, 2019. |
| 96,096 | Keihin IPT Manufacturing, LLC, Keihin North America, Inc., First Call Staffing. | Greenfield, IN | July 24, 2019. |

| TA-W No. | Subject firm | Location | Impact date |
|---------------|---|---------------------------|---------------------|
| 96,101 | Simmons Pet Food, Inc., Accu Staffing Services | Pennsauken, NJ | July 27, 2019. |
| 96,104 | Titan Wheel Corporation of Virginia, Titan International Inc., Luttrell Staffing Group. | Saltville, VA | July 26, 2020. |
| 96,118 | Johnson Controls, Inc., Building Technologies & Solutions Division, Johnson Controls, PLC. | Marinette, WI | August 2, 2019. |
| 96,119 | SLASHSUPPORT Inc., CSS Corporation Technologies (Mauritius) Limited, etc. | Draper, UT | August 4, 2019. |
| 96,128 | Southwick LLC, Southwick Apparel, Golden Fleece Manufacturing/ Brooks Brothers, etc. | Haverhill, MA | August 6, 2019. |
| 96,143 | Nokia of America Corporation, SAC Wireless | Naperville, IL | October 24, 2020. |
| 96,143A | Volt, Nokia of America Corporation | Naperville, IL | August 17, 2019. |
| 96,148 | SRG Global, Human Resources Department, SRG Global, Inc | Ripley, TN | August 18, 2019. |
| 96,148A | SRG Global, Controllers/Accounting Department, SRG Global, Inc | Ripley, TN | August 18, 2019. |
| 96,148B | SRG Global, Human Resources Department, SRG Global, Inc | Newbern, TN | August 18, 2019. |
| 96,148C | SRG Global, Controllers/Accounting Department, SRG Global, Inc | Newbern, TN | August 18, 2019. |
| 96,153 | Therm-O-Disc, Inc., Emerson Electric Co., Staffing Partners, Temp2Higher, Time Staffing, etc. | Mansfield, OH | August 20, 2019. |
| 96,154 | FISmidth, Inc., Staff Pro Staffing Agency, Elwood Staffing, Randstad Inc | Johnson City, TN | August 21, 2019. |
| 96,160 | Riviera Travel LLC, Riviera Tours LTD | Fairfield, CT | August 26, 2019. |
| 96,163 | Celerus Flow Technology, Advantage Technical Resourcing, SPX FLOW US, LLC. | McKean, PA | August 26, 2019. |
| 96,164 | CTS Electronic Components, Inc., CTS Corporation, Ceramics, Resource MFG, VIP Staffing, BESTstaff, etc. | Albuquerque, NM | August 26, 2019. |
| 96,168 | Morgan Advanced Ceramics Inc., Morganite Industries Inc | Latrobe, PA | August 31, 2019. |
| 96,170 | Streater LLC, Marmon Holdings, Express Services, Inc | Albert Lea, MN | August 31, 2019. |
| 96,172 | Wieland Copper Products, LLC, AtWork Personnel | Pine Hall, NC | August 31, 2019. |
| 96,173 | Respironics Novametrics LLC, Respironics Inc., Randstad | Wallingford, CT | October 19, 2020. |
| 96,174 | Schweitzer-Mauduit International, SWM Poland Sp.Zo.O | Spotswood, NJ | September 1, 2019. |
| 96,177 | Supreme Steel, Supreme Group | Portland, OR | September 2, 2019. |
| 96,183 | W&D North America, W & D Gmbh, Barry Wehmiller Design Group, Ruggieri Enterprise LLC. | Duncansville, PA | September 9, 2019. |
| 96,184 | EmblemHealth, LLC, Claims Processing Administration | New York, NY | September 10, 2019. |
| 96,184A | EmblemHealth, LLC, Claims Processing Administration | Albany, NY | September 10, 2019. |
| 96,185 | EmblemHealth, LLC, Claims Processing Administration | Melville, NY | September 10, 2019. |
| 96,187 | Korn Ferry (US), Logicalis, Larko Group | Chicago, IL | September 10, 2019. |
| 96,188 | Nexans, Nexans Energy USA | Chester, NY | September 11, 2019. |
| 96,188A | Nexans, Nexans Energy USA | Middletown, NY | September 11, 2019. |
| 96,194 | Carl Zeiss Meditec, Inc., Carl Zeiss Meditec AG, Randstad, Briand Executive Search, etc. | Dublin, CA | September 15, 2019. |
| 96,555 | Federal-Mogul Piston Rings LLC, Federal-Mogul Powertrain, Tenneco Powertrain. | Sparta, MI | October 9, 2019. |
| 96,558 | FreightCar Alabama, LLC, a subsidiary of FreightCar America, Inc | Cherokee, AL | October 15, 2019. |
| 96,569 | Telsmith Inc., a division of ASTEC Industries Inc | Mequon, WI | October 15, 2019. |
| 96,572 | Metro Decor LLC | Warren, OH | October 23, 2019. |
| 96,573 | Tenneco Inc., Pistons Business Unit Federal Mogul Powertrain LLC | South Bend, IN | October 26, 2019. |
| 96,574 | Phillips-Medisize | Eau Claire, WI | October 27, 2019. |
| 96,577 | Metaldyne BSM LLC, AAM Fremont Manufacturing Facility, Driveline Division. | Fremont, IN | October 27, 2019. |
| 96,582 | Aquafine Corporation | Valencia, CA | October 29, 2019. |
| 96,583 | Dentsply Sirona, Lab/Prosthetics Dentsply Prosthetics US LLC | York, PA | November 2, 2019. |
| 96,586 | Emerson Electric Company, Machine Automation Solutions | Charlottesville, VA | October 30, 2019. |
| 96,589 | Pall Filter Specialists, Inc | Grand Island, NE | November 2, 2019. |

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers

are certified eligible to apply for TAA) of the Trade Act have been met.

| TA-W No. | Subject firm | Location | Impact date |
|---------------|---|----------------------|------------------|
| 96,003 | thyssenKrupp Materials, LLC, thyssenKrupp Materials NA, Inc | Hutchinson, KS | June 18, 2019. |
| 96,043 | GKN Aerospace Precision Machining, Inc., GKN Aerospace | Wellington, KS | July 7, 2019. |
| 96,078 | Cadence Aerospace, Giddens Industries Division, Technipower, JSG Agency, Terra Staffing, etc. | Everett, WA | July 14, 2019. |
| 96,078A | Precision Machine Works, Inc., Cadence Aerospace, Archbright, Insight Global, etc. | Tacoma, WA | July 14, 2019. |
| 96,134 | Trulife, Inc., Express Employment Professionals | Bellingham, WA | August 8, 2019. |
| 96,145 | TECT Aerospace Wellington, Inc., TAD GPS, Summit Employment Professionals, The Arnold Group, etc. | Wellington, KS | August 17, 2019. |
| 96,145A | TECT Hypervelocity, Inc., Summit Employment Professionals, The Arnold Group, etc. | Park City, KS | August 17, 2019. |
| 96,145B | TECT Aerospace, LLC | Wichita, KS | August 17, 2019. |

| TA-W No. | Subject firm | Location | Impact date |
|----------|----------------------------|-----------|------------------|
| 96,167 | Aero-Tech Engineering, Inc | Maize, KS | August 31, 2019. |

The following certifications have been issued. The requirements of Section 222(b) (downstream producer to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

| TA-W No. | Subject firm | Location | Impact date |
|----------|---|------------------|------------------|
| 96,141 | Boeing Distribution Services, Inc., The Boeing Company, Adecco, Aerotek, Affinity Resources, etc. | Miami, FL | August 14, 2019. |
| 96,141A | Boeing Distribution Services, Inc., The Boeing Company, Aerotek | Chandler, AZ | August 14, 2019. |
| 96,141B | Boeing Distribution Services, Inc., The Boeing Company | Carson, CA | August 14, 2019. |
| 96,141C | Boeing Distribution Services, Inc., The Boeing Company, Aerotek | Enfield, CT | August 14, 2019. |
| 96,141D | Boeing Distribution Services, Inc., The Boeing Company | Wichita, KS | August 14, 2019. |
| 96,141E | Boeing Distribution Services, Inc., The Boeing Company, Aerotek, Robert Half, Randstad. | Oâ€™Fallon, MO | August 14, 2019. |
| 96,141F | Boeing Distribution Services, Inc., The Boeing Company | Parsippany, NJ | August 14, 2019. |
| 96,141G | Boeing Distribution Services, Inc., The Boeing Company, Aerotek | Cornwall, NY | August 14, 2019. |
| 96,141H | Boeing Distribution Services, Inc., The Boeing Company | Westbury, NY | August 14, 2019. |
| 96,141I | Boeing Distribution Services, Inc., The Boeing Company, Adecco | Greensboro, NC | August 14, 2019. |
| 96,141J | Boeing Distribution Services, Inc., The Boeing Company | Boothwyn, PA | August 14, 2019. |
| 96,141K | Boeing Distribution Services, Inc., The Boeing Company | Philadelphia, PA | August 14, 2019. |
| 96,141L | Boeing Distribution Services, Inc., The Boeing Company | Coppell, TX | August 14, 2019. |
| 96,141M | Boeing Distribution Services, Inc., The Boeing Company | Fort Worth, TX | August 14, 2019. |
| 96,141N | Boeing Distribution Services, Inc., The Boeing Company | Houston, TX | August 14, 2019. |
| 96,141O | Boeing Distribution Services, Inc., The Boeing Company | Kent, WA | August 14, 2019. |
| 96,171 | Textron Aviation Inc., Textron, PDS Tech, APA Services, Aviation Consulting Experts Inc. | Independence, KS | August 31, 2019. |

The following certifications have been issued. The requirements of Section 222(e) (firms identified by the International Trade Commission) of the Trade Act have been met.

| TA-W No. | Subject firm | Location | Impact date |
|----------|---|-------------------|---------------------|
| 96,571 | Pactiv LLC | Abilene, TX | September 10, 2019. |
| 96,575 | Nan Ya Plastics Corporation USA | Wharton, TX | September 10, 2019. |
| 96,578 | Greenfield Cabinetry, LLC, a subsidiary of the Corsi Group, Inc | Elkins, WV | April 17, 2019. |
| 96,580 | Sonoco Products, Plastics/Perimeter of the Store | Yakima, WA | September 10, 2019. |
| 96,588 | Plastic Ingenuity, Inc | Maumelle, AR | September 10, 2019. |
| 96,596 | Mercury Plastics, Inc | Chicago, IL | September 10, 2019. |
| 96,598 | Mercury Plastics, Inc., Felpak | Franklin Park, IL | September 10, 2019. |
| 96,602 | Solo Cup Operating Corporation, an affiliated entity of Dart Container Corporation. | Urbana, IL | September 10, 2019. |
| 96,604 | Solo Cup Operating Corporation, an affiliated entity of Dart Container Corporation. | Chicago, IL | September 10, 2019. |

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility

criteria for TAA have not been met for the reasons specified.

The investigation revealed that the requirements of Trade Act section 222(a)(1) and (b)(1) (significant worker

total/partial separation or threat of total/partial separation), or (e) (firms identified by the International Trade Commission), have not been met.

| TA-W No. | Subject firm | Location | Impact date |
|----------|---------------------|-----------------|-------------|
| 95,855 | Lipan Services LLC | San Angelo, TX. | |
| 95,856 | Rialto Services LLC | San Angelo, TX. | |

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both), or (a)(2)(B) (shift in production or services to a foreign country or

acquisition of articles or services from a foreign country), (b)(2) (supplier to a firm whose workers are certified eligible to apply for TAA or downstream producer to a firm whose workers are

certified eligible to apply for TAA), and (e) (International Trade Commission) of section 222 have not been met.

| TA-W No. | Subject firm | Location | Impact date |
|--------------|----------------------------|-----------------|-------------|
| 94,612 | Frank Morrow Company | Providence, RI. | |

The investigation revealed that the criteria under paragraphs (a)(2)(A) (increased imports), (a)(2)(B) (shift in production or services to a foreign country or acquisition of articles or services from a foreign country), (b)(2) (supplier to a firm whose workers are certified eligible to apply for TAA or downstream producer to a firm whose workers are certified eligible to apply for TAA), and (e) (International Trade Commission) of section 222 have not been met.

| TA-W No. | Subject firm | Location | Impact date |
|--------------|---|--------------------|-------------|
| 95,341 | Fishpeople Seafood Inc., BBSI Staffing | Toledo, OR. | |
| 95,536 | Johnson Controls, Inc., Building Technologies & Solutions Division, Johnson Controls International. | Plymouth, MN. | |
| 95,564 | MSX International RSN LLC, Pacific (BC) Topco 5 Limited | Center Line, MI. | |
| 95,802 | Caldwell Corporation | Emporium, PA. | |
| 95,813 | United States Steel Corporation, Minnesota Ore Operations, G4S Secure Solutions and Cleaning Specialist. | Iron Mountain, MN. | |
| 95,837 | Echo Canyon Crude Trucking, LLC, American Midstream Partners, Crude Oil Trucking, Echo Canyon Pipeline, etc. | San Angelo, TX. | |
| 95,885 | Schlumberger Technology Corporation, Schlumberger Holdings Corporation, Amerit Fleet Solutions, Onsite Personnel. | Denton, TX. | |
| 95,932 | Triumph Aerospace Structures, Triumph Groups, Johnson Services Group, Aerostructure, Chipton Ross, etc. | Tulsa, OK. | |
| 96,034 | Selmet, Inc., Consolidated Precision Products (CPP) | Albany, OR. | |
| 96,116 | Motorola Mobility LLC, Lenovo Group Limited, SDI | Chicago, IL. | |
| 96,151 | United States Gypsum Company, United States Gypsum Corporation, Elite Staffing. | Norfolk, VA. | |
| 96,162 | ASARCO, LLC, ASARCO USA Inc., Staff Matters Inc | Amarillo, TX. | |

Determinations Terminating Investigations of Petitions for Trade Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and

on the Department's website, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

| TA-W No. | Subject firm | Location | Impact date |
|--------------|---|-----------------|-------------|
| 96,071 | BAE Systems Controls Inc., Electronic Systems Division, BAE Systems, Inc. | Fort Wayne, IN. | |

The following determinations terminating investigations were issued in cases where the petition regarding the investigation has been deemed invalid.

| TA-W No. | Subject firm | Location | Impact date |
|--------------|--------------------|--------------|-------------|
| 96,186 | Klean Karpet | Atlanta, GA. | |

The following determinations terminating investigations were issued because the worker group on whose behalf the petition was filed is covered under an existing certification.

| TA-W No. | Subject firm | Location | Impact date |
|---------------|---|-----------------|-------------|
| 95,800 | Xerox Corporation, Billing & Customer Support Division | Webster, NY. | |
| 96,132 | Southwick LLC, Southwick Apparel Division, Golden Fleece Manufacturing/Brooks Brothers. | Haverhill, MA. | |
| 96,158 | Matthew Warren Spring, Plant 1, MW Industries, Inc | Logansport, IN. | |
| 96,158A | Matthew Warren Spring, Plant 2, MW Industries, Inc | Logansport, IN. | |
| 96,158B | Matthew Warren Spring, Plant 3, MW Industries, Inc | Logansport, IN. | |

I hereby certify that the aforementioned determinations were issued during the period of *November 1,*

2020 through November 30, 2020. These determinations are available on the Department's website [https://](https://www.doleta.gov/tradeact/petitioners/taa_search_form.cfm)

www.doleta.gov/tradeact/petitioners/taa_search_form.cfm under the searchable listing determinations or by

calling the Office of Trade Adjustment Assistance toll free at 888-365-6822.

Signed at Washington, DC, this 9th day of December 2020.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2020-28207 Filed 12-21-20; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

Post-Initial Determinations Regarding Eligibility To Apply for Trade Adjustment Assistance

In accordance with Sections 223 and 284 (19 U.S.C. 2273 and 2395) of the Trade Act of 1974 (19 U.S.C. 2271, *et seq.*) (“Act”), as amended, the Department of Labor herein presents Notice of Affirmative Determinations Regarding Application for Reconsideration, summaries of Negative Determinations Regarding Applications

for Reconsideration, summaries of Revised Certifications of Eligibility, summaries of Revised Determinations (after Affirmative Determination Regarding Application for Reconsideration), summaries of Negative Determinations (after Affirmative Determination Regarding Application for Reconsideration), summaries of Revised Determinations (on remand from the Court of International Trade), and summaries of Negative Determinations (on remand from the Court of International Trade) regarding eligibility to apply for trade adjustment assistance under Chapter 2 of the Act (“TAA”) for workers by (TA-W) number issued during the period of *November 1, 2020 through November 30, 2020*. Post-initial determinations are issued after a petition has been certified or denied. A post-initial determination may revise a certification, or modify or affirm a negative determination.

Notice of Revised Certifications of Eligibility

Revised certifications of eligibility have been issued with respect to cases

where affirmative determinations and certificates of eligibility were issued initially, but a minor error was discovered after the certification was issued. The revised certifications are issued pursuant to the Secretary’s authority under section 223 of the Act and 29 CFR 90.16. Revised Certifications of Eligibility are final determinations for purposes of judicial review pursuant to section 284 of the Act (19 U.S.C. 2395) and 29 CFR 90.19(a).

Revised Certifications of Eligibility

The following revised certifications of eligibility to apply for TAA have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination, and the reason(s) for the determination.

The following revisions have been issued.

| TA-W No. | Subject firm | Location | Impact date | Reason(s) |
|---------------|------------------------|---|-------------|------------------------------|
| 95,068 | Matthew Warren Spring. | Logansport, IN | 8/12/2018 | Worker Group Clarification. |
| 95,068A | Matthew Warren Spring. | Logansport, IN | 8/12/2018 | Worker Group Clarification. |
| 95,068B | Matthew Warren Spring. | Logansport, IN | 8/12/2018 | Worker Group Clarification. |
| 95,068C | Matthew Warren Spring. | Logansport, IN | 8/12/2018 | Worker Group Clarification. |
| 95,935R | The Boeing Company. | Working in Multiple Cities Throughout Missouri, MO. | 5/21/2019 | Increased Aggregate Imports. |

I hereby certify that the aforementioned determinations were issued during the period of *November 1, 2020 through November 30, 2020*. These determinations are available on the Department’s website https://www.doleta.gov/tradeact/petitioners/taa_search_form.cfm under the searchable listing determinations or by calling the Office of Trade Adjustment Assistance toll free at 888-365-6822.

Signed at Washington, DC, this 9th day of December 2020.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2020-28209 Filed 12-21-20; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (“the Act”) and are identified in the Appendix to this notice. Upon receipt of these petitions, the Administrator of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total

or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing provided such request is filed in writing with the Administrator, Office of Trade Adjustment Assistance, at the address shown below, no later than January 4, 2021.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Administrator, Office of Trade Adjustment Assistance, at the address shown below, not later than January 4, 2021.

The petitions filed in this case are available for inspection at the Office of the Administrator, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N-5428,

200 Constitution Avenue NW,
Washington, DC 20210.

Signed at Washington, DC, this 9th day of
December 2020.

Hope D. Kinglock,
*Certifying Officer, Office of Trade Adjustment
Assistance.*

Appendix

48 TAA PETITIONS INSTITUTED BETWEEN 11/1/20 AND 11/30/20

| TA-W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|-------|---|-----------------------|------------------------|---------------------|
| 96572 | Metro Decor LLC (Workers) | Warren, OH | 11/05/20 | 10/23/20 |
| 96576 | IAC Group (Company Official) | Greencastle, IN | 11/06/20 | 10/27/20 |
| 96583 | Dentsply Sirona () | York, PA | 11/02/20 | 11/02/20 |
| 96584 | Hunter Douglas (State Workforce Offi) | Cumberland, MD | 11/02/20 | 10/30/20 |
| 96585 | Lear Corporation (State Workforce Offi) | Rochester Hills, MI | 11/02/20 | 10/30/20 |
| 96586 | Emerson Electric Company () | Charlottesville, VA | 11/02/20 | 10/30/20 |
| 96587 | Shoal Creek Mine (Union Official) | Oakman, AL | 11/02/20 | 10/30/20 |
| 96588 | Plastic Ingenuity, Inc. (State Workforce Offi). | Maumelle, AR | 11/03/20 | 11/02/20 |
| 96589 | Pall Filter Specialists, Inc. (State Workforce Offi). | Grand Island, NE | 11/03/20 | 11/02/20 |
| 96590 | Allegro MicroSystems (Company Official) | Marlborough, MA | 11/03/20 | 11/02/20 |
| 96591 | ABB Inc. (American Job Center) | Morristown, TN | 11/05/20 | 11/04/20 |
| 96592 | The Hall China Company (State Workforce Offi). | East Liverpool, OH | 11/06/20 | 11/05/20 |
| 96593 | Sodecia (Company Official) | Lake Orion, MI | 11/06/20 | 11/05/20 |
| 96594 | Pactiv LLC (State Workforce Offi) | Franklin Park, IL | 11/09/20 | 11/06/20 |
| 96595 | Pactiv LLC (State Workforce Offi) | Bridgeview, IL | 11/09/20 | 11/06/20 |
| 96596 | Mercury Plastics, Inc. (State Workforce Offi). | Chicago, IL | 11/09/20 | 11/06/20 |
| 96597 | Pactiv LLC (State Workforce Offi) | Bedford Park, IL | 11/09/20 | 11/06/20 |
| 96598 | Mercury Plastics, Inc. (State Workforce Offi). | Franklin Park, IL | 11/09/20 | 11/06/20 |
| 96599 | Klockner Pentaplast of America Inc. (State Workforce Offi). | Beaver, WV | 11/09/20 | 11/04/20 |
| 96600 | Kinyo Virginia/DYC (State Workforce Offi) | Virginia Beach, VA | 11/09/20 | 11/06/20 |
| 96601 | Ex-Tech Plastics, Inc. (State Workforce Offi). | Richmond, IL | 11/09/20 | 11/06/20 |
| 96602 | Solo Cup Operating Corporation (State Workforce Offi). | Urbana, IL | 11/09/20 | 11/06/20 |
| 96603 | D & W Fine Pack, LLC (State Workforce Offi). | Elk Grove Village, IL | 11/09/20 | 11/06/20 |
| 96604 | Solo Cup Operating Corporation (State Workforce Offi). | Chicago, IL | 11/09/20 | 11/06/20 |
| 96606 | Broadwind Heavy Fabrications (State Workforce Offi). | Abilene, TX | 11/10/20 | 11/09/20 |
| 96607 | Pactiv Packaging Inc (State Workforce Offi). | Mineral Wells, WV | 11/10/20 | 11/04/20 |
| 96608 | Methode Electronics (Company Official) | Carthage, IL | 11/12/20 | 11/10/20 |
| 96609 | Wabel Tool Company (State Workforce Offi). | Decatur, IL | 11/12/20 | 11/10/20 |
| 96610 | Kennametal Inc. (American Job Center) | Johnson City, TN | 11/12/20 | 11/10/20 |
| 96611 | Damascus Steel, LLC (Company Official) | New Brighton, PA | 11/13/20 | 11/12/20 |
| 96612 | Howmet (Union Official) | Niles, OH | 11/16/20 | 11/13/20 |
| 96613 | Tenet/Baptist Health Systems (State Workforce Offi). | San Antonio, TX | 11/17/20 | 11/16/20 |
| 96614 | Vishay Dale Electronics, LLC (State Workforce Offi). | Yankton, SD | 11/17/20 | 11/16/20 |
| 96615 | Alpha Surgical, Inc. (State Workforce Offi) | North Providence, RI | 11/17/20 | 11/16/20 |
| 96616 | Vanguard Home Medical Equipment (State Workforce Offi). | Warwick, RI | 11/17/20 | 11/16/20 |
| 96617 | HKR USA Hikari (State Workforce Offi) | Orangeburg, SC | 11/18/20 | 11/17/20 |
| 96618 | BCS Access Systems US LLC (Company Official). | Auburn, NY | 11/18/20 | 11/17/20 |
| 96619 | Mondi Akrosil LLC. (Company Official) | Pleasant Prairie, WI | 11/19/20 | 11/18/20 |
| 96620 | McKesson Medical (State Workforce Offi) | Irving, TX | 11/20/20 | 11/19/20 |
| 96621 | Eaton Corporation (Union Official) | Auburn, IN | 11/23/20 | 11/19/20 |
| 96622 | Paul Hughes (Company Official) | Council Bluffs, IA | 11/23/20 | 11/22/20 |
| 96623 | BuzziSpace Inc. (State Workforce Offi) | High Point, NC | 11/23/20 | 11/20/20 |
| 96624 | Paulsboro Refining Company, LLC (State Workforce Offi). | Paulsboro, NJ | 11/24/20 | 11/23/20 |
| 96625 | Bettering Builders (Company Official) | Soddy Daisy, TN | 11/24/20 | 11/23/20 |
| 96626 | Bard Davol (State Workforce Offi) | Warwick, RI | 11/24/20 | 11/23/20 |

48 TAA PETITIONS INSTITUTED BETWEEN 11/1/20 AND 11/30/20—Continued

| TA-W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|-------------|--|-----------------------|---------------------|------------------|
| 96627 | Follett Corporation (State Workforce Offi) | Westchester, IL | 11/24/20 | 11/20/20 |
| 96628 | Acuity Brands Lighting INC (State Workforce Offi). | Fishers, IN | 11/27/20 | 11/25/20 |
| 96629 | Buhler Versatile USA, Inc. (State Workforce Offi). | Willmar, MN | 11/27/20 | 11/25/20 |

[FR Doc. 2020-28208 Filed 12-21-20; 8:45 am]

BILLING CODE P**DEPARTMENT OF LABOR****Office of the Secretary****Agency Information Collection Activities; Submission for OMB Review; Comment Request; Disaster Unemployment Assistance Activities Report****ACTION:** Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before January 21, 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.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of

automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202-693-8538, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: Sections 410 and 423 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act provide for Disaster Unemployment Assistance (DUA) to eligible applicants who are unemployed as a direct result of a major disaster. State Workforce Agencies, through individual agreements with the Secretary of Labor, act as agents of the Federal government in providing DUA. Form ETA 902 is a monthly report that a State submits on DUA program activities once the President declares a disaster. The Social Security Act section 303(a)(6) authorizes this information collection. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 7, 2020 (85 FR 19505).

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 approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL-ETA.

Title of Collection: Disaster Unemployment Assistance Activities Report.

OMB Control Number: 1205-0051.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 30.

Total Estimated Number of Responses: 210.

Total Estimated Annual Time Burden: 210 hours.

Total Estimated Annual Other Costs Burden: \$0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: December 17, 2020.

Mara Blumenthal,
Senior PRA Analyst.

[FR Doc. 2020-28267 Filed 12-21-20; 8:45 am]

BILLING CODE 4510-FW-P**OFFICE OF THE FEDERAL REGISTER****Publication Procedures for Federal Register Documents During a Funding Hiatus**

AGENCY: Office of the Federal Register.

ACTION: Notice of special procedures.

SUMMARY: In the event of an appropriations lapse, the Office of the Federal Register (OFR) would be required to publish documents directly related to the performance of governmental functions necessary to address imminent threats to the safety of human life or protection of property and documents related to funded programs if delaying publication until the end of the appropriations lapse would prevent or significantly damage the execution of funded functions at the agency. Since it would be impracticable for the OFR to make case-by-case determinations as to whether certain documents are directly related to activities that qualify for an exemption under the Antideficiency Act, the OFR will place responsibility on agencies submitting documents to certify that their documents are authorized under the Act.

FOR FURTHER INFORMATION CONTACT: Katerina Horska, Director of Legal Affairs and Policy, or Miriam Vincent, Staff Attorney, Office of the Federal Register, National Archives and Records Administration, (202) 741-6030 or Fedreg.legal@nara.gov.

SUPPLEMENTARY INFORMATION: Due to the possibility of a lapse in appropriations

and in accordance with the provisions of the Antideficiency Act, as amended by Public Law 101–508, 104 Stat. 1388 (31 U.S.C. 1341), the OFR announces special procedures for agencies submitting documents for publication in the **Federal Register**.

In the event of an appropriations lapse, the OFR would be required to publish documents directly related to the performance of governmental functions necessary to address imminent threats to the safety of human life or protection of property and documents related to funded programs if delaying publication until the end of the appropriations lapse would prevent or significantly damage the execution of funded functions at the agency. Since it would be impracticable for the OFR to make case-by-case determinations as to whether certain documents are directly related to activities that qualify for an exemption under the Antideficiency Act, the OFR will place responsibility on agencies submitting documents to certify that their documents are authorized under the Act.

During a funding hiatus affecting one or more Federal agencies, the OFR will remain open to accept and process documents authorized to be published in the daily **Federal Register** in the absence of continuing appropriations. An agency wishing to submit a document to the OFR during a funding hiatus must attach a transmittal letter to the document which certifies that publication in the **Federal Register** is necessary:

Unfunded Agencies or Programs

- To safeguard human life, protect property, or
- Provide other emergency services consistent with the performance of functions and services exempted under the Antideficiency Act.

Funded Agencies or Programs

- Because delaying publication until the end of the appropriations lapse would prevent or significantly damage the execution of funded functions at the agency.

Under the August 16, 1995 opinion of the Office of Legal Counsel of the Department of Justice (OLC), *Government Operations in the Event of a Lapse in Appropriations*, exempt functions and services would include activities such as those related to the constitutional duties of the President, food and drug inspection, air traffic control, responses to natural or manmade disasters, law enforcement and supervision of financial markets. Documents related to normal or routine activities of Federal agencies, even if

funded under prior year appropriations, will not be published.

In another opinion issued on December 13, 1995, *Effect of Appropriations for Other Agencies and Branches on the Authority to Continue Department of Justice Functions During the Lapse in the Department's Appropriations*, the OLC found that the necessary-implication exception allowed unfunded agencies to provide support to funded agencies or programs under certain conditions. Based on OLC interpretation of the December 12, 1995 opinion, as this applies to the OFR, if an agency with current appropriations submits a document for publication and certifies that delaying publication until the end of the appropriations lapse would prevent or significantly damage the execution of funded functions at the agency, then publication in the **Federal Register** will be a function or service excepted under the Anti-Deficiency Act.

At the onset of a funding hiatus, the OFR may suspend the regular three-day publication schedule to permit a limited number of exempt personnel to process emergency documents. Agency officials will be informed as to the schedule for filing and publishing individual documents.

OFR has posted frequently asked questions and transmittal letter templates on the following website, which will be updated as possible: <https://www.archives.gov/federal-register/the-federal-register/shutdown-faqs>.

Authority: The authority for this action is 44 U.S.C. 1502 and 1 CFR 2.4 and 5.1.

Oliver A. Potts,

Director of the Federal Register.

[FR Doc. 2020–28299 Filed 12–18–20; 8:45 am]

BILLING CODE 1301–00–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2021–011]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of proposed extension request.

SUMMARY: We propose to request an extension from the Office of Management and Budget (OMB) of a currently approved information collection used by individuals applying for a research card. Research cards are necessary for access to original archival records in a National Archives and

Records Administration facility. We invite you to comment on this proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: We must receive written comments on or before February 22, 2021.

ADDRESSES: Send comments by email to tamee.fechhelm@nara.gov. Because our buildings are temporarily closed during the COVID–19 restrictions, we are not able to receive comments by mail during this time.

FOR FURTHER INFORMATION CONTACT: Tamee Fechhelm, Paperwork Reduction Act Officer, by email at tamee.fechhelm@nara.gov or by telephone at 301.837.1694 with requests for additional information or copies of the proposed information collection and supporting statement.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for NARA to properly perform its functions; (b) our estimate of the burden of the proposed information collection and its accuracy; (c) ways we could enhance the quality, utility, and clarity of the information we collect; (d) ways we could minimize the burden on respondents of collecting the information, including through information technology; and (e) whether this collection affects small businesses. We will summarize any comments you submit and include the summary in our request for OMB approval. All comments will become a matter of public record.

In this notice, we solicit comments concerning the following information collection:

Title: Researcher Application.

OMB number: 3095–0016.

Agency form number: NA Form 14003.

Type of review: Regular.

Affected public: Individuals or households, business or other for-profit, not-for-profit institutions, Federal, State, Local or Tribal Government.

Estimated number of respondents: 17,500.

Estimated time per response: 8 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 2,333 hours.

Abstract: The information collection is prescribed by 36 CFR 1254.8. The

collection is an application for a research card, which people need before they can access original records in a NARA facility. Respondents are individuals who wish to use original archival records. NARA uses the information to screen individuals, to identify which types of records they can use, and to allow further contact.

Swarnali Haldar,

Executive for Information Services/CIO.

[FR Doc. 2020–28137 Filed 12–21–20; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Submission for OMB Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The National Credit Union Administration (NCUA) will be submitting 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.

DATES: Comments should be received on or before January 21, 2021 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 submission may be obtained by contacting Dawn Wolfgang at (703) 548–2279, emailing PRAComments@ncua.gov, or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0067.

Title: Corporate Credit Union Monthly Call Report and Annual Report of Officers.

Form: NCUA 5310.

Abstract: Section 202(a)(1) of the Federal Credit Union Act (Act) requires federally insured credit unions to make reports of condition to the NCUA Board upon dates selected by it. Corporate credit unions report this information monthly on NCUA Form 5310, also known as the Corporate Credit Union

Call Report. The financial and statistical information is essential to NCUA in carrying out its responsibility for supervising corporate credit unions. The Federal Credit Union Act, 12 U.S.C. 1762, specifically requires federal credit unions to report the identity of credit union officials. Section 741.6(a) requires federally-insured credit unions to submit a Report of Officials annually to NCUA containing the annual certification of compliance with security requirements. The branch information is requested under the authority of § 741.6 of the NCUA Rules and Regulations.

NCUA utilizes the information to monitor financial conditions in corporate credit unions and to allocate supervision and examination resources.

Type of Review: Revision of a currently approved collection.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 539.

OMB Number: 3133–0186.

Title: Higher-Risk Mortgage Appraisals.

Abstract: Section 1471 of the Dodd-Frank Act established Truth in Lending section 129H, which contains appraisal requirements applicable to higher-risk mortgages and prohibits a creditor from extending credit in the form of a higher-risk mortgage loan to any consumer without meeting those requirements. A higher-risk mortgage is defined as a residential mortgage loan secured by a principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by certain enumerated percentage point spreads. To implement this statutory requirement, a final rule was promulgated to amend 12 CFR part 1026, Regulation Z.

The recordkeeping and disclosure requirements prescribed under § 1026.35 are necessary to protect consumers, and promote the safety and soundness of creditors making higher-risk mortgage loans.

Type of Review: Extension of a currently approved collection.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 276.

By Melane Conyers-Ausbrooks, Secretary of the Board, the National Credit Union Administration, on December 16, 2020.

Dated: December 17, 2020.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2020–28182 Filed 12–21–20; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request; Fair Credit Reporting Disclosure and Recordkeeping Requirements

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The National Credit Union Administration (NCUA), as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the following extension of a currently approved collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before February 22, 2021 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Suite 6032, Alexandria, Virginia 22314; Fax No. 703–548–2279; or email at PRAComments@NCUA.gov. Given the limited in-house staff because of the COVID–19 pandemic, email comments are preferred.

FOR FURTHER INFORMATION CONTACT:

Address requests for additional information to Dawn Wolfgang at the address above or telephone 703–548–2279.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0165.

Title: Fair Credit Reporting (FCRA).

Type of Review: Extension of a currently approved collection.

Abstract: The Fair Credit Reporting Act (FCRA) (15 U.S.C. 1681 *et seq.*) sets standards for the collection, communication, and use of information bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living. FCRA has been revised numerous times since it took effect, notably by passage of the Consumer Credit Reporting Reform Act of 1996, the Gramm-Leach-Bliley Act of 1999, and the Fair and Accurate Credit Transactions Act of 2003.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA) amended a number of consumer financial protection laws, including most provisions of FCRA. In addition to substantive amendments, the DFA transferred rulemaking authority for

most provisions of FCRA to the Consumer Financial Protection Bureau (CFPB). Pursuant to the DFA and FCRA, as amended, CFPB promulgated Regulation V, 12 CFR 1022, to implement those provisions of FCRA for which CFPB has rulemaking authority. Regulation V contains several requirements that impose information collection requirements on federal credit unions (FCUs).

The DFA did not transfer certain rulemaking authority under FCRA. Specifically, the DFA did not transfer to CFPB the authority to promulgate the requirement to properly dispose of consumer information; rules on identity theft red flags and corresponding interagency guidelines on identity theft detection, prevention, and mitigation, and rules on the duties of card issuers regarding changes of address. These provisions are promulgated in NCUA's Fair Credit Reporting regulation, 12 CFR 717, which applies to federal credit unions.

The collection of information pursuant to Parts 1022 and 717 is triggered by specific events and disclosures and must be provided to consumers within the time periods established under the regulation.

Affected Public: Private Sector: Not-for-profit institutions; Individuals or Households.

Estimated Number of Respondents: FCU: 3,232; Consumer: 143,300.

Estimated Frequency of Response: Upon occurrence of triggering action.

Estimated Burden Hours per Response: FCU: 5.07; Consumer: 0.08.

Estimated Total Annual Burden Hours: 272,686 (FCU: 248,827; Consumer: 23,859).

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. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper execution of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Melane Conyers-Ausbrooks, Secretary of the Board, the National Credit Union Administration, on December 16, 2020.

Dated: December 17, 2020.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2020-28184 Filed 12-21-20; 8:45 am]

BILLING CODE 7535-01-P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; National Science Foundation-Managed Honor Awards

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register**, and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. **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.

FOR FURTHER INFORMATION CONTACT:

Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Copies of the submission may be obtained by calling 703-292-7556.

SUPPLEMENTARY INFORMATION: NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to

respond to the collection of information unless it displays a currently valid OMB control number.

Title of Collection: Business Systems Review Guide.

OMB Number: 3145-NEW.

Type of Request: Request for approval to establish an information collection.

Proposed Project: The National Science Foundation Act of 1950 (Pub. L. 81-507) set forth NSF's mission and purpose:

"To promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense.* * *

The Act authorized and directed NSF to initiate and support:

Basic scientific research and research fundamental to the engineering process;

Programs to strengthen scientific and engineering research potential;

Science and engineering education programs at all levels and in all the various fields of science and engineering;

Programs that provide a source of information for policy formulation; and

Other activities to promote these ends.

Among Federal agencies, NSF is a leader in providing the academic community with advanced instrumentation needed to conduct state-of-the-art research and to educate the next generation of scientists, engineers and technical workers. The knowledge generated by these tools sustains U.S. leadership in science and engineering (S&E) to drive the U.S. economy and secure the future. NSF's responsibility is to ensure that the research and education communities have access to these resources, and to provide the support needed to utilize them optimally, and implement timely upgrades.

The scale of advanced instrumentation ranges from small research instruments to shared resources or facilities that can be used by entire communities. The demand for such instrumentation is very high, and is growing rapidly, along with the pace of discovery. For major facilities and shared infrastructure, the need is particularly high. This trend is expected to accelerate in the future as increasing numbers of researchers and educators rely on such large facilities, instruments, and databases to provide the reach to make the next intellectual leaps. NSF currently provides support for facility construction from two accounts: The Major Research Equipment and Facility Construction (MREFC) account, and the Research and Related Activities (R&RA) account. The

MREFC account, established in FY 1995, is a separate budget line item that provides an agency-wide mechanism, permitting directorates to undertake large facility projects that exceed 10% of the Directorate's annual budget; or roughly \$70M or greater. Smaller projects continue to be supported from the R&RA Account. Facilities are defined as shared-use infrastructure, instrumentation and equipment that are accessible to a broad community of researchers and/or educators. Facilities may be centralized or may consist of distributed installations. They may incorporate large-scale networking or computational infrastructure, multi-user instruments or networks of such instruments, or other infrastructure, instrumentation and equipment having a major impact on a broad segment of a scientific or engineering discipline. Historically, awards have been made for such diverse projects as accelerators, telescopes, research vessels and aircraft, and geographically distributed but networked sensors and instrumentation.

The growth and diversification of large facility projects require that NSF remain attentive to the ever-changing issues and challenges inherent in their planning, construction, operation, management and oversight. Most importantly, dedicated, competent NSF and awardee staff are needed to manage and oversee these projects; giving the attention and oversight that good practice dictates and that proper accountability to taxpayers and Congress demands. To this end, there is also a need for consistent, documented requirements and procedures to be understood and used by NSF program managers and awardees for all such major projects.

Use of the Information: Facilities are an essential part of the science and engineering enterprise and supporting them is one major responsibility of the National Science Foundation (NSF). NSF makes awards to external entities—primarily universities, consortia of universities or non-profit organizations—to undertake construction, management and operation of facilities. Such awards frequently take the form of cooperative agreements. NSF does not directly construct or operate the facilities it supports. However, NSF retains responsibility for overseeing their development, management and successful performance. Business Systems Reviews (BSR) of the National Science Foundation's (NSF) Major Facilities are designed to provide reasonable assurance that the business systems (people, processes, and technologies) of NSF Recipients are

effective in meeting administrative responsibilities and satisfying Federal regulatory requirements, including those listed in NSF's Proposal & Award Policies & Procedures Guide (PAPPG).

These reviews are not considered audits but are intended to be assistive in nature; aiding the Recipient in following good practices where appropriate and bringing them into compliance, if needed. A team of BSR Participants is assembled to assess the Recipient's policies, procedures, and practices to determine whether, taken collectively, these administrative business systems used in managing the Facility meet NSF award expectations and comply with Federal regulations.

The BSR Guide is designed for use by both our customer community and NSF staff for guidance in leading these reviews. The BSR Guide defines the overall framework and structure and summarizes the details outlined in the internal operating guidelines and procedures used by BSR Participants to execute the review process. Management principles and practices are specified for seven core functional areas (CFA) and are used by BSR Participants in performing these evaluations. Roles and responsibilities of the NSF stakeholders involved in the process are outlined in the BSR Guide as well as the expectations of the Recipient.

This version of the Business Systems Guide aligns with the Uniform Guidance and the *NSF Major Facilities Guide*.

This Guide will be updated periodically to reflect changes in requirements, policies and/or procedures. Award Recipients are expected to monitor and adopt the requirements and best practices included in the Guide.

The submission of Award Recipient and Project administrative business process and procedural documentation used in support of operations of the Major Facilities is part of the collection of information. This information is used to help NSF fulfill this responsibility in supporting merit-based research and education projects in all the scientific and engineering disciplines. The Foundation also has a continuing commitment to provide oversight on facilities design and construction which must be balanced against monitoring its information collection so as to identify and address any excessive review and reporting burdens.

NSF has approximately twenty-four (24) Major Facilities in various stages of design, construction, operations and divestment. The need for a BSR and review scope is based on NSF's internal

annual Major Facility Portfolio Risk Assessment and the assessment of various risks factors.

Burden to the Public: The Foundation estimates that approximately one and half (1.5) Full Time Equivalents (FTEs) are necessary for each major facility project to respond to a BSR requirements on an annual basis; or 2,824 hours per year. With an average of four (4) conducted a year, this equates to roughly 5 FTEs or 11,296 public burden hours annually.

Dated: December 17, 2020.

Suzanne H. Plimpton,
Reports Clearance Officer, National Science Foundation.

[FR Doc. 2020-28220 Filed 12-21-20; 8:45 am]

BILLING CODE 7555-01-P

NATIONAL SCIENCE FOUNDATION

Request for Information on Potential Concepts and Approaches for a National Strategic Computing Reserve (NSCR)

AGENCY: Office of Science and Technology Policy (OSTP), Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO), National Science Foundation.

ACTION: Request for information.

SUMMARY: OSTP and the National Science and Technology Council's (NSTC) Subcommittees on the Future Advanced Computing Ecosystem (FACE) and Networking and Information Technology Research and Development (NITRD) request input from interested parties on the goals, value, and necessary approaches for establishing a National Strategic Computing Reserve (NSCR). The NSCR may be envisioned as a coalition of experts and resource providers that could be mobilized quickly to provide critical computational resources (including compute, software, data, and technical expertise) in times of urgent need. This Request for Information will help inform potential attributes of a NSCR.

DATES: Interested persons are invited to submit comments on or before 11:59 p.m. (ET) on January 16, 2021.

ADDRESSES: Comments submitted in response to this notice may be sent by any of the following methods:

- *Email:* nscr-rfi@nitrd.gov. Email submissions should be machine-readable and not be copy-protected. Submissions should include "RFI Response: National Strategic Computing Reserve" in the subject line of the message.

• *Fax:* (202) 459-9673, Attn: Ji Lee.
 • *Mail:* Attn: Ji Lee, NCO, 2415 Eisenhower Avenue, Alexandria, VA 22314, USA.

Instructions: Response to this RFI is voluntary. Each individual or institution is requested to submit only one response. Submissions must not exceed 10 pages in 12 point or larger font, with a page number provided on each page. Responses should include the name of the person(s) or organization(s) filing the comment. Responses to this RFI may be posted online at <http://www.nitrd.gov>. Therefore, no business proprietary information, copyrighted information, or personally identifiable information should be submitted in response to this RFI.

In accordance with FAR 15.202(3), responses to this notice are not offers and cannot be accepted by the Government to form a binding contract. Responders are solely responsible for all expenses associated with responding to this RFI.

FOR FURTHER INFORMATION CONTACT: Ji Lee at nscr-rfi@nitrd.gov, 202-459-9674, or by post mailing to 2415 Eisenhower Avenue, Alexandria, VA 22314, USA. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The prompt, successful, and nimble deployment of computational resources (including expertise) via the COVID-19 High-Performance Computing (HPC) Consortium has demonstrated its essential role in the Nation's response to emergencies. This backdrop has led to the conceptualization of a National Strategic Computing Reserve (NSCR), comprising a coalition of experts and resource providers that could be mobilized quickly to provide critical computational resources (including compute, software, data, and technical expertise) in times of urgent need.

Background Information: The COVID-19 HPC Consortium (<https://covid19-hpc-consortium.org>) was formed in March 2020 and offers an example of how the consortium rapidly delivered scientific insights. The Consortium brought together the Federal Government, industry, and academic leaders to provide access to the world's most powerful computational resources in support of COVID-19 research. Within its first week of existence, the Consortium instantiated an operational framework for providing computational resources for rapid crisis response. The Consortium effectively:

• Worked together across institutional and organizational boundaries within government, industry, and academia to create a common portal to access computational resources and to coalesce ad hoc efforts in smaller "consortia" around the country;

• Ramped up quickly to meet urgent computational resource requirements not easily available through other means; this ramp-up included the development and adaptation of review, matching and on-boarding processes for accessing these resources;

• Set up a communications and user engagement framework for a worldwide community; and

• Accelerated explorations in basic understanding of the SARS-CoV2 virus, its host interactions, strategies to mitigate its spread, and early-stage drug development.

With this RFI, we seek to aggregate the lessons learned from the COVID-19 HPC Consortium with other broader community input towards the potential design of a NSCR effort.

Information Requested: Responders are asked to answer one or more of the following questions in the responses to the RFI:

1. *Deployment Scenarios:* What are envisioned scenarios under which it would be beneficial to make NSCR computational resources available for use? What are relevant characteristics to consider regarding the design of triggers for activating and deactivating the NSCR? What approaches might the NSCR utilize to test readiness for such scenarios? Are there other barriers to activating NSCR that would need to be addressed?

2. *Computational Resources:* By what means will the NSCR computational resources be recruited, vetted, and sustained for use when needed? What are appropriate incentives and mechanisms for compensation? What principles might be employed in assessing the suitability of resources for inclusion in the NSCR? What types of research (e.g., fundamental research, Controlled Unclassified Information research, proprietary research) should the NSCR be provisioned to support?

3. *NSCR Providers:* How should the resource providers' contributions to NSCR be determined? What approaches should guide the selection and allocation of the NSCR computational resources to users, and what roles do resource providers have in determining these approaches? By what means can the NSCR computational resource providers opt in or opt out on computational resource allocations?

4. *NSCR Users:* By what means and with what principles should allocations

for NSCR computational resources be considered? What should constitute eligibility to apply for computational resources? What kind of eligibility restrictions/selection criteria would be appropriate for users and the use cases of applications of NSCR?

5. *Community Formation:* What types of community outreach and communications will help enhance the likelihood of connecting the NSCR computational resources to the relevant computational, scientific, and emergency-response communities? With what organizations and services should the NSCR coordinate to enhance its effectiveness?

6. *Partnership Agreements:* What are key aspects of partnership agreements (e.g., access to results, intellectual property rights) that can help sustain the NSCR over time?

7. *Relationship to Other Strategic Reserves:* Are there other strategic reserves that are relevant to NSCR? How can NSCR connect or interface with those reserves? What lessons can be learned from other strategic reserves that might inform the process of standing up a NSCR?

Submitted by the National Science Foundation in support of the Office of Science and Technology Policy and the Networking and Information Technology Research and Development National Coordination Office on December 16, 2020.

(Authority: 42 U.S.C. 1861.)

Suzanne H. Plimpton,
Reports Clearance Officer, National Science Foundation.

[FR Doc. 2020-28142 Filed 12-21-20; 8:45 am]

BILLING CODE 7555-01-P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, January 12, 2021.

PLACE: Virtual.

STATUS: The one item may be viewed by the public through webcast only.

MATTER TO BE CONSIDERED:
 64964—Pipeline Investigation Report—Atmos Energy Corporation Natural Gas-Fueled Explosion, Dallas, Texas, February 23, 2018

CONTACT PERSON FOR MORE INFORMATION:
 Candi Bing at (202) 590-8384 or by email at bingc@ntsb.gov.

Media Information Contact: Keith Holloway by email at keith.holloway@ntsb.gov or at (202) 314-6100.

This meeting will take place virtually. The public may view it through a live

or archived webcast by accessing a link under “Webcast of Events” on the NTSB home page at www.nts.gov.

There may be changes to this event due to the evolving situation concerning the novel coronavirus (COVID-19). Schedule updates, including weather-related cancellations, are also available at www.nts.gov.

The National Transportation Safety Board is holding this meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b).

Dated: Friday, December 18, 2020.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2020-28405 Filed 12-18-20; 4:15 pm]

BILLING CODE 7533-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2020-0271]

Order to ConverDyn Suspending Exports of Certain Source Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an order to ConverDyn suspending its authority to export certain source material to the United Kingdom (U.K.). This suspension is required due to the U.K.’s exit from the European Atomic Energy Community (EURATOM). Exports of EURATOM-obligated and Canadian-obligated source material to the U.K. are currently not authorized.

DATES: This Order is effective on January 1, 2021.

ADDRESSES: Please refer to Docket ID NRC-2020-0271 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-2020-0271. 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. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

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

FOR FURTHER INFORMATION CONTACT:

Lauren Mayros, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-287-9088, email: Lauren.Mayros@nrc.gov.

SUPPLEMENTARY INFORMATION: The

United States engages in significant nuclear cooperation with other nations, including the authorized distribution of source material, pursuant to the terms of an Agreement for Cooperation in Peaceful Uses of Nuclear Energy (123 Agreement). ConverDyn currently holds two specific licenses, XSOU8846/01 and XSOU8789/07, authorizing the export of source material to several countries including the U.K. ConverDyn’s export licenses were issued under the legal framework of the 123 Agreement between the U.S. and EURATOM.

On December 31, 2020, the U.K. will exit from EURATOM, and on January 1, 2021, a 123 Agreement between the U.S. and the U.K. will enter into force. The U.S. Government has already made arrangements with the Government of the U.K. for this transition to occur on January 1, 2021 for all NRC-licensed exports to the U.K. However, beginning on January 1, 2021, the NRC is currently unable to authorize the export of EURATOM-obligated and Canadian-obligated material from the U.S. to the U.K., until pre-approval to retransfer such material to the U.K. is received from EURATOM or the Canadian government, respectively.

This suspension is required as an operation of law and only applies to exports of EURATOM-obligated or Canadian-obligated source material to the U.K. The NRC is reproducing the text of the order as an attachment to this **Federal Register** notice.

Dated: December 17, 2020.

For the Nuclear Regulatory Commission.

Nader L. Mamish,

Director, Office of Internal Programs.

Attachment—Order Suspending Export Licenses

Order Modifying Licenses To Suspend Certain Exports to the United Kingdom
(Effective January 1, 2021)

I

ConverDyn (or “the licensee”) holds specific licenses XSOU8846/01 and XSOU8789/07 issued by the U.S. Nuclear Regulatory Commission (NRC) pursuant to Sections 62 and 127 of the Atomic Energy Act of 1954, as amended (AEA) and 10 CFR part 110. These specific licenses authorize the export of source material to France, Germany, the Netherlands, and the United Kingdom (U.K.) under the terms of an Agreement for Cooperation in Peaceful Uses of Nuclear Energy (123 Agreement) between the United States (U.S.) and the European Atomic Energy Community (EURATOM).

II

On December 31, 2020, the formal transition period marking the United Kingdom’s (U.K.) exit from the European Union (EU) will end. On this date, the U.K. will also exit from EURATOM. On January 1, 2021, the U.S./U.K. 123 Agreement will enter into force. At that time, ConverDyn’s export licenses, XSOU8846/01 and XSOU8789/07 will authorize exports to France, Germany, and the Netherlands under the legal framework of the U.S./EURATOM 123 agreement and will authorize exports to the U.K. under the legal framework of the U.S./U.K. 123 Agreement. After the U.K. exits EURATOM, the NRC is prohibited from authorizing any exports of EURATOM-obligated material from the U.S. to the U.K. until EURATOM, pursuant to the U.S./EURATOM 123 agreement, provides its pre-approval to retransfer EURATOM-obligated material from the U.S. to the U.K. The NRC is likewise prohibited from authorizing any exports of Canadian-obligated material from the U.S. to the U.K. until the Government of Canada, pursuant to the U.S./Canada 123 Agreement, provides its pre-approval to retransfer Canadian-obligated material to the U.K.

The U.S. Government has already made arrangements with the Government of the U.K. for the transition from the U.S./EURATOM 123 Agreement to the U.S./U.K. 123 Agreement to automatically occur on January 1, 2021, for all NRC-approved export licenses to the U.K. However, the

U.S. Government cannot authorize the export of EURATOM-obligated or Canadian-obligated material from the U.S. to the U.K. without prior approval for retransfer from EURATOM or the Canadian government, respectively. Therefore, beginning on January 1, 2021, ConverDyn will no longer be authorized to export EURATOM-obligated and Canadian-obligated material to the U.K. under licenses XSOU8846/01 and XSOU8789/07 until such prior approval is received.

III

Accordingly, pursuant to Sections 62, 64, 123, 127, 161b, 161i, 183, and 186 of the AEA, and 10 CFR 110.50(a)(1) and (2) and 110.52, IT IS HEREBY ORDERED, EFFECTIVE January 1, 2021, THAT LICENSES XSOU8846/01 AND XSOU8789/07 ARE MODIFIED AS FOLLOWS:

A. The licensee's authorization to export EURATOM-obligated material to the U.K. is suspended, and such exports are prohibited, until the licensee receives notice from the NRC that the United States Government has obtained EURATOM's pre-approval, pursuant to the U.S./EURATOM 123 Agreement, to retransfer EURATOM-obligated material to the U.K. When the licensee receives such notice from the NRC, this provision of the Order will expire without any further action by the NRC.

B. The licensee's authorization to export Canadian-obligated material to the U.K. is suspended, and such exports are prohibited, until the licensee receives notice from the NRC that the United States Government has obtained Canada's approval, pursuant to the U.S./Canada 123 Agreement, to retransfer Canadian-obligated material to the U.K. When the licensee receives such notice from the NRC, this provision of the Order will expire without any further action by the NRC.

The NRC finds that this action is required by operation of law and the common defense and security of the United States. Therefore, in accordance with 10 CFR 110.52(c), the licensee need not be afforded an opportunity to reply and be heard prior to issuance of this Order.

For the Nuclear Regulatory Commission

Nader L. Mamish,

Director, Office of International Programs.

Dated at Rockville, Maryland this 16th day of December 2020.

[FR Doc. 2020-28160 Filed 12-21-20; 8:45 am]

BILLING CODE 7590-01-P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Payment of Premiums

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB approval of revised collection of information.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is modifying the collection of information under its regulation on Payment of Premiums (OMB control number 1212-0009; expiring December 31, 2022) and requests that the Office of Management and Budget (OMB) approve the revised collection of information under the Paperwork Reduction Act for three years. This notice informs the public of PBGC's request and solicits public comment on the collection of information

DATES: Comments must be submitted on or before January 21, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

A copy of the request will be posted on PBGC's website at <https://www.pbgc.gov/prac/laws-and-regulation/federal-register-notices-open-for-comment>. It may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005-4026, or calling 202-326-4040 during normal business hours. TTY users may call the Federal Relay Service toll-free at 800-877-8339 and ask to be connected to 202-326-4040.

FOR FURTHER INFORMATION CONTACT:

Melissa Rifkin (rifkin.melissa@pbgc.gov), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005-4026; 202-229-6563. (TTY users may call the Federal relay service toll-free at 800-877-8339 and ask to be connected to 202-229-6563.)

SUPPLEMENTARY INFORMATION: Section 4007 of title IV of the Employee Retirement Income Security Act of 1974 (ERISA) requires pension plans covered under title IV pension insurance

programs to pay premiums to PBGC. All plans covered by title IV pay a flat-rate per-participant premium. An underfunded single-employer plan also pays a variable-rate premium based on the value of the plan's unfunded vested benefits.

Pursuant to section 4007, PBGC has issued its regulation on Payment of Premiums (29 CFR part 4007). Under § 4007.3 of the premium payment regulation, the plan administrator of each pension plan covered by title IV of ERISA is required to file a premium payment and information prescribed by PBGC for each premium payment year. Premium information is filed electronically using "My Plan Administration Account" ("My PAA") through PBGC's website. Under § 4007.10 of the premium payment regulation, plan administrators are required to retain records about premiums and information submitted in premium filings.

Premium filings report (i) the flat-rate premium and related data (all plans), (ii) the variable-rate premium and related data (single-employer plans), and (iii) additional data such as identifying information and miscellaneous plan-related or filing-related data (all plans). PBGC needs this information to identify the plans for which premiums are paid, to verify whether the amounts paid are correct, to help PBGC determine the magnitude of its exposure in the event of plan termination, to help track the creation of new plans and transfer of participants and plan assets and liabilities among plans, and to keep PBGC's insured-plan inventory up to date. That information and the retained records are also needed for audit purposes.

PBGC intends to modify the 2021 premium filing to require certain plans that transferred assets to another plan (or received assets from another plan) at the beginning of the plan year to report additional information about the transfer. More specifically, such plans will be required to report whether the transfer was de minimis and, in the case of a de minimis merger, whether the transferee plan had fewer assets than the transferor plan. This information is necessary to verify that the date reported as the "participant count date" (i.e., the date as of which participants are counted for premium purposes) is correct.

PBGC also intends to update the premium rates and make conforming, clarifying, and editorial changes. One such change, to conform with the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019, is adding the option of "CSEC

plan” (meaning cooperative and small-employer charity plan) as a response to the question of “Plan type.”

The collection of information under the regulation has been approved through December 21, 2022, by OMB under control number 1212-0009. On August 21, 2020, PBGC published in the **Federal Register** (at 85 FR 51759) a notice informing the public of its intent to request approval of the revised collection of information. PBGC did not receive any comments. 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.

PBGC estimates that it will receive 31,245 premium filings per year from 31,245 plan administrators under this collection of information. PBGC further estimates that the annual burden of this collection of information is 13,540 hours and \$21,621,540.

Issued in Washington, DC, by,

Stephanie Cibinic,

Deputy Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2020-28193 Filed 12-21-20; 8:45 am]

BILLING CODE 7709-02-P

OFFICE OF PERSONNEL MANAGEMENT

President’s Commission on White House Fellowships Advisory Committee: Closed Meeting

AGENCY: President’s Commission on White House Fellowships, Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The President’s Commission on White House Fellowships (PCWHF) was established by an Executive Order in 1964. The PCWHF is an advisory committee composed of Special Government Employees appointed by the President.

FOR FURTHER INFORMATION CONTACT: Elizabeth D. Pinkerton, 712 Jackson Place NW, Washington, DC 20503, Phone: 202-395-4522.

SUPPLEMENTARY INFORMATION:

The meeting is closed.

Name of Committee: President’s Commission on White House Fellowships Mid-Year Meeting.

Date: January 4–5, 2021.

Time: 8:00 a.m.–5:30 p.m.

Place: Eisenhower Executive Office Building, 1650 Pennsylvania Ave. NW, Washington, DC 20502.

Agenda: The Commission holds a mid-year meeting to talk with current

Fellows on how their placements are going and discuss preparation for future events.

President’s Commission on White House Fellowships.

Alexys Stanley,

Regulatory Affairs Director.

[FR Doc. 2020-28144 Filed 12-21-20; 8:45 am]

BILLING CODE 6325-44-P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2019-198; CP2019-199; CP2020-141; CP2020-184; CP2020-189; CP2020-192; CP2020-193; MC2021-48 and CP2021-50]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission’s consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 28, 2020 and December 29, 2020.

ADDRESSES: Submit comments electronically via the Commission’s Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT:

David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION: The December 28, 2020 comment due date applies to Docket Nos. CP2019-198; CP2019-199; CP2020-141; CP2020-184; CP2020-189.

The December 29, 2020 comment due date applies to Docket Nos. CP2020-192; CP2020-193; MC2021-48 and CP2021-50.

Table of Contents

- I. Introduction
- II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product

currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request’s acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service’s request(s) can be accessed via the Commission’s website (<http://www.prc.gov>). Non-public portions of the Postal Service’s request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

The Commission invites comments on whether the Postal Service’s request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

1. *Docket No(s):* CP2019-198; *Filing Title:* USPS Notice of Amendment to Priority Mail Contract 543, Filed Under Seal; *Filing Acceptance Date:* December 16, 2020; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* December 28, 2020.

2. *Docket No(s):* CP2019-199; *Filing Title:* USPS Notice of Amendment to Priority Mail Contract 544, Filed Under Seal; *Filing Acceptance Date:* December 16, 2020; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* December 28, 2020.

3. *Docket No(s):* CP2020-141; *Filing Title:* Notice of the United States Postal Service of Filing Modifications to Inbound Competitive Multi-Service IRA-USPS Agreement; *Filing Acceptance Date:* December 16, 2020;

¹ See Docket No. RM2018-3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19-22 (Order No. 4679).

Filing Authority: 39 CFR 3035.105; *Public Representative:* Katalin K. Clendenin; *Comments Due:* December 28, 2020.

4. *Docket No(s).*: CP2020–184; *Filing Title:* Notice of the United States Postal Service of Filing Modification One to International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 2 Negotiated Service Agreement; *Filing Acceptance Date:* December 16, 2020; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Gregory S. Stanton; *Comments Due:* December 28, 2020.

5. *Docket No(s).*: CP2020–189; *Filing Title:* Notice of the United States Postal Service of Filing Modification Two to International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 5 Negotiated Service Agreement; *Filing Acceptance Date:* December 16, 2020; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* December 28, 2020.

6. *Docket No(s).*: CP2020–192; *Filing Title:* Notice of the United States Postal Service of Filing Modification One to International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Contract 2 Negotiated Service Agreement; *Filing Acceptance Date:* December 16, 2020; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* December 29, 2020.

7. *Docket No(s).*: CP2020–193; *Filing Title:* Notice of the United States Postal Service of Filing Modification One to Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 5 Negotiated Service Agreement; *Filing Acceptance Date:* December 16, 2020; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* December 29, 2020.

8. *Docket No(s).*: MC2021–48 and CP2021–50; *Filing Title:* USPS Request to Add Priority Mail Contract 684 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 16, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:*

Christopher C. Mohr; *Comments Due:* December 29, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2020–28256 Filed 12–21–20; 8:45 am]
BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Privacy Act of 1974, as Amended; Notice of Computer Matching Program (Railroad Retirement Board and Social Security Administration, Match Number 1007)

AGENCY: Railroad Retirement Board (RRB).

ACTION: Notice of a modified matching program.

SUMMARY: As required by the Privacy Act of 1974, as amended, the RRB is issuing public notice of its renewal of an ongoing computer-matching program with the Social Security Administration (SSA). The purpose of this notice is to advise individuals applying for or receiving benefits under the Railroad Retirement Act of the use made by RRB of this information obtained from SSA by means of a computer match. The RRB is also issuing public notice, on behalf of the SSA, of their intent to conduct a computer-matching program based on information provided to them by the RRB.

DATES: This matching program becomes effective as proposed without further notice on January 21, 2021. We will file a report of this computer-matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Government Reform of the House of Representatives; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB).

ADDRESSES: Interested parties may comment on this publication by writing to Ms. Stephanie Hillyard, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy Grant, Associate Chief Information Officer, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, telephone 312–751–4869 or email at tim.grant@rrb.gov.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988, (Pub. L. 100–

503), amended by the Privacy Act of 1974, (5 U.S.C. 552a) as amended, requires a Federal agency participating in a computer matching program to publish a notice in the **Federal Register** for all matching programs.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records contained in a Privacy Act System of Records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards (DIB) of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments. The last notice for this matching program was published at 73 FR 31516–31517 (June 2, 2008).

B. RRB Computer Matches Subject to the Privacy Act

We have taken appropriate action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

Participating Agencies

Railroad Retirement Board (RRB) and the Social Security Administration (SSA), Match #1007.

Authority for Conducting the Matching Program

Section 7(b)(7) of the Railroad Retirement Act (45 U.S.C. 231f(b)(7)) provides that the Social Security Administration shall supply information necessary to administer the Railroad Retirement Act. Sections 202, 205(o) and 215(f) of the Social Security Act (42 U.S.C. 402, 405(o) and 415(f)) relate to benefit provisions, inclusion of railroad compensation together with wages for payment of benefits under certain circumstances, and the re-computation of benefits.

Purpose

The RRB will, on a daily basis, obtain from SSA a record of the wages reported to SSA for persons who have applied for

benefits under the Railroad Retirement Act and a record of the amount of benefits paid by that agency to persons who are receiving or have applied for benefits under the Railroad Retirement Act. The wage information is needed to compute the amount of the tier I annuity component provided by sections 3(a), 4(a) and 4(f) of the Railroad Retirement Act (45 U.S.C. 231b(a), 45 U.S.C. 231c(a) and 45 U.S.C. 231c(f)). The benefit information is needed to adjust the tier I annuity component for the receipt of the Social Security benefit. This information is available from no other source.

Second, the RRB will receive from SSA the amount of certain social security benefits which the RRB pays on behalf of SSA. Section 7(b)(2) of the Railroad Retirement Act (45 U.S.C. 231f(b)(2)) provides that the RRB shall make the payment of certain social security benefits. The RRB also requires this information in order to adjust the amount of any annuity due to the receipt of a social security benefit. Section 10(a) of the Railroad Retirement Act (45 U.S.C. 231i(a)) permits the RRB to recover any overpayment from the accrual of social security benefits. This information is not available from any other source.

Third, once a year the RRB will receive from SSA a copy of SSA's Master Benefit Record for earmarked RRB annuitants. Section 7(b)(7) of the Railroad Retirement Act (45 U.S.C. 231f(b)(7)) requires that SSA provide the requested information. The RRB needs this information to make the necessary cost-of-living computation adjustments quickly and accurately for those RRB annuitants who are also SSA beneficiaries.

SSA will receive weekly from RRB earnings information for all railroad employees. SSA will match the identifying information of the records furnished by the RRB against the identifying information contained in its Master Benefit Record and its Master Earnings File. If there is a match, SSA will use the RRB earnings to adjust the amount of Social Security benefits in its Annual Earnings Reappraisal Operation. This information is available from no other source.

The SSA will also receive daily from RRB earnings information on selected individuals. The transfer of information may be initiated either by RRB or by SSA. SSA needs this information to determine eligibility to Social Security benefits and, if eligibility is met, to determine the benefit amount payable. Section 18 of the Railroad Retirement Act (45 U.S.C. 231q(2)) requires that earnings considered as compensation

under the Railroad Retirement Act be considered as wages under the Social Security Act for the purposes of determining entitlement under the Social Security Act if the person has less than 10 years of railroad service or has 10 or more years of service but does not have a current connection with the railroad industry at the time of his/her death.

Categories of Individuals

All applicants for benefits under the Railroad Retirement Act and current beneficiaries will have a record of any social security wages and the amount of any social security benefits furnished to the RRB by SSA. In addition, all persons who ever worked in the railroad industry after 1936 will have a record of their service and compensation furnished to SSA by RRB.

Categories of Records

1. Name, social security number, RRB claim number, annuity beginning date, date of birth, sex, last employer identification number, amount of daily pay rate, separation allowance or severance payment, creditable service and compensation after 1937, home address, date of death, and electronic mail address.

2. Information pertaining to the payment or denial of an individual's claim for benefits under the Railroad Retirement Act: Name, address, social security number, claim number, proofs of age, marriage, relationship, death, military service, creditable earnings and service months (including military service), entitlement to benefits under the Social Security Act, programs administered by the Veterans Administration, or other benefit systems, rates, effective dates, medical reports, correspondence and telephone inquiries to and about the beneficiary, suspension and termination dates, health insurance effective date, option, premium rate and deduction, direct deposit data, employer pension information, citizenship status and legal residency status (for annuitants living outside the United States), and tax withholding information (instructions of annuitants regarding number of exemptions claimed and additional amounts to be withheld, as well as actual amounts withheld for tax purposes).

Systems of Records

The applicable RRB Privacy Act Systems of Records and their **Federal Register** citation used in the matching program are:

1. RRB-5, Master File of Railroad Employees' Creditable

Compensation, September 30, 2014 (79 FR 58877)

2. RRB-22, Railroad Retirement, Survivor, Pensioner Benefit System, May 15, 2015 (80 FR 28018)

The applicable SSA Privacy Act Systems of Records used and their **Federal Register** citation used in the matching program are:

1. SSA 60-0058, Master Files of Social Security Number (SSN) Holders and SSN Applications (the Enumeration System); 75 FR 82121 (December 29, 2010)
2. SSA/OS, 60-0059, Earnings Recording and Self-Employment Income System (MEF); 71 FR 1819 (January 11, 2006)
3. SSA/ORSIS 60-0090, Master Beneficiary Record (MBR); 71 FR 1826 (January 11, 2006)
4. SSA/ODISSIS 60-103, Supplemental Security Income Record and Special Veteran Benefits; 71 FR 1830 (January 11, 2006)
5. SSA/OPB 60-0269, Prisoner Update Processing System (PUPS); 64 FR 11076 (March 8, 1999)

This matching program will become effective January 19, 2021 or 40 days after a copy of the agreement, as approved by the Data Integrity Board of each agency, is sent to Congress and the Office of Management and Budget, or 30 days after publication of this notice in the **Federal Register**, whichever date is latest. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met. This matching program expires on January 19, 2022.

By authority of the Board.

Stephanie Hillyard,

Secretary to the Board.

[FR Doc. 2020-28214 Filed 12-21-20; 8:45 am]

BILLING CODE 7905-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90688]

Order Granting Temporary Conditional Exemptive Relief Pursuant to Section 36 of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 608(e) of Regulation NMS Under the Exchange Act, Relating to Certain Requirements of the National Market System Plan Governing the Consolidated Audit Trail

December 16, 2020.

I. Introduction

BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, MEMX LLC, Miami International Securities Exchange LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, NASDAQ BX, LLC, Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., NYSE National, Inc., and Long Term Stock Exchange, Inc. (collectively, the “Participants” or “SROs”) are responsible for implementing the National Market System Plan Governing the Consolidated Audit Trail (“CAT NMS Plan”).¹ When fully implemented, the consolidated audit trail (“CAT”) is designed to capture customer and order event information for Eligible Securities² across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single, consolidated data source.

Section 36 of the Exchange Act grants the Commission the authority, with certain limitations, to “conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.”³ Under Rule 608(e) of Regulation NMS, the Commission may “exempt from [Rule 608], either unconditionally or on

specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanism of, a national market system.”⁴

For the reasons set forth below, this Order grants the Participants temporary conditional exemptive relief from certain requirements of the CAT NMS Plan, until the dates specified below. The Commission is granting temporary conditional exemptive relief from certain CAT NMS Plan requirements in order to allow Participants more time to meet such requirements and to allow Participants to prioritize and focus resources on implementation of other outstanding CAT NMS Plan requirements.

II. Discussion and Exemptive Relief

Participants and Industry Members have devoted and continue to expend substantial resources and efforts in the ongoing development of the CAT. The Commission believes that granting the temporary exemptive relief until July 31, 2023,⁵ except where otherwise noted below, would provide Participants the time to develop the necessary technological, system or procedural changes to meet the CAT NMS Plan requirements discussed below. The Commission believes that granting temporary conditional exemptive relief from specific CAT NMS Plan requirements as discussed below is, pursuant to Section 36 of the Exchange Act, appropriate in the public interest and consistent with the protection of investors, and that pursuant to Rule 608(e), this exemptive relief is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and the perfection of a national market system.

In addition to the conditions specific to the exemptive relief described below, the Commission is granting the exemptive relief described herein conditioned on the Participants providing information in Quarterly Progress Reports⁶ regarding the progress

towards meeting these CAT NMS Plan requirements. Section 6.6(c)(ii)(B) of the CAT NMS Plan requires that for each “milestone” still in progress at the end of a given calendar quarter, the Participants must submit, among other things, a description of “any other factual indicators that demonstrate the current level of completion with respect to the milestone.” As a condition of the exemptive relief granted in this Order, the Participants are required to include a description of specific factual indicators that demonstrate the current level of completion with respect to the “Full Implementation of CAT NMS Plan Requirements” milestone⁷ within the Quarterly Progress Reports required by the CAT NMS Plan. These factual indicators, as they apply to each CAT NMS Plan requirement, are discussed in greater detail below.

A. Timeframes for Lifecycle Linkages

The CAT NMS Plan requires specific timeframes for the identification, communication and correction of errors from the time an order event is received by the processor, including, by Noon Eastern Time T+1 (transaction date + one day), “[i]nitial data validation, lifecycle linkages and communication of errors to CAT Reporters.”⁸ This means that by 12pm EST the day after a transaction, the Plan Processor must have completed initial data validation, made lifecycle linkages (*i.e.*, completed processing and linkage of the initial transaction data) and communicated errors to CAT Reporters. However, the Commission understands that the Plan Processor is currently unable to establish lifecycle linkages by the noon EST T+1 deadline as required by the CAT NMS Plan, but the Plan Processor does have the ability to provide an interim CAT Order ID and lifecycle linkages by 9 p.m. EST T+1. To allow

towards implementing the CAT NMS Plan requirements). *See also* Securities Exchange Act Release No. 88890 (May 15, 2020), 85 FR 31322 (May 22, 2020).

⁷ *See* CAT NMS Plan at Section 1.1 (defining “Full Implementation of CAT NMS Plan Requirements” milestone). The Commission believes that these factual indicators relate to the Full Implementation of CAT NMS Plan Requirements milestone because this milestone “means the point at which Participants have satisfied all of their obligations to build and implement the CAT, such that all CAT system functionality required by Rule 613 and the CAT NMS plan has been developed, successfully tested and fully implemented[.]” *Id.*

⁸ *See* CAT NMS Plan at Section 6.1 of Appendix D. Section 6.1 of Appendix continues to provide the following timelines: (1) “8:00 a.m. Eastern Time T+3 (transaction date + three days)—Resubmission of corrected data; and” (2) “8:00 a.m. Eastern Time T+5 (transaction date + five days)—Corrected data available to Participant regulatory staff and the SEC.”

¹ The CAT NMS Plan was approved by the Commission, as modified, on November 15, 2016. *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (“CAT NMS Plan Approval Order”).

² Unless otherwise noted, capitalized terms are used as defined in the CAT NMS Plan.

³ 15 U.S.C. 78mm(a)(1).

⁴ 17 CFR 242.608(e).

⁵ This date is approximately one year after the date by which the Participants previously estimated that the CAT would be fully implemented, July 11, 2022. *See* Securities Exchange Act Release No. 88890 (May 15, 2020), 85 FR 31322, 31334 (May 22, 2020).

⁶ *See* CAT NMS Plan at Section 6.6(c)(ii) (requiring Participants to file quarterly progress reports with the Commission tracking progress

the Participants more time to make the technological changes necessary to meet the requirements of Section 6.1 of Appendix D, the Commission believes it is appropriate to grant temporary exemptive relief, until July 31, 2023, from the requirement that the Participants make lifecycle linkages of transaction data available by noon EST T+1. This relief is conditioned on the Participants providing an interim CAT Order ID and lifecycle linkages by 9 p.m. EST T+1. Furthermore, as a condition of this relief, and for purposes of the Quarterly Progress Reports, factual indicators that demonstrate the current level of completion with respect to this CAT NMS Plan requirement must include a description of any improvements to the time by which the Plan Processor is capable of providing an interim CAT Order ID and lifecycle linkages. The Commission believes that this condition would allow the Commission to monitor the progress made towards meeting this CAT NMS Plan requirement prior to the expiration of the exemptive relief.

B. Re-Processing of Corrections Received After T+5

Section 3 of Appendix D of the CAT NMS Plan requires that all CAT Data reported to the Central Repository must be processed and assembled to create the complete lifecycle of each Reportable Event.⁹ Furthermore, Section 6.2 of Appendix D of the CAT NMS Plan states that if corrections are received after T+5 (transaction date + 5 days), Participants' regulatory staff and the SEC must be notified and informed as to how re-processing will be completed. The Commission understands that the Participants believe that re-processing data for corrections made after T+5 could negatively impact current development timelines and thus impede regulatory use of CAT Data, and that Section 3 of Appendix D does not require the re-processing of all data corrections made after T+5, but that the Participants do plan to establish procedures to identify when and how such data will be re-processed. However, under the CAT NMS Plan, corrections received after T+5 are required to be re-processed, with the Participants' regulatory staff and SEC notified and informed as to how re-processing will be completed; it does not provide that re-processing is optional. To provide the Participants

⁹ See, e.g., CAT NMS Plan, *supra* note 1, at Section 3 of Appendix D. Pursuant to Section 6.1 of Appendix D, the Plan Processor is required to make available corrected data to Participant regulatory staff and the SEC at 8:00 a.m. EST five days after a transaction date.

time to develop the changes necessary to handle the re-processing of all corrections received after T+5, the Commission believes it is appropriate to grant temporary exemptive relief, until July 31, 2021, from the requirement in Section 3 and Section 6.2 of Appendix D of the CAT NMS Plan that the Participants process and assemble the complete lifecycle for corrected Reportable Events received by the Plan Processor after T+5. As a condition of this relief, and for purposes of the Quarterly Progress Reports, factual indicators that demonstrate the current level of completion with respect to this CAT NMS Plan requirement must include a description of progress made with respect to the re-processing of all corrections received after T+5 prior to the expiration of the exemptive relief on July 31, 2021. The Commission believes that this condition would allow the Commission to monitor the progress made towards meeting this CAT NMS Plan requirement prior to the expiration of the exemptive relief.

C. Linkage of Participant Data and Industry Member Data With SIP Data

Section 6.5(b)(i) of the CAT NMS Plan requires, among other things, that the CAT Data and data from the Securities Information Processor (the "SIP") that is collected by the Central Repository ("SIP Data") when available to the Participant regulatory staff and the SEC "shall be linked," such that the Participant and Industry Member Data ("Transaction Data") collected by CAT and the SIP Data collected by CAT are part of the lifecycle of a single Order.¹⁰ However, the Commission understands that the CAT Plan Processor is unable to "link" Participant Data and Industry Member Data with SIP Data as required by Section 6.5(b)(i) of the CAT NMS Plan. Rather, the Commission understands that the CAT Plan Processor is only able to provide a regulatory user a side-by-side view of—instead of a linkage between—both the transactional data in CAT and SIP Data through an online targeted query tool or a user-defined direct query.

In order to provide Participants more time to develop the changes necessary to meet the requirements of Section 6.5(b)(i), the Commission believes it is appropriate to, until July 31, 2023, grant a temporary exemption to the Participants from the requirement in Section 6.5(b)(i) of the CAT NMS Plan

¹⁰ Section 3 of Appendix D of the CAT NMS Plan requires that "[a]ll CAT Data reported to the Central Repository must be processed and assembled to create the complete lifecycle of each Reportable Event," and "CAT Data" explicitly includes "SIP Data."

that requires the information collected by the Central Repository pursuant to paragraphs (c)(7) and (e)(7) of SEC Rule 613 to be provided to regulators in a linked manner, insofar as this provision applies to linking Participant Data and Industry Member Data with SIP Data as required by Section 6.5(b)(i). As a condition of this relief, and for purposes of the Quarterly Progress Reports, factual indicators that demonstrate the current level of completion with respect to this CAT NMS Plan requirement must include the release of updated specifications and/or scenarios documents relating to the linkage of Participant Data and Industry Member Data with SIP Data, such that SIP Data is incorporated in the lifecycle of an order. The Commission believes that this condition would allow the Commission to monitor the progress made towards meeting this CAT NMS Plan requirement prior to the expiration of the exemptive relief.

D. Reporting of Port-Level Settings Applicable to Orders

Port-level settings are special handling instructions associated with a port connection to another Industry Member or Participant and are used by Industry Members and Participants to instruct how to handle an Order (e.g., certain routing instructions) that are sent through that port connection. The CAT NMS Plan requires Industry Members to report the "Material Terms of an Order," including "any special handling instructions" ¹¹ to the Central Repository for certain events in an Order's lifecycle.¹² The Commission believes that the CAT NMS Plan's requirement to report "Material Terms of an Order" including "any special handling instructions" requires the reporting of port-level settings because port-level settings provide instructions on how orders should be handled.¹³ Put another way, port-level settings are special handling instructions, and therefore these settings must be reported, consistent with the two-sided reporting obligations of CAT, by both the sender and receiver. For example, an instruction that prevents an order from trading with another order from the same broker-dealer (self-trade match

¹¹ See CAT NMS Plan at Section 1.1.

¹² See CAT NMS Plan at Sections 1.1 and 6.4(d)(i), (ii), (iii), and (iv).

¹³ CAT NMS FAQ (D34) regarding the requirement to report material terms of an order that are communicated via default or implicit handling instructions states that generally, the party who "applies" the default or implicit handling instruction to the order is required to report any material terms in that instruction to CAT. See CAT NMS FAQ D34, available at: <https://www.catnmsplan.com/faq>.

prevention) is reportable as a special handling instruction even if the exchange does not need to apply the instruction because there is not another order from the same broker-dealer that would trade with the incoming order.

The Commission understands, however, that Participants and/or Industry Members would have to make technological changes to ensure the accurate and reliable reporting of port-level settings, and therefore, the Commission believes it is appropriate to, until July 31, 2023, exempt the Participants from requiring that both the CAT Reporter sending an Order and the CAT Reporter receiving an Order report port-level settings as part of the Material Terms of an Order. In order to monitor the Participants' progress on compliance with the CAT NMS Plan's reporting requirements, this exemptive relief is conditioned on the Participants engaging both the Commission and Industry Members on a plan to address the reporting of port-level settings on an exchange-by-exchange basis. Furthermore, as a condition of this relief, and for purposes of the Quarterly Progress Reports, factual indicators must include the release of updated specifications and/or scenarios documents relating to the reporting of port-level settings by both the sender and receiver of an Order as a special handling instruction to demonstrate the current level of completion with respect to the CAT NMS Plan requirement that special handling instructions, including port-level settings, be reported as Material Terms of an Order. The Commission believes that these conditions would allow the Commission to monitor the progress made towards meeting this CAT NMS Plan requirement prior to the expiration of the exemptive relief.

E. Lifecycle Linkage Between Customer Orders and "Representative" Orders

The CAT NMS Plan requires that the Plan Processor must be able to link all related order events from all CAT Reporters involved in the lifecycle of an order, and this requirement applies to, among other things, "representative" orders. Specifically, the CAT NMS Plan states that the Central Repository must be able to create the lifecycle between customer orders to "representative" orders created in firm accounts for the purpose of facilitating a customer order (e.g., linking a customer order handled on a riskless principal basis to the street-side proprietary order).¹⁴ The

¹⁴ See CAT NMS Plan at Section 3, Appendix D. A representative order is an order originated in a firm owned or controlled account, including

Commission understands that the Participants do not currently have the ability to create lifecycles in certain representative order scenarios, particularly because of the difficulty of linking representative orders for Industry Members with separate order management systems and execution management systems that do not currently have a systematic or direct link between them.¹⁵ While the Commission has granted exemptive relief relating to the timing of CAT NMS Plan reporting requirements for Industry Members,¹⁶ including the phased reporting of representative orders, the exemptive relief that was granted relates solely to the timing and phasing of reporting and not the substantive requirements of the CAT NMS Plan.¹⁷

In order to allow time for Participants and Industry Members to develop the capability of meeting CAT NMS Plan requirements relating to representative orders, the Commission believes it is appropriate to grant temporary exemptive relief, until July 31, 2023, from the CAT NMS Plan requirement that the Plan Processor create the lifecycle between customer orders to "representative" orders created in firm accounts for the purpose of facilitating a customer order, conditioned on the Participants continuing to require Industry Member reporting of representative orders as described in the Phased Industry Member Reporting Order. The Commission believes that granting relief until July 31, 2023 is appropriate because this would provide Participants the time necessary to determine how all representative orders are to be reported to CAT and time for Industry Members to make any changes necessary to report all representative orders. As a condition of this relief, and for purposes of the Quarterly Progress Reports, factual indicators that

principal, agency average price and omnibus accounts, by an Industry Member for the purpose of working one or more customer or client orders. See Securities Exchange Act Release No. 88702 (April 20, 2020), 85 FR 23075, 23076 n.26 (April 24, 2020) ("Phased Industry Member Reporting Order").

¹⁵ See Industry Member Specifications, FINRA CAT, available at: <https://www.catnmsplan.com/specifications/im>.

¹⁶ In the Phased Industry Member Reporting Order, see *supra* note 14, the Commission granted exemptive relief from requirements in Sections 6.4, 6.7(a)(v) and 6.7(a)(vi) of the CAT NMS Plan related to Industry Member reporting of Industry Member Data to the Central Repository.

¹⁷ As a condition to the exemptive relief granted in the Phased Industry Member Reporting Order, the Participants represented that the full scope of CAT Data will be required to be reported to the CAT when Phase 2e has been implemented (by July 11, 2022), subject to any applicable exemptive relief or amendments to the CAT NMS Plan. See *id.* at 23076, 23079, 23080, 23081, 23083.

demonstrate the current level of completion with respect to this CAT NMS Plan requirement must include a description of progress made regarding the release of updated specifications and/or scenarios documents relating to the reporting of all representative orders. The Commission believes that this condition would allow the Commission to monitor the progress made towards meeting this CAT NMS Plan requirement prior to the expiration of the exemptive relief.

F. Participant Reporting of Rejected Orders

The CAT NMS Plan requires Participants to record and report to the Central Repository the receipt of an order and the time at which the order is received pursuant to Section 6.3(d) of the CAT NMS Plan. This requirement applies to when an order is *received*, which means that an order that a Participant receives, but then rejects ("rejected orders") is a CAT Reportable event, and that the receipt of that order and the time at which that order was received also must be reported, pursuant to Section 6.3(d). Additionally, similar to all other CAT Data, rejected orders that are reported to the Central Repository must be processed and assembled to create the complete lifecycle of each Reportable Event.¹⁸ However, the Commission understands that the Participants are currently only able to report some but not all rejected orders, as required by Section 6.3(d).

In order to provide Participants more time to develop the changes necessary to meet the requirements of Section 6.3(d) of the CAT NMS Plan as they relate to rejected orders, the Commission believes it is appropriate to, until December 13, 2021, grant a temporary exemption to the Participants from the requirement in Section 6.3(d) of the CAT NMS Plan that requires the Participants to report rejected orders.¹⁹ As a condition to this relief, and for purposes of the Quarterly Progress Reports, factual indicators that demonstrate the current level of completion with respect to this CAT NMS Plan requirement must include a description of any updates to specifications and/or scenarios documents relating to the capture and

¹⁸ See CAT NMS Plan at Appendix D, Section 3.

¹⁹ The Commission understands that Industry Member Specifications accommodates the reporting of rejected orders through "New Order Event" reporting, and that if an Industry Member *receives* an order, the Industry Member must report the receipt of the order and time of order receipt. See FINRA CAT, Industry Member Specifications, available at: <https://www.catnmsplan.com/specifications/im>; FINRA CAT, FAQ D3, available at: <https://www.catnmsplan.com/faq>.

reporting of rejected orders. The Commission believes that this condition would allow the Commission to monitor the progress made towards meeting this CAT NMS Plan requirement prior to the expiration of the exemptive relief.

III. Conclusion

For the reasons discussed above, the Commission believes that granting temporary exemptive relief, pursuant to Section 36 of the Exchange Act, is appropriate in the public interest and consistent with the protection of investors, and that pursuant to Rule 608(e), granting temporary exemptive relief is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and the perfection of a national market system.

Accordingly, *it is hereby ordered*, pursuant to Section 36(a)(1) of the Exchange Act,²⁰ and Rule 608(e) of the Exchange Act²¹ that the Participants are granted an exemption, from: (1) The requirement in Section 6.1 of Appendix D of the CAT NMS Plan that requires Participants to make lifecycle linkages of transaction data available by noon EST T+1, until July 31, 2023; (2) the requirement in Sections 3 and 6.2 of Appendix D of the CAT NMS Plan that the Participants process and assemble the complete lifecycle for corrected Reportable Events received by the Plan Processor made after T+5, until July 31, 2021; (3) the requirement in Section 6(b)(i) of the CAT NMS Plan that requires the Participants to ensure that information collected pursuant to paragraphs (c)(7) and (e)(7) of SEC Rule 613 shall be linked when made available to the Participant regulatory staff and the SEC, until July 31, 2023; (4) the requirement in Sections 6.3(d)(i)(F), (ii)(G), (iii)(F), (iv)(E) and 6.4(d)(i) of the CAT NMS Plan that the Participants report, and amend their Compliance Rules to require Industry Members report the Material Terms of an Order that are communicated in port-level settings or instructions, until July 31, 2023; (5) the requirement in Section 3, Appendix D of the CAT NMS Plan that the Participants create the lifecycle between customer orders to representative orders created in firm accounts for the purpose of facilitating a customer order, until July 31, 2023, and (6) the requirement in Section 6.3(d) of the CAT NMS Plan that requires Participants to report rejected

orders, until December 13, 2021, subject to the conditions described above.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90684; File No. SR-CboeBZX-2020-091]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To List and Trade Shares of the Invesco Focused Discovery Growth ETF and the Invesco Select Growth ETF, Each a Series of the Invesco Actively Managed Exchange-Traded Fund Trust, Under Rule 14.11(m) (Tracking Fund Shares)

December 16, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 14, 2020, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the Invesco Focused Discovery Growth ETF and the Invesco Select Growth ETF pursuant to Rule 14.11(m), Tracking Fund Shares,³ which

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ As defined in Rule 14.11(m)(3)(A), the term “Tracking Fund Share” means a security that: (i) Represents an interest in an investment company (“Investment Company”) registered under the Investment Company Act of 1940 (the “1940 Act”) organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (ii) is issued in a specified aggregate minimum number in return for a deposit of a specified Tracking Basket and/or a cash amount with a value equal to the next determined Net Asset Value (“NAV”); (iii) when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid a specified Tracking Basket and/or a cash amount with a value equal to the next determined NAV; and (iv) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

are securities issued by an actively managed open-end management investment company.⁴ The Exchange is submitting this proposal as required by Rule 14.11(m)(2)(A), which provides that the Exchange must file separate proposals under Section 19(b) of the Act before listing and trading of a series of Tracking Fund Shares.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares of the Invesco Focused Discovery Growth ETF and the Invesco Select Growth ETF pursuant to Rule 14.11(m), Tracking Fund Shares,⁵ which are securities issued by an actively managed open-end management

⁴ Rule 14.11(m) was approved along with the listing and trading of three series of Tracking Fund Shares by the Commission on May 15, 2020. See Securities Exchange Act Release No. 88887 (May 15, 2020), 85 FR 30990 (May 21, 2020) (the “Tracking Fund Shares Approval Order”).

⁵ As defined in Rule 14.11(m)(3)(A), the term “Tracking Fund Share” means a security that: (i) Represents an interest in an investment company (“Investment Company”) registered under the Investment Company Act of 1940 (the “1940 Act”) organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (ii) is issued in a specified aggregate minimum number in return for a deposit of a specified Tracking Basket and/or a cash amount with a value equal to the next determined Net Asset Value (“NAV”); (iii) when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid a specified Tracking Basket and/or a cash amount with a value equal to the next determined NAV; and (iv) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

²⁰ 15 U.S.C. 78mm(a)(1).

²¹ 17 CFR 242.608(e).

investment company.⁶ The Exchange is submitting this proposal as required by Rule 14.11(m)(2)(A), which provides that the Exchange must file separate proposals under Section 19(b) of the Act before listing and trading of a series of Tracking Fund Shares.

The Shares will be offered by the Trust, which was organized as a Delaware statutory trust on November 6, 2007. The Trust is registered with the Commission as an open-end investment company and has filed a registration statement on behalf of the Funds on Form N-1A with the Commission.⁷ Invesco Capital Management LLC (the "Adviser") will be the investment adviser to the Funds. The Adviser is not registered as a broker-dealer, but is affiliated with broker-dealers. The Adviser represents that a fire wall exists and will be maintained between the respective personnel at the Adviser and affiliated broker-dealers with respect to access to information concerning the composition and/or changes to each Fund's portfolio and Tracking Basket.⁸ Personnel who make decisions on a Fund's portfolio composition and/or Tracking Basket or who have access to nonpublic information regarding the Fund Portfolio⁹ and/or the Tracking Basket or changes thereto are subject to procedures designed to prevent the use and dissemination of material non-

public information regarding such portfolio and/or Tracking Basket. The Funds' sub-adviser, Invesco Advisers, Inc. (the "Sub-Adviser"), is not registered as a broker-dealer but is affiliated with broker-dealers. Sub-Adviser personnel who make decisions regarding a Fund's Fund Portfolio and/or Tracking Basket or who have access to information regarding the Fund Portfolio and/or the Tracking Basket or changes thereto are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio and/or Tracking Basket. In the event that (a) the Adviser or a Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer; or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes newly affiliated with a broker-dealer; it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the Fund Portfolio and/or Tracking Basket, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio and/or Tracking Basket. Any person or entity, including any service provider for the Funds, who has access to nonpublic information regarding a Fund Portfolio or Tracking Basket or changes thereto for a Fund or Funds will be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or Tracking Basket or changes thereto. Further, any such person or entity that is registered as a broker-dealer or affiliated with a broker-dealer, has erected and will maintain a "fire wall" between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio or Tracking Basket. Each Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

The Shares will conform to the initial and continued listing criteria under Rule 14.11(m) as well as all terms in the Exemptive Relief. The Exchange represents that, for initial and/or continued listing, each Fund will be in compliance with Rule 10A-3 under the Act.¹⁰ A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the

Exchange. The Exchange will obtain a representation from the issuer of the Shares of each Fund that the NAV per share of each Fund will be calculated daily¹¹ and will be made available to all market participants at the same time. Each Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.

Invesco Focused Discovery Growth ETF

The Fund's holdings will conform to the permissible investments as set forth in the Exemptive Relief and the holdings will be consistent with all requirements in the Exemptive Relief.¹² Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the Intermarket Surveillance Group ("ISG")¹³ or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Fund seeks capital appreciation as its investment objective. The Fund seeks to achieve its investment objective by investing primarily in exchange-traded common stocks of U.S. companies that the Sub-Adviser expects to have above average growth rates. The Fund seeks to invest in newer companies or in more established companies that are in the early growth phase of their business cycle, which is typically marked by above average growth rates. The Fund may invest in securities of issuers of all capitalization sizes; however, it will primarily hold securities of mid-capitalization issuers. In selecting investments for the Fund,

¹¹ The Exemptive Relief and Registration Statement provide that the Funds may calculate the NAV per Share more than once daily (e.g., at 12:00 p.m. ET and 4:00 p.m. ET), however, this proposal is not intended to allow the calculation of more than one NAV. The Exchange will submit and receive approval for a separate proposal prior to the Funds calculating the NAV per Share more than once daily.

¹² Pursuant to the Exemptive Relief, the Fund's permissible investments include only the following instruments: ETFs, exchange-traded notes, exchange-traded common stocks, common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Shares ("foreign common stocks"), exchange-traded preferred stocks, exchange-traded American Depositary Receipts ("ADRs"), exchange-traded real estate investment trusts, exchange-traded commodity pools, exchange-traded metals trusts, exchange-traded currency trusts, and exchange-traded futures that trade contemporaneously with the Shares, as well as cash and cash equivalents. With the exception of foreign common stocks and cash and cash equivalents, all holdings of the Fund will be listed on a U.S. national securities exchange.

¹³ For a list of the current members of ISG, see www.isgportal.com. The Exchange notes that all components, except the cash and cash equivalent components, of the Funds may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

⁶ Rule 14.11(m) was approved along with the listing and trading of three series of Tracking Fund Shares by the Commission on May 15, 2020. See Securities Exchange Act Release No. 88887 (May 15, 2020), 85 FR 30990 (May 21, 2020) (the "Tracking Fund Shares Approval Order").

⁷ The Trust is registered under the 1940 Act. On September 25, 2020, the Trust filed post-effective amendments to its registration statement on Form N-1A relating to each Fund (File No. 811-22148) (the "Registration Statement"). The descriptions of the Funds and the Shares contained herein are based, in part, on information included in the Registration Statement. The Commission has issued an order granting certain exemptive relief to the Trust (the "Exemptive Relief") under the 1940 Act. See Investment Company Act of 1940 Release No. 34127 (December 2, 2020).

⁸ As defined in Rule 14.11(m)(3)(E), the term "Tracking Basket" means the identities and quantities of the securities and other assets included in a basket that is designed to closely track the daily performance of the Fund Portfolio, as provided in the exemptive relief under the 1940 Act applicable to a series of Tracking Fund Shares. Although the Exemptive Relief and Registration Statement utilize the term "Substitute Basket," the function and purpose of the Substitute Basket is the same as contemplated by Rule 14.11(m)(3)(E) (i.e., the Substitute Basket is composed of securities and other assets included in a basket that is designed to closely track the daily performance of the Fund Portfolio). For ease of reference, the Substitute Basket is referred to as a Tracking Basket herein.

⁹ As defined in Rule 14.11(m)(3)(B), the term "Fund Portfolio" means the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day.

¹⁰ See 17 CFR 240.10A-3.

the Sub-Adviser looks for companies with high growth potential using a “bottom-up” stock selection process. The “bottom-up” approach focuses on fundamental analysis of individual issuers before considering the impact of overall economic, market or industry trends. This approach includes analysis of a company’s financial statements and management structure and consideration of the company’s operations, product development, and its industry position.

Invesco Select Growth ETF

The Fund’s holdings will conform to the permissible investments as set forth in the Exemptive Relief and the holdings will be consistent with all requirements in the Exemptive Relief.¹⁴ Any foreign common stocks held by the Fund will be traded on an exchange that is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.¹⁵

The Fund seeks capital appreciation as its investment objective. The Fund seeks to achieve its investment objective by investing primarily in exchange-traded common stocks of U.S. companies that the Sub-Adviser believes have potential for earnings or revenue growth driven by long-term secular trends and themes. The Fund may invest in securities of issuers of all capitalization sizes; however, it will primarily hold securities of large and mid-capitalization issuers. The Fund usually will hold a relatively small number of stocks (approximately 20–30) and may invest more than 25% of its assets in a given sector.

Trading Halts

Rule 14.11(m)(4)(B)(iv) provides that (a) the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Tracking Fund Shares. Trading may be halted because of market conditions or for reasons that, in the view of the

Exchange, make trading in the Shares inadvisable. These may include: (i) The extent to which trading is not occurring in the securities and/or the financial instruments composing the Tracking Basket or Fund Portfolio; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; and (b) if the Exchange becomes aware that one of the following is not being made available to all market participants at the same time: the net asset value, the Tracking Basket, or the Fund Portfolio with respect to a series of Tracking Fund Shares, then the Exchange will halt trading in such series until such time as the net asset value, the Tracking Basket, or the Fund Portfolio is available to all market participants, as applicable.

Trading Rules

The Exchange deems Tracking Fund Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange’s existing rules governing the trading of equity securities.¹⁶ As provided in Rule 14.11(m)(2)(C), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is \$0.01. The Exchange has appropriate rules to facilitate trading in Tracking Fund Shares during all trading sessions.

Tracking Basket for the Proposed Funds

For the Funds, the Tracking Basket will include a significant percentage of the securities held in the Fund Portfolio, but will exclude certain securities held in the Fund Portfolio (or modify their weightings), such as those the Fund’s portfolio managers are actively looking to purchase or sell, or securities which, if disclosed, could increase the risk of front-running or free-riding. By design, the behavior of the Tracking Basket will be highly correlated with the behavior of a Fund Portfolio. A process developed by the Adviser will be used to optimize the Tracking Basket, which the Adviser expects will cause the performance of the Tracking Basket to closely track the performance of the Fund Portfolio. The Exchange notes that although the Tracking Basket methodology used by the Fund is not identical to the Tracking Basket methodology in a proposal to list and trade shares of Tracking Fund Shares that was previously approved by the

Commission,¹⁷ the substantive function of the Tracking Basket is the same. The Tracking Basket will only include securities in which the applicable Fund may itself invest. Intraday pricing information for all constituents of the Tracking Basket that are exchange-traded, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges on which they are traded and through subscription services. Intraday pricing information for cash equivalents will be available through subscription services and/or pricing services. The Exchange notes that each Fund’s NAV will form the basis for creations and redemptions for the Funds and creations and redemptions will work in a manner substantively identical to that of series of Managed Fund Shares. The Adviser expects that the Shares of the Funds will generally be created and redeemed in-kind, with limited exceptions. The names and quantities of the instruments that constitute the basket of securities for creations and redemptions will be the same as a Fund’s Tracking Basket, except to the extent purchases and redemptions are made entirely or in part on a cash basis. In the event that the value of the Tracking Basket is not the same as a Fund’s NAV, the creation and redemption baskets will consist of the securities included in the Tracking Basket plus or minus an amount of cash equal to the difference between the NAV and the value of the Tracking Basket, as further described below.

The Tracking Basket will be constructed utilizing a risk model, which includes a covariance matrix, based on an optimization process to minimize deviations in the return of the Tracking Basket relative to the Fund. The proprietary optimization process mathematically seeks to minimize key parameters that the Adviser believes are important to the effectiveness of the Tracking Basket as a hedge, including tracking error (standard deviation of return differentials between the Tracking Basket and the Fund) and creation/redemption transaction costs.¹⁸ In general, the optimization process attempts to keep the characteristics of the Tracking Basket in line with those of the Fund. Typically, the Tracking Basket is expected to be rebalanced on schedule with the public disclosure of the Fund’s holdings; however, a new optimized Tracking Basket may be generated as frequently as daily, and therefore, rebalancing may occur more frequently at the Adviser’s discretion. In

¹⁴ Pursuant to the Exemptive Relief, the Fund’s permissible investments include only the following instruments: ETFs, exchange-traded notes, exchange-traded common stocks, foreign common stocks, exchange-traded preferred stocks, ADRs, exchange-traded real estate investment trusts, exchange-traded commodity pools, exchange-traded metals trusts, exchange-traded currency trusts, and exchange-traded futures that trade contemporaneously with the Shares, as well as cash and cash equivalents. With the exception of foreign common stocks and cash and cash equivalents, all holdings of the Fund will be listed on a U.S. national securities exchange.

¹⁵ For a list of the current members of ISG, see www.isgportal.com. The Exchange notes that all components, except the cash and cash equivalent components, of the Funds may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

¹⁶ With respect to trading in Tracking Fund Shares, all of the BZX Member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange will continue to monitor its Members for compliance with such requirements.

¹⁷ See Tracking Fund Shares Approval Order.

¹⁸ Tracking error measures the deviations between the Tracking Basket and Fund.

determining whether to rebalance a new optimized Tracking Basket, the Adviser will consider various factors, including liquidity of the securities in the Tracking Basket, tracking error, and the cost to create and trade the Tracking Basket.¹⁹ For example, if the Adviser determines that a new Tracking Basket would reduce the variability of return differentials between the Tracking Basket and the Fund when balanced against the cost to trade the new Tracking Basket, rebalancing may be appropriate. The Adviser will periodically review the Tracking Basket parameters and Tracking Basket performance and process.

As noted above, each Fund will also disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio, at a minimum within at least 60 days following the end of every fiscal quarter. The Exchange notes that the concept of the Tracking Basket employed under this structure is designed to provide investors with the traditional benefits of ETFs while protecting the Funds from the potential for front running or free riding of portfolio transactions, which could adversely impact the performance of a Fund.

The Exchange believes that the particular instruments that may be included in each of the Fund's respective Fund Portfolio and Tracking Basket do not raise any concerns related to the Tracking Baskets being able to closely track the NAV of the Funds because such instruments include only instruments that trade on an exchange contemporaneously with the Shares.²⁰ In addition, each Fund's Tracking Basket will be optimized so that it reliably and consistently correlates to the performance of the Fund.

The Adviser anticipates that the returns between a Fund and its respective Tracking Basket will have a consistent relationship and that the deviation in the returns between a Fund

and its Tracking Basket will be sufficiently small such that the Tracking Basket will provide Authorized Participants, arbitrageurs, and certain other market participants (collectively, "Market Makers") with a reliable hedging vehicle that they can use to effectuate low-risk arbitrage trades in Fund Shares. The Exchange believes that the disclosures provided by the Funds will allow Market Makers to understand the relationship between the performance of a Fund and its Tracking Basket. Market Makers will be able to estimate the value of and hedge positions in a Fund's Shares, which the Exchange believes will facilitate the arbitrage process and help ensure that the Fund's Shares normally will trade at market prices close to their NAV. The Exchange also believes that competitive market making, where traders are looking to take advantage of differences in bid-ask spread, will aid in keeping spreads tight.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act²¹ in general and Section 6(b)(5) of the Act²² in particular in that 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.

The Exchange notes that a significant amount of information about each Fund and its Fund Portfolio will be publicly available at all times. Each Fund will disclose the Tracking Basket, which is designed to closely track the daily performance of the Fund Portfolio, on a daily basis. Each Fund will at a minimum publicly disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio within at least 60 days following the end of every fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act. The website will include additional quantitative information updated on a daily basis, including, on a per Share basis for each Fund, the prior business day's NAV and the closing price or bid/ask price at the time of calculation of

such NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV. The website will also disclose the percentage weight overlap between the holdings of the Tracking Basket compared to the Fund holdings for the prior business day and any information regarding the bid/ask spread for each Fund as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended. Price information for the exchange-listed instruments held by the Funds, including both U.S. and non-U.S. listed equity securities and U.S. exchange-listed futures will be available through major market data vendors or securities exchanges listing and trading such securities.

The Exchange represents that the Shares of the Funds will continue to comply with all other requirements applicable to Tracking Fund Shares, including the dissemination of key information such as the Tracking Basket, the Fund Portfolio, and NAV, suspension of trading or removal, trading halts, surveillance, minimum price variation for quoting and order entry, an information circular informing members of the special characteristics and risks associated with trading in the Shares, and firewalls as set forth in the Rules applicable to Tracking Fund Shares and the order approving such rules. Moreover, U.S.-listed equity securities held by the Funds will trade on markets that are a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference asset (as applicable), or the applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by a Fund or Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures with

¹⁹ The Adviser uses a trading cost model to develop estimates of costs to trade a new Tracking Basket. There are essentially two elements to this cost: (1) The cost to purchase securities constituting the Tracking Basket, *i.e.*, the cost to put on the hedge for the Authorized Participant, and (2) the cost of any adjustments that need to be made to the composition of the Tracking Basket, *i.e.*, the cost to the Authorized Participant to change or maintain the hedge position. The inclusion of the trading cost model in the optimization process is intended to result in a Tracking Basket that is cost effective and liquid without compromising its tracking ability.

²⁰ The Exchange notes that to the extent that the Fund Portfolio or Tracking Basket include any foreign common stocks, such securities will be traded on an exchange that is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

²¹ 15 U.S.C. 78f.

²² 15 U.S.C. 78f(b)(5).

respect to such Fund under Exchange Rule 14.12.

The Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices in that the Rules relating to listing and trading of Tracking Fund Shares provide specific initial and continued listing criteria required to be met by such securities.

Rules 14.11(m)(4)(B)(iii) and (iv) provide that the Exchange will consider the suspension of trading in and will commence delisting proceedings for a Fund pursuant to Rule 14.12 under any of the circumstances described above and that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Tracking Fund Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

Additionally, the Exchange believes that the requirements related to information protection enumerated under Rule 14.11(m)(2)(F) will act as a strong safeguard against any misuse and improper dissemination of information related to a Fund Portfolio, the Tracking Basket, or changes thereto. The requirement that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio or the Tracking Basket or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or the Tracking Basket or changes thereto will act to prevent any individual or entity from sharing such information externally.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Tracking Fund Shares. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees. Any foreign common stocks held by the Fund will be traded on an exchange that is a member of ISG or

with which the Exchange has in place a comprehensive surveillance sharing agreement. All futures contracts that the Funds may invest in will be traded on a U.S. futures exchange. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, underlying U.S. exchange-listed equity securities, and U.S. exchange-listed futures with other markets and other entities that are members of ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, underlying equity securities, and U.S. exchange-listed futures from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

As provided in Rule 14.11(m)(2)(D), the Adviser will upon request make available to the Exchange and/or FINRA, on behalf of the Exchange, the daily Fund Portfolio of each Fund. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading the Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of the Shares.

In addition, Form N-PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. A fund's SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website at www.sec.gov. The Exchange also notes that the Exemptive Relief provides that the Funds will comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material non-public information, which otherwise do not apply to issuers of Tracking Fund Shares.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers'

computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the CTA high-speed line. The Exchange deems Tracking Fund Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. As provided in Rule 14.11(m)(2)(C), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is \$0.01.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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 purpose of the Act. Rather, the Exchange notes that the proposed rule change will facilitate the listing of several new series of actively-managed exchange-traded product, thus enhancing competition among both market participants and listing venues, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²³ and Rule 19b-4(f)(6) thereunder.²⁴

²³ 15 U.S.C. 78s(b)(3)(A).

²⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing

A proposed rule change filed under Rule 19b-4(f)(6)²⁵ normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁶ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The proposed rule change is substantially similar to other Tracking Fund Shares the Commission previously approved²⁷ and does not raise any novel regulatory issues. Accordingly, the Commission waives the 30-day operative delay and designates the proposal operative upon filing.²⁸

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 will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²⁵ 17 CFR 240.19b-4(f)(6).

²⁶ 17 CFR 240.19b-4(f)(6)(iii).

²⁷ See Securities Exchange Act Release No. 88887 (May 15, 2020), 85 FR 30990 (May 21, 2020) (SR-CboeBZX-2019-107) (Notice of Filing of Amendment No. 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 5, to Adopt Rule 14.11(m), Tracking Fund Shares, and to List and Trade Shares of the Fidelity Blue Chip Value ETF, Fidelity Blue Chip Growth ETF, and Fidelity New Millennium ETF). See also Securities Exchange Act Release No. 90530 (November 30, 2020), 85 FR 78366 (December 4, 2020) (SR-CboeBZX-2020-085) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to List and Trade Shares of the Fidelity Growth Opportunities ETF, Fidelity Magellan ETF, Fidelity Real Estate Investment ETF, and Fidelity Small-Mid Cap Opportunities ETF).

²⁸ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-CboeBZX-2020-091 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeBZX-2020-091. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2020-091 and should be submitted on or before January 12, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020-28148 Filed 12-21-20; 8:45 am]

BILLING CODE 8011-01-P

²⁹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 10905; Release No. 90693]

Order Approving Public Company Accounting Oversight Board Budget and Annual Accounting Support Fee for Calendar Year 2021

December 16, 2020.

The Sarbanes-Oxley Act of 2002, as amended (the "Sarbanes-Oxley Act"),¹ established the Public Company Accounting Oversight Board ("PCAOB") to oversee the audits of companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports. Section 982 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act")² amended the Sarbanes-Oxley Act to provide the PCAOB with explicit authority to oversee auditors of broker-dealers registered with the Securities and Exchange Commission (the "Commission"). The PCAOB is to accomplish these goals through the registration of public accounting firms, standard setting, inspections, and investigation and disciplinary programs. The PCAOB is subject to the comprehensive oversight of the Commission.

Section 109 of the Sarbanes-Oxley Act provides that the PCAOB shall establish a reasonable annual accounting support fee, as may be necessary or appropriate to establish and maintain the PCAOB. Under Section 109(f) of the Sarbanes-Oxley Act, the aggregate annual accounting support fee shall not exceed the PCAOB's aggregate "recoverable budget expenses," which may include operating, capital, and accrued items. The PCAOB's annual budget and accounting support fee are subject to approval by the Commission. In addition, the PCAOB must allocate the annual accounting support fee among issuers and among brokers and dealers.

Section 109(b) of the Sarbanes-Oxley Act directs the PCAOB to establish a budget for each fiscal year in accordance with the PCAOB's internal procedures, subject to approval by the Commission. Rule 190 of Regulation P (the "budget rule") governs the Commission's review and approval of PCAOB budgets and annual accounting support fees.³ The budget rule provides, among other things, a timetable for the preparation and submission of the PCAOB budget

¹ 15 U.S.C. 7201 *et seq.*

² Public Law 111-203, 124 Stat. 1376 (2010).

³ 17 CFR 202.190.

and for Commission actions related to each budget, a description of the information that should be included in each budget submission, limits on the PCAOB's ability to incur expenses and obligations except as provided in the approved budget, procedures relating to supplemental budget requests, requirements for the PCAOB to furnish on a quarterly basis certain budget-related information, and a list of definitions that apply to the rule and to general discussions of PCAOB budget matters.

In accordance with the budget rule, in March 2020 the PCAOB provided the Commission with a narrative description of its program issues and outlook for the 2021 budget year. In response, the Commission provided the PCAOB with economic assumptions and general budgetary guidance for the 2021 budget year. The PCAOB subsequently delivered a preliminary budget and budget justification to the Commission. Staff from the Commission's Office of the Chief Accountant and Office of Financial Management dedicated a substantial amount of time to the review and analysis of the PCAOB's programs, projects, and budget estimates and attended several meetings with staff of the PCAOB to further develop the understanding of the PCAOB's budget and operations. During the course of this review, Commission staff relied upon representations and supporting documentation from the PCAOB. Based on this review, the Commission issued a "passback" letter to the PCAOB on October 28, 2020. On November 19, 2020, the PCAOB adopted its 2021 budget and accounting support fee during an open meeting, and subsequently submitted that budget to the Commission for approval.

After considering the above, the Commission did not identify any proposed disbursements in the 2021 budget adopted by the PCAOB that are not properly recoverable through the annual accounting support fee, and the Commission believes that the aggregate proposed 2021 annual accounting support fee does not exceed the PCAOB's aggregate recoverable budget expenses for 2021.

Significant uncertainty surrounding the impact of COVID-19 on the PCAOB's operations reinforces the importance of continued coordination between the SEC and PCAOB. The Commission directs the PCAOB during 2021 to continue to schedule monthly meetings, as necessary, with the Commission's staff to discuss important policy initiatives, changes related to program areas, and significant impacts to the PCAOB's 2021 budget, including

significant differences between actual and budgeted amounts and anticipated cost-savings. Separately, the Commission directs the PCAOB to continue its written quarterly updates on recent activities, including strategic initiatives, for the PCAOB's Office of Economic and Risk Analysis, Office of Data, Security, and Technology, and Division of Registration and Inspections. The PCAOB Board will make itself available to meet with the Commissioners on these and other topics. The PCAOB should also submit its 2020 annual report to the Commission by March 31, 2021.

The Commission understands that the Office of Management and Budget ("OMB") has determined that the 2021 budget of the PCAOB is subject to sequestration under the Budget Control Act of 2011.⁴ For 2020, the PCAOB sequestered \$16.8 million. That amount will become available in 2021. For 2021, the sequestration amount will be 5.7% or \$16.4 million. Consequently, we expect the PCAOB will have approximately \$0.4 million in excess funds available from the 2020 sequestration for spending in 2021. Accordingly, the PCAOB has reduced its accounting support fee for 2021 by approximately \$0.4 million.

The Commission has determined that the PCAOB's 2021 budget and annual accounting support fee are consistent with Section 109 of the Sarbanes-Oxley Act. Accordingly,

It is ordered, pursuant to Section 109 of the Sarbanes-Oxley Act, that the PCAOB budget and annual accounting support fee for calendar year 2021 are approved.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020-28156 Filed 12-21-20; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90691; File No. SR-CboeBZX-2020-093]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To List and Trade Shares of the ProShares Short VIX Short-Term Futures ETF and the ProShares Ultra VIX Short-Term Futures ETF, Each a Series of ProShares Trust II, Under Rule 14.11(f)(4), Trust Issued Receipts

December 16, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 14, 2020, Cboe BZX Exchange, Inc. ("Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 list and trade Shares of the ProShares Short VIX Short-Term Futures ETF (the "Short Fund") and the ProShares Ultra VIX Short-Term Futures ETF (the "Ultra Fund", and collectively the "Funds") under Rule 14.11(f)(4), which governs the listing and trading of Trust Issued Receipts⁵ on the Exchange.⁶ The Exchange notes that the Funds have previously been approved by the Commission and are currently listed on Arca.⁷ This proposal is substantively

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ Rule 14.11(f)(4) applies to Trust Issued Receipts that invest in "Financial Instruments." The term "Financial Instruments," as defined in Rule 14.11(f)(4)(A)(iv), means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

⁶ The Commission approved BZX Rule 14.11(f)(4) in Securities Exchange Act Release No. 68619 (January 10, 2013), 78 FR 3489 (January 16, 2013) (SR-BATS-2012-044).

⁷ See Securities Exchange Act No. 64470 (May 11, 2011) 76 FR 28493 (May 15, 2011) (SR-NYSEArca-

⁴ OMB Report to the Congress on the Joint Committee Reductions for Fiscal Year 2021, February 10, 2020, available at https://www.whitehouse.gov/wp-content/uploads/2020/02/JC-sequestration_report_FY21_2-10-20.pdf.

identical to the Original Proposal with updates from the Prior Proposal, and the issuer represents that all material representations contained within the Original Proposal as updated by the Prior Proposal remain true. Further, the Funds are already trading on the Exchange pursuant to unlisted trading privileges, as provided in Rule 14.11(j).

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade Shares of the ProShares Short VIX Short-Term Futures ETF (the "Short Fund") and the ProShares Ultra VIX Short-Term Futures ETF (the "Ultra Fund", and collectively the "Funds") under Rule 14.11(f)(4), which governs the listing and trading of Trust Issued

2011-23) (Proposal to list and trade Shares of the ProShares Short VIX Short-Term Futures ETF and the ProShares Ultra VIX Short-Term Futures ETF (the "Original Proposal"). See also Securities Exchange Act No. 65134 (August 15, 2011) 76 FR 52037 (August 19, 2011) (SR-NYSEArca-2011-23) (Order approving the listing and trading of the ProShares Short VIX Short-Term Futures ETF and the ProShares Ultra VIX Short-Term Futures ETF). See also Securities Exchange Act No. 83000 (April 5, 2018) 83 FR 15659 (April 11, 2018) (SR-NYSEArca-2018-17) (Notice of filing and immediate effectiveness to amend certain representations made in the Prior Proposal relating to Shares of the ProShares Short VIX Short-Term Futures ETF and the ProShares Ultra VIX Short-Term Futures ETF (the "Prior Proposal").

Receipts⁸ on the Exchange.⁹ The Exchange notes that the Funds have previously been approved by the Commission and are currently listed on Arca.¹⁰ This proposal is substantively identical to the Original Proposal with updates from the Prior Proposal, and the issuer represents that all material representations contained within the Original Proposal as updated by the Prior Proposal remain true. Further, the Funds are already trading on the Exchange pursuant to unlisted trading privileges, as provided in Rule 14.11(j).

The Sponsor, a Maryland limited liability company, serves as the Sponsor of Trust. The Sponsor is a commodity pool operator.¹¹ Bank of New York Mellon serves as the administrator (the "Administrator"), custodian and transfer agent of the Funds and their respective Shares. SEI Investments

⁸ Rule 14.11(f)(4) applies to Trust Issued Receipts that invest in "Financial Instruments." The term "Financial Instruments," as defined in Rule 14.11(f)(4)(A)(iv), means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

⁹ The Commission approved BZX Rule 14.11(f)(4) in Securities Exchange Act Release No. 68619 (January 10, 2013), 78 FR 3489 (January 16, 2013) (SR-BATS-2012-044).

¹⁰ See Securities Exchange Act No. 64470 (May 11, 2011) 76 FR 28493 (May 15, 2011) (SR-NYSEArca-2011-23) (Proposal to list and trade Shares of the ProShares Short VIX Short-Term Futures ETF and the ProShares Ultra VIX Short-Term Futures ETF (the "Original Proposal"). See also Securities Exchange Act No. 65134 (August 15, 2011) 76 FR 52037 (August 19, 2011) (SR-NYSEArca-2011-23) (Order approving the listing and trading of the ProShares Short VIX Short-Term Futures ETF and the ProShares Ultra VIX Short-Term Futures ETF). See also Securities Exchange Act No. 83000 (April 5, 2018) 83 FR 15659 (April 11, 2018) (SR-NYSEArca-2018-17) (Notice of filing and immediate effectiveness to amend certain representations made in the Prior Proposal relating to Shares of the ProShares Short VIX Short-Term Futures ETF and the ProShares Ultra VIX Short-Term Futures ETF (the "Prior Proposal").

¹¹ The Trust filed on behalf of the Funds a registration statement on Form S-3 under the Securities Act of 1933 (File No. 333-231875) ("Registration Statement") on May 11, 2020 that was declared effective on September 9, 2020. The Funds' prospectus containing the previous investment objectives for the Funds was filed pursuant to Rule 424(b)(3) on February 15, 2018. A prospectus containing the new objectives, as described in the Prior Proposal, was filed pursuant to Rule 424(b)(3) on February 28, 2018 (the "Prior Registration Statement"). The description of the Funds and the Shares contained in the Prior Proposal are based on the Prior Registration Statement. As noted above, all material representations contained within the Original Proposal as updated by the Prior Proposal remain true. The change to each Fund's investment objective as described in the Prior Proposal was implemented effective as of the close of business on February 27, 2018. The Sponsor issued a press release dated February 26, 2018 regarding the Sponsor's plans to reduce the target exposure for the Funds. See http://www.proshares.com/news/proshare_capital_management_llc_plans_to_reduce_target_exposure_on_two_etfs.html.

Distribution Co. ("Distributor") serves as Distributor of the Shares. Wilmington Trust Company, a Delaware banking corporation, is the sole trustee of the Trust.

The Short Fund seeks, on a daily basis, to provide investment results (before fees and expenses) that correspond to one-half the inverse (-0.5x) of the daily performance, at the time of the net asset value ("NAV") calculation, of a benchmark that seeks to offer exposure to market volatility through publicly traded futures markets. The Ultra Fund seeks, on a daily basis, to provide investment results (before fees and expenses) that correspond to one and one-half times (1.5x) the daily performance, at the time of NAV calculation, of a benchmark that seeks to offer exposure to market volatility through publicly traded futures markets. The benchmark for the Funds is the S&P 500 VIX Short-Term Futures Index (ticker symbol SPVIXSTR, the "Index").¹² The Index utilizes prices of the next two near-term VIX futures contracts to replicate a position that rolls the nearest month VIX futures contracts to the next month on a daily basis in equal fractional amounts. The Ultra Fund will take long positions in futures contracts based on the Cboe Volatility Index ("VIX"), while the Short Fund will take short positions in futures contracts based on the VIX.

The Index is comprised of, and the value of the Funds will be based on, VIX futures contracts traded on the Cboe Futures Exchange, Inc. ("CFE") (hereinafter referred to as "VIX Futures Contracts"). VIX Futures Contracts are measures of the market's expectation of the level of VIX at certain points in the future, and as such will behave differently than current or spot VIX values.¹³ The Funds are not linked to the VIX, and in many cases the Index, and by extension the Funds, could

¹² Standard & Poor's Financial Services LLC, the index sponsor with respect to the Index, is not a broker-dealer and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Index.

¹³ VIX is the ticker symbol for the Cboe Volatility Index, a popular measure of implied volatility. According to the Registration Statement, the goal of the VIX is to estimate the implied volatility of the S&P 500 over the next 30 days. A relatively high level of the VIX corresponds to a more volatile U.S. equity market as expressed by more costly options on the S&P 500 Index. The VIX represents one measure of the market's expectation of the volatility over the next 30 day period. It is a composite value of options on the S&P 500 Index. The formula used to calculate the composite value utilizes current market prices for a series of out-of-the-money calls and puts for the front month and second month expirations.

significantly underperform or outperform the VIX.

While the VIX represents a measure of the current expected volatility of the S&P 500 over the next 30 days, the prices of VIX Futures Contracts are based on the current expectation of what the expected 30-day volatility will be at a particular time in the future (on the expiration date). For example, a VIX Futures Contract purchased in March that expires in May, in effect, is a forward contract on what the level of the VIX, as a measure of 30-day implied volatility of the S&P 500, will be on the May expiration date. The forward volatility reading of the VIX may not correlate directly to the current volatility reading of the VIX because the implied volatility of the S&P 500 at a future expiration date may be different from the current implied volatility of the S&P 500. As a result, the Index and the Funds should be expected to perform very differently from one-half the inverse of the daily performance or a multiple of the daily performance of the Index over all periods of time. To illustrate, on December 4, 2019, the VIX closed at a price of 14.8 and the price of the February 2020 VIX Futures Contracts expiring on February 19, 2020 was 18.125. In this example, the price of the VIX represented the 30-day implied, or “spot,” volatility (the volatility expected for the period from December 5, 2019 to January 5, 2020) of the S&P 500 and the February 2020 VIX Futures Contracts represented forward implied volatility (the volatility expected for the period from February 19 to March 19, 2020) of the S&P 500.

If the Short Fund is successful in meeting its objective, its value (before fees and expenses) should gain approximately half as much on a percentage basis as its Index when the Index declines on a given day. Conversely, its value (before fees and expenses) should lose approximately half as much on a percentage basis as the Index when the Index rises on a given day.

If the Ultra Fund is successful in meeting its objective, its value (before fees and expenses) should gain approximately 1.5 times as much on a percentage basis as its Index when the Index rises on a given day. Conversely, its value (before fees and expenses) should lose approximately 1.5 times as much on a percentage basis as its Index when the Index declines on a given day.

Each Fund will under Normal Market Conditions¹⁴ invest in VIX Futures

Contracts based on components of the Index to pursue its investment objective. In the event position accountability rules are reached with respect to VIX Futures Contracts, ProShare Capital Management LLC (“the Sponsor”), may, in its commercially reasonable judgment, cause such Fund to obtain exposure through swaps referencing the relevant Index or particular VIX Futures Contracts, or invest in other futures contracts or swaps not based on the particular VIX Futures Contracts if such instruments tend to exhibit trading prices or returns that correlate with the Index or any VIX Futures Contract and will further the investment objective of such Fund.¹⁵ The Funds may also invest in swaps if the market for a specific VIX Futures Contract experiences emergencies (e.g., natural disaster, terrorist attack or an act of God) or disruptions (e.g., a trading halt or a flash crash) that prevent a Fund from obtaining the appropriate amount of investment exposure to the affected VIX Futures Contracts directly or to other futures contracts.¹⁶ Each Fund also may invest in Cash and Cash Equivalents¹⁷ such as U.S. Treasury securities or other high credit quality short-term fixed-income or similar securities (including shares of money market funds, bank deposits, bank money market accounts, certain variable rate-demand notes and repurchase agreements collateralized by government securities) that may serve as collateral for the futures contracts.

If the Sponsor to the Trust issuing the Trust Issued Receipts is affiliated with a broker-dealer, such Sponsor to the Trust shall erect and maintain a “fire wall” between the Sponsor and the broker-dealer with respect to access to information concerning the composition and/or changes to such Trust portfolio. The Sponsor is not a broker-dealer, but is affiliated with a broker-dealer and has

Market Conditions “includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or system failures; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.”

¹⁵ To the extent practicable, the Funds will invest in swaps cleared through the facilities of a centralized clearing house.

¹⁶ According to the Registration Statement, the Sponsor will also attempt to mitigate the Funds’ credit risk by transacting only with large, well-capitalized institutions using measures designed to determine the creditworthiness of a counterparty. The Sponsor will take various steps to limit counterparty credit risk, as described in the Registration Statement.

¹⁷ For purposes of this proposal, the term “Cash and Cash Equivalents” shall have the definition provided in Exchange Rule 14.11(i)(4)(C)(iii), applicable to Managed Fund Shares.

implemented and will maintain a “fire wall” with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio. In the event that (a) the Sponsor becomes a broker-dealer or newly affiliated with a broker-dealer, or (b) any new sponsor is a broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Each of the Funds uses investment techniques that include the use of any one or a combination of VIX Futures Contracts and may, if applicable, include swaps. The Funds’ investment techniques may involve a small investment relative to the amount of investment exposure assumed and may result in losses exceeding the amounts invested. Such techniques, particularly when used to create leverage, may expose the Funds to potentially dramatic changes (losses or gains) in the value of their investments and imperfect correlation between the value of the investments and the security or Index.

The Funds do not seek to achieve their stated investment objective over a period greater than one day because mathematical compounding prevents the Funds from perfectly achieving such results. Accordingly, results over periods of time greater than one day typically will not be a simple one-half of the inverse correlation (–50%) or multiple correlation (+150%) of the period return of the Index and may differ significantly.

According to the Registration Statement, each Fund is not actively managed by traditional methods, which typically involve effecting changes in the composition of a portfolio on the basis of judgments relating to economic, financial and market considerations with a view toward obtaining positive results under all market conditions. Rather, each Fund seeks to remain fully invested at all times in investment positions that, in combination, provide exposure to its Index consistent with its investment objective even during periods in which that benchmark is flat or moving in a manner which causes the value of a Fund to decline.

In seeking to achieve each Fund’s investment objective, the Sponsor uses a mathematical approach to investing. Using this approach, the Sponsor

¹⁴ For the purpose of this filing, the term “Normal Market Conditions” shall have the same definition as Rule 14.11(i)(3)(D), which provides that Normal

determines the type, quantity and mix of investment positions that the Sponsor believes in combination should produce returns consistent with such Fund's objective. The Sponsor relies upon a pre-determined model to generate orders that result in repositioning the Funds' investments in accordance with their respective investment objectives.

The S&P 500 VIX Short-Term Futures Index

According to the Registration Statement, the Index is intended to reflect the returns that are potentially available through an unleveraged investment in the VIX Futures Contracts comprising the Index (the "Index Components").

Unlike the Index, the VIX, which is not a benchmark for any Fund, is calculated based on the prices of put and call options on the S&P 500, which are traded on Cboe Exchange, Inc.

The S&P 500 VIX Short-Term Futures Index employs rules for selecting the Index Components and a formula to calculate a level for the Index from the prices of these components. Currently, the Index Components represent the prices of the two near-term VIX futures months, replicating a position that rolls the nearest month VIX Futures Contract to the next month VIX Futures Contract on a daily basis in equal fractional amounts. This results in a constant weighted average maturity of one month. The roll period begins on the Tuesday prior to the monthly CFE VIX Futures Contracts settlement date and runs through the Tuesday prior to the subsequent month's CFE VIX Futures Contract settlement date.

Calculation of the Index

The level of the Index is calculated in accordance with the method described in the Registration Statement. The level of the Index will be published at least every 15 seconds both in real time from 9:30 a.m. to 4:00 p.m., E.T. and at the close of trading on each Business Day¹⁸ by Bloomberg L.P. and Reuters.

The Index Components comprising the Index represent the prices of certain VIX Futures Contracts. The Index takes a daily rolling long position in contracts of specified maturities and is intended to reflect the returns that are potentially available through an unleveraged investment in those contracts. The Index measures the return from a rolling long position in the first and second month VIX Futures Contracts. The Index

¹⁸ A "Business Day" means any day other than a day when any of BZX, Cboe, CFE or other exchange material to the valuation or operation of the Funds, or the calculation of the VIX, options contracts underlying the VIX, VIX Futures Contracts or the Index is closed for trading.

rolls continuously throughout each month from the first month VIX Futures Contract into the second month VIX Futures Contract.

The Index rolls on a daily basis. According to the Registration Statement, one of the effects of daily rolling is to maintain a constant weighted average maturity for the underlying futures contracts. Unlike equities, which typically entitle the holder to a continuing stake in a corporation, futures contracts normally specify a certain date for the delivery of the underlying asset or financial instrument or, in the case of futures contracts relating to indices such as the VIX, a certain date for payment in cash of an amount determined by the level of the underlying index. The Index operates by selling, on a daily basis, Index Components with a nearby settlement date and purchasing Index Components with a longer-dated settlement date. The roll for each contract occurs on each Business Day according to a pre-determined schedule that has the effect of keeping constant the weighted average maturity of the relevant Index Components. This process is known as "rolling" a futures position, and the Index is a "rolling index". The constant weighted average maturity for the futures underlying the Index is one month.

Because the Index incorporates this process of rolling futures positions on a daily basis, and the Funds, in general, also roll their positions on a daily basis, the daily roll is not anticipated to be a significant source of tracking error between the Funds and the Index. The Index is based on VIX Futures Contracts and not the VIX, and as such neither the Funds nor the Index are expected to track the VIX.

Purchases and Redemptions of Creation Units

The Funds will create and redeem Shares from time to time in one or more Creation Units. A Creation Unit is a block of 50,000 Shares. Except when aggregated in Creation Units, the Shares are not redeemable securities.

On any Business Day, an authorized participant may place an order with the Distributor to create one or more Creation Units.¹⁹ The total cash payment required to create each Creation Unit is the NAV of 50,000 Shares of each Fund on the purchase order date plus the applicable transaction fee.

¹⁹ Authorized participants have a cut-off time of 2:00 p.m. E.T. to place creation and redemption orders.

The procedures by which an authorized participant can redeem one or more Creation Units mirror the procedures for the purchase of Creation Units. On any Business Day, an authorized participant may place an order with the Distributor to redeem one or more Creation Units. The redemption proceeds from a Fund consist of the cash redemption amount. The cash redemption amount is equal to the NAV of the number of Creation Unit(s) of a Fund requested in the authorized participant's redemption order as of the time of the calculation of a Fund's NAV on the redemption order date, less applicable transaction fees.

Availability of Information Regarding the Shares

The NAV for the Funds' Shares will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time.²⁰ Pricing information will be available on each Fund's website including: (1) The prior Business Day's reported NAV, the closing market price or the bid/ask price, daily trading volume, and a calculation of the premium and discount of the closing market price or bid/ask price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

The intraday, closing, and settlement prices of the Index Components are also readily available from the websites of CFE (www.cfe.cboe.com), automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. Complete real-time data for component futures underlying the Index is available by subscription from Reuters and Bloomberg. Specifically, the level of the Index will be published at least every 15 seconds both in real time from 9:30 a.m. to 4:00 p.m. E.T. and at the close of trading on each Business Day by Bloomberg and Reuters. The CFE also provides delayed futures information on current and past trading sessions and market news free of charge on its website. The specific contract specifications for component futures

²⁰ According to the Registration Statement, net asset value means the total assets of the Funds including, but not limited to, all Cash and Cash Equivalents or other debt securities less total liabilities of the Funds, each determined on the basis of generally accepted accounting principles in the United States, consistently applied under the accrual method of accounting. Each Fund's NAV is calculated once each trading day as of 4 p.m. (E.T.), or an earlier time as set forth on www.proshares.com.

underlying the Index are also available on such websites, as well as other financial informational sources.

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (“CTA”). Quotation and last-sale information regarding VIX Futures Contracts will be available from the exchanges on which such instruments are traded. Quotation and last-sale information for swaps will be available from nationally recognized data services providers, such as Reuters and Bloomberg, through subscription agreements or from a broker-dealer who makes markets in such instruments. Quotation and last-sale information for swaps are available through third-party pricing services or broker-dealers who make markets in such instruments. Pricing information regarding Cash and Cash Equivalents in which the Funds may invest is generally available through nationally recognized data services providers, such as Reuters and Bloomberg, through subscription agreements.

In addition, the Funds’ website at www.proshares.com will display the end of day closing Index level, and NAV per Share for the applicable Fund. The Funds will provide website disclosure of portfolio holdings daily and will include, as applicable, the notional value (in U.S. dollars) of VIX Futures Contracts, swaps, as well as Cash and Cash Equivalents held in the portfolio of the Funds. This website disclosure of the portfolio composition of the Funds will occur at the same time as the disclosure by the Funds of the portfolio composition to authorized participants so that all market participants are provided portfolio composition information at the same time. Therefore, the same portfolio information will be provided on the public website as well as in electronic files provided to authorized participants.

In addition, in order to provide updated information relating to the Funds for use by investors and market professionals, an updated Intraday Indicative Value (“IIV”) will be calculated. The IIV is an indicator of the value of the VIX Futures Contracts, swaps, and Cash and/or Cash Equivalents less liabilities of a Fund at the time the IIV is disseminated. The IIV will be calculated and widely disseminated by one or more major market data vendors every 15 seconds throughout Regular Trading Hours.²¹

In addition, the IIV is available through on-line information services such as Bloomberg and Reuters.

The IIV disseminated during Regular Trading Hours should not be viewed as an actual real time update of the NAV, which is calculated only once a day. The IIV also should not be viewed as a precise value of the Shares.

The Exchange believes that dissemination of the IIV provides additional information regarding the Funds that is not otherwise available to the public and is useful to professionals and investors in connection with the related Shares trading on the Exchange or the creation or redemption of such Shares.

Additional information regarding the Funds and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement.

Initial and Continued Listing

The Shares of each Fund will conform to the initial and continued listing criteria under BZX Rule 14.11(f)(4). The Exchange represents that, for initial and continued listing, the Funds and the Trust must be in compliance with Rule 10A-3 under the Act. A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share for each Fund will be calculated daily and will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments composing the daily disclosed portfolio of the Funds; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(f)(4)(C)(ii), which sets forth circumstances under which Shares of a Fund may be halted.

The Exchange represents that the Exchange may halt trading during the

day in which an interruption to the dissemination of the IIV, the value of the Index, the VIX or the value of the underlying VIX Futures Contracts occurs. If an interruption to the dissemination of the IIV, the value of an Index, the VIX or the value of the underlying VIX Futures Contracts persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Suitability

Currently, Interpretation and Policy .01 of Exchange Rule 3.7 (Recommendations to Customers) provides that a member, in recommending a transaction in connection with products listed pursuant to Chapter XIV, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to its other security holdings and as to its financial situation and needs. Further, the rule provides, that no member shall recommend to a customer a transaction in any such product unless the member has a reasonable basis for believing at the time of making the recommendation that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks of the recommended transaction and is financially able to bear the risks of the recommended position.

Prior to the commencement of trading, the Exchange will inform its members of the suitability requirements of, Interpretation and Policy .01 of Exchange Rule 3.7 in an Information Circular. Specifically, members will be reminded in the Information Circular that, in recommending transactions in the Shares, they must have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer’s investment objectives, financial situation, needs, and any other information known by such member, and (2) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the Shares. In connection with the suitability obligation, the Information Circular will also provide that members must make reasonable efforts to obtain the following

²¹ As defined in Rule 1.5(w), the term “Regular Trading Hours” means the time between 9:30 a.m. and 4:00 p.m. E.T.

information: (1) The customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

In addition, FINRA has implemented increased sales practice and customer margin requirements for FINRA members applicable to inverse and leveraged ETFs (which include the Shares) and options on leveraged ETFs, as described in FINRA Regulatory Notices 09-31 (June 2009), 09-53 (August 2009) and 09-65 (November 2009) (the "FINRA Regulatory Notices"). Members that carry customer accounts will be required to follow the FINRA guidance set forth in these notices. As noted above, each Fund will seek daily investment results, before fees and expenses, that correspond to the Index. The Funds do not seek to achieve their respective primary investment objective over a period of time greater than a single day. The return of the Funds for a period longer than a single day will not be a simple multiple (one-half of the inverse correlation (-50%) with respect to the ProShares Short VIX Short-Term Futures ETF or multiple correlation (+150%) with respect to the ProShares Ultra VIX Short-Term Futures ETF) of the period return of the Index because the return of each Fund is the result of its return for each day compounded over the period and usually will differ in amount and possibly even direction for the same period. These differences can be significant.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange will allow trading in the Shares during all trading sessions and has the appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is \$0.01, with the exception of securities that are priced less than \$1.00, for which the minimum price variation for order entry is \$0.0001.

Surveillance

Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Trust Issued Receipts. The Exchange will

allow trading in the Shares during all trading sessions on the Exchange and has the appropriate rules to facilitate transactions in the Shares during all trading sessions. The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. All of the VIX Futures Contracts held by the Funds will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.²² The Exchange, FINRA, on behalf of the Exchange, or both will communicate regarding trading in the Shares and the underlying listed instruments, including listed derivatives held by the Funds, with the ISG, other markets or entities who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange, FINRA, on behalf of the Exchange, or both may obtain information regarding trading in the Shares and the underlying listed instruments, including listed derivatives, held by the Funds from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees. All statements and representations made in this filing regarding the Index composition, description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of the Index, reference asset, and IIV, and the applicability of Exchange rules specified in this filing shall constitute continued listing requirements for the Funds. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Funds or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If the Funds or the Shares are not in compliance with the applicable listing requirements, the Exchange will

²² For a list of the current members and affiliate members of ISG, see www.isgportal.com. The Exchange notes that not all components of the Funds' holdings may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

commence delisting procedures under Exchange Rule 14.12. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the IIV and the Disclosed Portfolio is disseminated; (4) the risks involved in trading the Shares outside of Regular Trading Hours²³ when an updated IIV will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

The Information Circular will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Funds. The Exchange notes that investors purchasing Shares directly from the Funds will receive a prospectus. Members purchasing Shares from the Funds for resale to investors will deliver a prospectus to such investors. The Information Circular will reference the FINRA Regulatory Notices regarding sales practice and customer margin requirements for FINRA members applicable to leveraged ETFs and options on leveraged ETFs. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will reference that the Funds are subject to various fees and expenses described in the Registration Statement. The Information Circular will also reference that the Commodity Futures Trading Commission has regulatory jurisdiction over futures contracts traded on U.S. markets.

²³ As defined in Rule 1.5(w), "Regular Trading Hours" means the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

The Information Circular will also disclose the trading hours of the Shares of the Funds and that the NAV for the Shares is calculated after 4:00 p.m. E.T. each trading day. The Information Circular will disclose that information about the Shares of the Funds is publicly available on the Funds' website.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act²⁴ in general and Section 6(b)(5) of the Act²⁵ in particular in that 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.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria under Rule 14.11(f)(4). If the Sponsor to the Trust issuing the Trust Issued Receipts is affiliated with a broker-dealer, such Sponsor to the Trust shall erect and maintain a "fire wall" between the Sponsor and the broker-dealer with respect to access to information concerning the composition and/or changes to the Funds' portfolio. The Sponsor is not a broker-dealer, but is affiliated with a broker-dealer and has implemented and will maintain a "fire wall" with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio. In the event that (a) the Sponsor becomes a broker-dealer or newly affiliated with a broker-dealer, or (b) any new sponsor is a broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio. The Exchange, FINRA, on behalf of the Exchange, or both may obtain information regarding trading in the Shares and the underlying listed

instruments, including listed derivatives, held by the Funds from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and that the NAV and the Funds' holdings will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Funds and the Shares, thereby promoting market transparency. Moreover, the IIV will be disseminated by one or more major market data vendors at least every 15 seconds during Regular Trading Hours. On each Business Day, before commencement of trading in Shares during Regular Trading Hours, the Funds will disclose on their website the holdings that will form the basis for the Fund's calculation of NAV at the end of the Business Day. Pricing information will be available on the Funds' website including: (1) The prior Business Day's reported NAV, the closing market price or the bid/ask price, daily trading volume, and a calculation of the premium and discount of the closing market price or bid/ask price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Additionally, information regarding market price and trading of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will be available on the facilities of the CTA. The website for the Funds will include a form of the prospectus for each Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Funds will be halted under the conditions specified in Exchange Rule 11.18. Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Finally, trading in the Shares will be subject to

14.11(f)(4)(C)(ii), which sets forth circumstances under which Shares of the Funds may be halted. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, the IIV, the Index value, and quotation and last sale information for the Shares.

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. Quotation and last-sale information regarding VIX Futures Contracts will be available from the exchanges on which such instruments are traded. Quotation and last-sale information for swaps will be available from nationally recognized data services providers, such as Reuters and Bloomberg, through subscription agreements or from a broker-dealer who makes markets in such instruments. Quotation and last-sale information for swaps will be valued on the basis of quotations or equivalent indication of value supplied by a third-party pricing service or broker-dealer who makes markets in such instruments. Pricing information regarding Cash Equivalents in which the Fund may invest is generally available through nationally recognized data services providers, such as Reuters and Bloomberg, through subscription agreements.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, the IIV, and quotation and last sale information for the Shares. The Information Circular will also reference the FINRA Regulatory Notices regarding sales practice and customer margin requirements for FINRA members applicable to leveraged ETFs and options on leveraged ETFs.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

²⁴ 15 U.S.C. 78f.

²⁵ 15 U.S.C. 78f(b)(5).

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 purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the transfer from Arca and listing of additional exchange-traded products on the Exchange, which will enhance competition among listing venues, to the benefit of issuers, investors, and the marketplace more broadly.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁶ and Rule 19b-4(f)(6) thereunder.²⁷

A proposed rule change filed under Rule 19b-4(f)(6)²⁸ normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay will allow the Funds to transfer listing to the Exchange as soon as is practicable and minimize the amount of time that the Funds' listing venue will be in transition. The Funds have previously been approved by the

Commission to list and trade on NYSE Arca, Inc.³⁰ The Exchange states that this proposal is substantively identical to the Original Proposal, including changes from the Prior Proposal, and the issuer represents that all material representations contained within the Original Proposal, as updated by the Prior Proposal, remain true. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.³¹

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2020-093 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-CboeBZX-2020-093. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2020-093 and should be submitted on or before January 12, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90685; File No. SR-CboeBZX-2020-092]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To List and Trade Shares of the ProShares VIX Short-Term Futures ETF and the ProShares VIX Mid-Term Futures ETF, Each a Series of ProShares Trust II, Under Rule 14.11(f)(4) (Trust Issued Receipts)

December 16, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 14, 2020, Cboe BZX Exchange, Inc. ("Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial"

²⁶ 15 U.S.C. 78s(b)(3)(A).

²⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²⁸ 17 CFR 240.19b-4(f)(6).

²⁹ 17 CFR 240.19b-4(f)(6)(iii).

³⁰ See *supra* note.

³¹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 list and trade Shares of the ProShares VIX Short-Term Futures ETF and the ProShares VIX Mid-Term Futures ETF (each a "Fund" and, collectively, the "Funds") under Rule 14.11(f)(4), which governs the listing and trading of Trust Issued Receipts⁵ on the Exchange.⁶ The Exchange notes that the Funds have previously been approved by the Commission and are currently listed on Arca.⁷ This proposal is substantively identical to the Prior Proposal and the issuer represents that all material representations contained within the Prior Proposal remain true. Further, the Funds are already trading on the Exchange pursuant to unlisted trading privileges, as provided in Rule 14.11(j).

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these

statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade Shares of the ProShares VIX Short-Term Futures ETF and the ProShares VIX Mid-Term Futures ETF (each a "Fund" and, collectively, the "Funds") under Rule 14.11(f)(4), which governs the listing and trading of Trust Issued Receipts⁸ on the Exchange.⁹ The Exchange notes that the Funds have previously been approved by the Commission and are currently listed on Arca.¹⁰ This proposal is substantively identical to the Prior Proposal and the issuer represents that all material representations contained within the Prior Proposal remain true. Further, the Funds are already trading on the Exchange pursuant to unlisted trading privileges, as provided in Rule 14.11(j).

The Funds seek to provide investment results (before fees and expenses) that match the performance of a benchmark that seeks to offer exposure to market volatility through publicly traded futures markets. The benchmark for ProShares VIX Short-Term Futures ETF is the S&P 500 VIX Short-Term Futures Index (ticker symbol SPVIXSTR) and the benchmark for ProShares VIX Mid-Term Futures ETF is the S&P 500 VIX Mid-Term Futures Index (ticker symbol SPVIXMTR, each an "Index", and, collectively, the "Indexes").¹¹ As

discussed in further detail below, the S&P 500 VIX Short-Term Futures Index utilizes prices of the next two near-term Cboe Volatility Index ("VIX") futures contracts to replicate a position that rolls the nearest month VIX futures to the next month on a daily basis in equal fractional amounts, while the S&P 500 VIX Mid-Term Futures Index measures the return of a daily rolling long position in the fourth, fifth, sixth and seventh month of VIX futures contracts. The Funds will invest in futures contracts based on the VIX to pursue their respective investment objectives. Each Fund also may invest in Cash and Cash Equivalents¹² such as U.S. Treasury securities or other high credit quality short-term fixed-income or similar securities (including shares of money market funds, bank deposits, bank money market accounts, certain variable rate-demand notes and repurchase agreements collateralized by government securities) that may serve as collateral for the futures contracts.

ProShare Capital Management LLC (the "Sponsor"), a Maryland limited liability company, serves as the Sponsor of ProShares Trust II (the "Trust"). The Sponsor is a commodity pool operator.¹³ Bank of New York Mellon serves as the administrator (the "Administrator"), custodian and transfer agent of the Funds and their respective Shares. SEI Investments Distribution Co. ("Distributor") serves as Distributor of the Shares. Wilmington Trust Company, a Delaware banking corporation, is the sole trustee of the Trust.

If the Sponsor to the Trust issuing the Trust Issued Receipts is affiliated with a broker-dealer, such Sponsor to the Trust shall erect a "fire wall" between the Sponsor and the broker-dealer with respect to access to information concerning the composition and/or changes to such Trust portfolio. The Sponsor is not a broker-dealer, but is affiliated with a broker-dealer and has implemented and will maintain a "fire wall" with respect to such broker-dealer regarding access to information concerning the composition and/or

⁸ Rule 14.11(f)(4) applies to Trust Issued Receipts that invest in "Financial Instruments." The term "Financial Instruments," as defined in Rule 14.11(f)(4)(A)(iv), means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

⁹ The Commission approved BZX Rule 14.11(f)(4) in Securities Exchange Act Release No. 68619 (January 10, 2013), 78 FR 3489 (January 16, 2013) (SR-BATS-2012-044).

¹⁰ See Securities Exchange Act No. 63317 (November 16, 2010) 75 FR 71158 (November 22, 2010) (SR-NYSEArca-2010-101) (Proposal to list and trade Shares of the ProShares VIX Short-Term Futures ETF and the ProShares VIX Mid-Term Futures ETF (the "Prior Proposal")). See also Securities Exchange Act No. 63610 (December 27, 2010) 76 FR 199 (January 3, 2011) (SR-NYSEArca-2010-101) (Order approving the listing and trading of the ProShares VIX Short-Term Futures ETF and the ProShares VIX Mid-Term Futures ETF).

¹¹ Standard & Poor's Financial Services LLC is the index sponsor with respect to the Indexes and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Indexes.

¹² For purposes of this proposal, the term "Cash and Cash Equivalents" shall have the definition provided in Exchange Rule 14.11(i)(4)(C)(iii), applicable to Managed Fund Shares.

¹³ The ProShares VIX Short-Term Futures ETF has filed a registration statement on Form S-3 under the Securities Act of 1933, dated May 11, 2020 (File No. 333-238175) and the ProShares VIX Mid-Term Futures ETF has filed a registration statement on Form S-1 under the Securities Exchange Act of 1933, dated August 12, 2020 (File No.: 333-244420) (collectively, the "Registration Statement"). The description of the Funds and the Shares contained herein are based on the Registration Statement.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ Rule 14.11(f)(4) applies to Trust Issued Receipts that invest in "Financial Instruments." The term "Financial Instruments," as defined in Rule 14.11(f)(4)(A)(iv), means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

⁶ The Commission approved BZX Rule 14.11(f)(4) in Securities Exchange Act Release No. 68619 (January 10, 2013), 78 FR 3489 (January 16, 2013) (SR-BATS-2012-044).

⁷ See Securities Exchange Act No. 63317 (November 16, 2010) 75 FR 71158 (November 22, 2010) (SR-NYSEArca-2010-101) (Proposal to list and trade Shares of the ProShares VIX Short-Term Futures ETF and the ProShares VIX Mid-Term Futures ETF (the "Prior Proposal")). See also Securities Exchange Act No. 63610 (December 27, 2010) 76 FR 199 (January 3, 2011) (SR-NYSEArca-2010-101) (Order approving the listing and trading of the ProShares VIX Short-Term Futures ETF and the ProShares VIX Mid-Term Futures ETF).

changes to the portfolio. In the event that (a) the Sponsor becomes a broker-dealer or newly affiliated with a broker-dealer, or (b) any new sponsor is a broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

According to the Registration Statement, if a Fund is successful in meeting its objective, its value (before fees and expenses) should gain approximately as much on a percentage basis as the level of its corresponding Index when the Index rises. Conversely, its value (before fees and expenses) should lose approximately as much on a percentage basis as the level of its corresponding Index when the Index declines. Each Fund acquires exposure through VIX futures contracts traded on the Cboe Futures Exchange (“VIX Futures Contracts”) (“CFE”), such that each Fund typically has exposure intended to approximate the benchmark at the time of its net asset value (“NAV”) calculation.¹⁴

According to the Registration Statement, each Fund is not actively managed by traditional methods, which typically involve effecting changes in the composition of a portfolio on the basis of judgments relating to economic, financial and market considerations with a view toward obtaining positive results under all market conditions. Rather, each Fund seeks to remain fully invested at all times in investment positions that, in combination, provide exposure to its Index consistent with its investment objective, even during periods in which that benchmark is flat or moving in a manner which causes the value of a Fund to decline.

In seeking to achieve each Fund’s investment objective, the Sponsor uses a mathematical approach to investing. Using this approach, the Sponsor determines the type, quantity and mix of investment positions that the Sponsor believes in combination should produce daily returns consistent with such Fund’s objective. The Sponsor relies upon a pre-determined model to generate orders that result in repositioning the Funds’ investments in accordance with their respective investment objectives.

¹⁴ Terms relating to the Funds, the Shares and the Indexes referred to, but not defined, herein are defined in the Registration Statement.

VIX Futures Contracts

The Indexes are comprised of, and the value of the Funds will be based on, VIX Futures Contracts. VIX Futures Contracts are measures of the market’s expectation of the level of VIX at certain points in the future, and as such will behave differently than current, or spot, VIX.¹⁵ The Funds are not linked to the VIX, and in many cases the Indexes, and by extension the Funds, will significantly underperform the VIX.

While the VIX represents a measure of the current expected volatility of the S&P 500 over the next 30 days, the prices of VIX Futures Contracts are based on the current expectation of what the expected 30-day volatility will be at a particular time in the future (on the expiration date). For example, a VIX Futures Contract purchased in March that expires in May, in effect, is a forward contract on what the level of the VIX, as a measure of 30-day implied volatility of the S&P 500, will be on the May expiration date. The forward volatility reading of the VIX may not correlate directly to the current volatility reading of the VIX because the implied volatility of the S&P 500 at a future expiration date may be different from the current implied volatility of the S&P 500. To illustrate, on December 4, 2019, the VIX closed at a price of 14.8 and the price of the February 2020 VIX Futures Contracts expiring on February 19, 2020 was 18.125. In this example, the price of the VIX represented the 30-day implied, or “spot,” volatility (the volatility expected for the period from December 5, 2019 to January 5, 2020) of the S&P 500 and the February 2020 VIX Futures Contracts represented forward implied volatility (the volatility expected for the period from February 19 to March 19, 2020) of the S&P 500.

The S&P 500 VIX Short-Term Futures Index and S&P 500 VIX Mid-Term Futures Index

According to the Registration Statement, the Indexes act as a measure of the implied volatility of the S&P 500 as reflected by the price of certain VIX Futures Contracts (the “Index Components”), with the price of each VIX Futures Contract reflecting the

¹⁵ VIX is the ticker symbol for the Cboe Volatility Index, a popular measure of implied volatility. The goal of the VIX is to estimate the implied volatility of the S&P 500 over the next 30 days. A relatively high level of the VIX corresponds to a more volatile U.S. equity market as expressed by more costly options on the S&P 500 Index. The VIX represents one measure of the market’s expectation of over the next 30 day period. It is a blend of prices for a range of options on the S&P 500 Index. The formula utilizes current market prices for a series of out-of-the-money calls and puts for the near and next-term expirations.

market’s measure of the expected volatility (*i.e.*, the rate and magnitude of variations in performance) of the S&P 500 over the next 30 days. Each Index seeks to reflect the returns that are potentially available from holding an unleveraged long position in certain VIX Futures Contracts.

Unlike the Indexes, the VIX, which is not a benchmark for either Fund, is calculated based on the prices of put and call options on the S&P 500, which are traded on Cboe Exchange, Inc.

The S&P 500 VIX Short-Term Futures Index employs rules for selecting the Index Components and a formula to calculate a level for the Index from the prices of these components. Specifically, the Index Components represent the prices of the two near-term VIX futures months, replicating a position that rolls the nearest month VIX Futures Contract to the next month VIX Futures Contract on a daily basis in equal fractional amounts. This results in a constant weighted average maturity of one month. The roll period begins on the Tuesday prior to the monthly CFE VIX Futures Contracts settlement date and runs through the Tuesday prior to the subsequent month’s CFE VIX Futures Contract settlement date.

The S&P 500 VIX Mid-Term Futures Index also employs rules for selecting the Index Components and a formula to calculate the level of the Index from the prices of these components. Currently, the Index Components represent the prices for four contract months of VIX Futures Contracts, representing a market-based estimation of constant maturity, five month forward implied VIX values. The S&P 500 VIX Mid-Term Futures Index measures the return from a rolling long position in the fourth, fifth, sixth and seventh month VIX Futures Contracts, and rolls continuously throughout each month while maintaining positions in the fifth and sixth month contracts. This results in a constant weighted average maturity of five months.

Calculation of the Indexes

The level of each Index is calculated in accordance with the method described in the Registration Statement. The level of each Index will be published at least every 15 seconds both in real time from 9:30 a.m. to 4:00 p.m., E.T. and at the close of trading on each Business Day¹⁶ by Bloomberg L.P. and Reuters.

¹⁶ A “Business Day” means any day other than a day when any of BZX, Cboe, CFE or other exchange material to the valuation or operation of the Funds, or the calculation of the VIX, options contracts underlying the VIX, VIX Futures Contracts or the Indexes is closed for regular trading.

The Index Components comprising each Index represent the prices of certain futures contracts on the VIX. Each Index takes a daily rolling long position in contracts of specified maturities and is intended to reflect the returns that are potentially available through an unleveraged investment in those contracts. The S&P 500 VIX Short-Term Futures Index measures the return from a rolling long position in the first and second month VIX Futures Contracts. The Index rolls continuously throughout each month from the first month VIX Futures Contracts into the second month VIX Futures Contracts. The S&P 500 VIX Mid-Term Futures Index measures the return from a rolling long position in the fourth, fifth, sixth and seventh month VIX Futures Contracts. The Index rolls continuously throughout each month from the fourth month contract into the seventh month contract while maintaining positions in the fifth month and sixth month contracts.

The Indexes roll on a daily basis. One of the effects of daily rolling is to maintain a constant weighted average maturity for the underlying futures contracts. Unlike equities, which typically entitle the holder to a continuing stake in a corporation, futures contracts normally specify a certain date for the delivery of the underlying asset or financial instrument or, in the case of futures contracts relating to indices such as the VIX, a certain date for payment in cash of an amount determined by the level of the underlying index. The Indexes operate by selling, on a daily basis, Index Components with a nearby settlement date and purchasing Index Components with a longer-dated settlement date. The roll for each contract occurs on each Business Day according to a pre-determined schedule that has the effect of keeping constant the weighted average maturity of the relevant futures contracts. This process is known as “rolling” a futures position, and each Index is a “rolling index”. The constant weighted average maturity for the futures underlying the S&P 500 VIX Short-Term Futures Index is one month and for the futures underlying the S&P 500 VIX Mid-Term Futures Index is five months.

Because the Indexes incorporate this process of rolling futures positions on a daily basis, and the Funds, in general, also roll their positions on a daily basis, the daily roll is not anticipated to be a significant source of tracking error between either Fund and its respective Index. The Indexes are based on VIX Futures Contracts and not the VIX, and,

as such, neither the Funds nor the Indexes are expected to track the VIX.

Purchases and Redemptions of Creation Units

The Funds will create and redeem Shares from time to time in one or more Creation Units. A Creation Unit is a block of 25,000 Shares. Except when aggregated in Creation Units, the Shares are not redeemable securities.

On any Business Day, an authorized participant may place an order with the Distributor to create one or more Creation Units.¹⁷ The total cash payment required to create each Creation Unit is the NAV of 25,000 Shares of the Funds on the purchase order date plus the applicable transaction fee.

The procedures by which an authorized participant can redeem one or more Creation Units mirror the procedures for the purchase of Creation Units. On any Business Day, an authorized participant may place an order with the Distributor to redeem one or more Creation Units. The redemption proceeds from a Fund consist of the cash redemption amount. The cash redemption amount is equal to the NAV of the number of Creation Unit(s) of a Fund requested in the authorized participant's redemption order as of the time of the calculation of a Fund's NAV on the redemption order date, less applicable transaction fees.

Availability of Information Regarding the Shares

The NAV for the Funds' Shares will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time.¹⁸ Pricing information will be available on the Fund's website including: (1) The prior Business Day's reported NAV, the closing market price or the bid/ask price, daily trading volume, and a calculation of the premium and discount of the closing market price or bid/ask price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within

¹⁷ Authorized participants have a cut-off time of 2:00 p.m. E.T. to place creation and redemption orders.

¹⁸ According to the Registration Statement, net asset value means the total assets of the Funds including, but not limited to, all Cash and Cash Equivalents or other debt securities less total liabilities of the Funds, each determined on the basis of generally accepted accounting principles in the United States, consistently applied under the accrual method of accounting. Each Fund's NAV is calculated once each trading day as of 4 p.m. (E.T.), or an earlier time as set forth on www.proshares.com.

appropriate ranges, for each of the four previous calendar quarters. The closing prices and settlement prices of the Index Components are also readily available from the websites of CFE (<http://www.cfe.cboe.com>), automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. Complete real-time data for component futures underlying the Indexes is available by subscription from Reuters and Bloomberg. Specifically, the level of each Index will be published at least every 15 seconds both in real time from 9:30 a.m. to 4:00 p.m. E.T. and at the close of trading on each Business Day by Bloomberg and Reuters. The CFE also provides delayed futures information on current and past trading sessions and market news free of charge on its website. The specific contract specifications for component futures underlying the Indexes are also available on such websites, as well as other financial informational sources.

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (“CTA”). Information relating to VIX Futures Contracts will be available from the exchange on which such instruments are traded. Pricing information regarding VIX Futures Contracts is generally available through nationally recognized data services providers through subscription agreements. Pricing information regarding Cash and Cash Equivalents in which the Funds may invest is generally available through nationally recognized data services providers, such as Reuters and Bloomberg, through subscription agreements.

In addition, the Funds' website at www.proshares.com will display the end of day closing Index levels, and NAV per share for the Funds. The Funds will provide website disclosure of portfolio holdings daily and will include, as applicable, the notional value (in U.S. dollars) of VIX Futures Contracts and characteristics of such instruments and Cash and Cash Equivalents, and amount of cash held in the portfolio of the Funds. This website disclosure of the portfolio composition of the Funds will occur at the same time as the disclosure by the Funds of the portfolio composition to authorized participants so that all market participants are provided portfolio composition information at the same time. Therefore, the same portfolio information will be provided on the public website as well as in electronic files provided to authorized participants. Accordingly, each investor

will have access to the current portfolio composition of the Funds through the Funds' website.

In addition, in order to provide updated information relating to the Funds for use by investors and market professionals, an updated Intraday Indicative Value ("IIV") will be calculated. The IIV is an indicator of the value of the VIX Futures Contracts and Cash and/or Cash Equivalents less liabilities of a Fund at the time the IIV is disseminated. The IIV will be calculated and widely disseminated by one or more major market data vendors every 15 seconds throughout Regular Trading Hours.¹⁹

In addition, the IIV is published on the Exchange's website and is available through on-line information services such as Bloomberg and Reuters.

The IIV disseminated during Regular Trading Hours should not be viewed as an actual real time update of the NAV, which is calculated only once a day. The IIV also should not be viewed as a precise value of the Shares.

The Exchange believes that dissemination of the IIV provides additional information regarding the Funds that is not otherwise available to the public and is useful to professionals and investors in connection with the related Shares trading on the Exchange or the creation or redemption of such Shares.

Additional information regarding the Funds and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement.

Initial and Continued Listing

The Shares of each Fund will conform to the initial and continued listing criteria under BZX Rule 14.11(f)(4). The Exchange represents that, for initial and continued listing, the Funds and the Trust must be in compliance with Rule 10A-3 under the Act. A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share for each Fund will be calculated daily and will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to

¹⁹ As defined in Rule 1.5(w), the term "Regular Trading Hours" means the time between 9:30 a.m. and 4:00 p.m. E.T.

halt or suspend trading in the Shares of the Funds. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments composing the daily disclosed portfolio of the Funds; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(f)(4)(C)(ii), which sets forth circumstances under which Shares of a Fund may be halted.

The Exchange represents that the Exchange may halt trading in the Shares of a Fund during the day in which an interruption to the dissemination of the IIV, the value of an Index, the VIX or the value of the underlying VIX Futures Contracts occurs. If an interruption to the dissemination of the IIV, the value of an Index, the VIX or the value of the underlying VIX Futures Contracts persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange will allow trading in the Shares during all trading sessions on the Exchange and has the appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is \$0.01, with the exception of securities that are priced less than \$1.00, for which the minimum price variation for order entry is \$0.0001.

Surveillance

Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Trust Issued Receipts. The Exchange believes that its surveillance procedures are adequate to properly monitor the

trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. All of the VIX Futures Contracts held by the Funds will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.²⁰ The Exchange, FINRA, on behalf of the Exchange, or both will communicate regarding trading in the Shares and the underlying listed instruments, including listed derivatives held by the Funds, with the ISG, other markets or entities who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange or FINRA may obtain information regarding trading in the Shares and the underlying listed instruments, including listed derivatives, held by the Funds from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. All statements and representations made in this filing regarding index composition, description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of an index, reference asset, and IIVs, and the applicability of Exchange rules specified in this filing shall constitute continued listing requirements for the Funds. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Funds or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If the Funds or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks

²⁰ For a list of the current members and affiliate members of ISG, see www.isgportal.com. The Exchange notes that not all components of the Fund's holdings may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the IIV and each Fund's holdings is disseminated; (4) the risks involved in trading the Shares outside of Regular Trading Hours when an updated IIV will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Funds. Members purchasing Shares from the Funds for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will reference that the Funds are subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Funds and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares of the Funds will be publicly available on the Funds' website.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act²¹ in general and Section 6(b)(5) of the Act²² in particular in that 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.

The Exchange believes that the proposed rule change is designed to

prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Exchange Rule 14.11(f). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. If the Sponsor to the Trust issuing the Trust Issued Receipts is affiliated with a broker-dealer, such Sponsor to the Trust shall erect and maintain a "fire wall" between the Sponsor and the broker-dealer with respect to access to information concerning the composition and/or changes to the Funds' portfolios. The Sponsor is not a broker-dealer, but is affiliated with a broker-dealer and has implemented and will maintain a "fire wall" with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio. In the event that (a) the Sponsor becomes a broker-dealer or newly affiliated with a broker-dealer, or (b) any new sponsor is a broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio. The Exchange, FINRA, on behalf of the Exchange, or both may obtain information regarding trading in the Shares and the underlying VIX Futures Contracts via the ISG from other exchanges who are members or affiliates of the ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and that the NAV and the Funds' holdings will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Funds and the Shares, thereby promoting market transparency. Moreover, the IIV will be

disseminated by one or more major market data vendors at least every 15 seconds during Regular Trading Hours. On each Business Day, before commencement of trading in Shares during Regular Trading Hours, the Funds will disclose on their website the holdings that will form the basis for each Fund's calculation of NAV at the end of the Business Day. Pricing information will be available on the Funds' website including: (1) The prior Business Day's reported NAV, the closing market price or the bid/ask price, daily trading volume, and a calculation of the premium and discount of the closing market price or bid/ask price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Additionally, information regarding market price and trading of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will be available on the facilities of the CTA. The website for the Funds will include a form of the prospectus for each Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Funds will be halted under the conditions specified in Exchange Rule 11.18. Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Finally, trading in the Shares will be subject to 14.11(f)(4)(C)(ii), which sets forth circumstances under which Shares of the Funds may be halted. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, the Indexes, the IIV, and quotation and last sale information for the Shares.

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. Quotation and last-sale information regarding VIX Futures Contracts will be available from the exchanges on which such instruments are traded. Pricing information regarding Cash and Cash Equivalents in which the Funds will invest is generally available through nationally recognized data services providers, such as Reuters and Bloomberg, through subscription agreements.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect

²¹ 15 U.S.C. 78f.

²² 15 U.S.C. 78f(b)(5).

investors and the public interest in that it will facilitate the listing and trading of exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding each Fund's holdings, the IIV, and quotation and last sale information for the Shares.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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 purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the transfer from Arca and listing of additional exchange-traded products on the Exchange, which will enhance competition among listing venues, to the benefit of issuers, investors, and the marketplace more broadly.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²³ and Rule 19b-4(f)(6) thereunder.²⁴

²³ 15 U.S.C. 78s(b)(3)(A).

²⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time

A proposed rule change filed under Rule 19b-4(f)(6)²⁵ normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁶ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay will allow the Funds to transfer listing to the Exchange as soon as is practicable and minimize the amount of time that the Funds' listing venue will be in transition. The Funds have previously been approved by the Commission to list and trade on NYSE Arca, Inc.²⁷ The Exchange states that this proposal is substantively identical to the Prior Proposal and the issuer represents that all material representations contained within the Prior Proposal remain true. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.²⁸

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2020-092 on the subject line.

as designated by the Commission. The Exchange has satisfied this requirement.

²⁵ 17 CFR 240.19b-4(f)(6).

²⁶ 17 CFR 240.19b-4(f)(6)(iii).

²⁷ See *supra* note 10.

²⁸ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeBZX-2020-092. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2020-092 and should be submitted on or before January 12, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020-28149 Filed 12-21-20; 8:45 am]

BILLING CODE 8011-01-P

²⁹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90686; File No. SR–CboeBZX–2020–090]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule To List and Trade Shares of the Invesco Real Assets ESG ETF and the Invesco US Large Cap Core ESG ETF, Each a Series of the Invesco Actively Managed Exchange-Traded Fund Trust, Under Rule 14.11(m) (Tracking Fund Shares)

December 16, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on December 15, 2020, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the Invesco Real Assets ESG ETF and the Invesco US Large Cap Core ESG ETF pursuant to Rule 14.11(m), Tracking Fund Shares,³ which are securities issued by an actively managed open-end management investment company.⁴ The Exchange is submitting this proposal as required by

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ As defined in Rule 14.11(m)(3)(A), the term “Tracking Fund Share” means a security that: (i) Represents an interest in an investment company (“Investment Company”) registered under the Investment Company Act of 1940 (the “1940 Act”) organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (ii) is issued in a specified aggregate minimum number in return for a deposit of a specified Tracking Basket and/or a cash amount with a value equal to the next determined Net Asset Value (“NAV”); (iii) when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid a specified Tracking Basket and/or a cash amount with a value equal to the next determined NAV; and (iv) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

⁴ Rule 14.11(m) was approved along with the listing and trading of three series of Tracking Fund Shares by the Commission on May 15, 2020. See Securities Exchange Act Release No. 88887 (May 15, 2020), 85 FR 30990 (May 21, 2020) (the “Tracking Fund Shares Approval Order”).

Rule 14.11(m)(2)(A), which provides that the Exchange must file separate proposals under Section 19(b) of the Act before listing and trading of a series of Tracking Fund Shares.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares of the Invesco Real Assets ESG ETF and the Invesco US Large Cap Core ESG ETF pursuant to Rule 14.11(m), Tracking Fund Shares,⁵ which are securities issued by an actively managed open-end management investment company.⁶ The Exchange is submitting this proposal as required by Rule 14.11(m)(2)(A), which provides that the Exchange must file separate

⁵ As defined in Rule 14.11(m)(3)(A), the term “Tracking Fund Share” means a security that: (i) Represents an interest in an investment company (“Investment Company”) registered under the Investment Company Act of 1940 (the “1940 Act”) organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (ii) is issued in a specified aggregate minimum number in return for a deposit of a specified Tracking Basket and/or a cash amount with a value equal to the next determined Net Asset Value (“NAV”); (iii) when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid a specified Tracking Basket and/or a cash amount with a value equal to the next determined NAV; and (iv) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

⁶ Rule 14.11(m) was approved along with the listing and trading of three series of Tracking Fund Shares by the Commission on May 15, 2020. See Securities Exchange Act Release No. 88887 (May 15, 2020), 85 FR 30990 (May 21, 2020) (the “Tracking Fund Shares Approval Order”).

proposals under Section 19(b) of the Act before listing and trading of a series of Tracking Fund Shares.

The Shares will be offered by the Trust, which was organized as a Delaware statutory trust on November 6, 2007. The Trust is registered with the Commission as an open-end investment company and has filed a registration statement on behalf of the Funds on Form N–1A with the Commission.⁷ Invesco Capital Management LLC (the “Adviser”) will be the investment adviser to the Funds. The Adviser is not registered as a broker-dealer, but is affiliated with broker-dealers. The Adviser represents that a fire wall exists and will be maintained between the respective personnel at the Adviser and affiliated broker-dealers with respect to access to information concerning the composition and/or changes to each Fund’s portfolio and Tracking Basket.⁸ Personnel who make decisions on a Fund’s portfolio composition and/or Tracking Basket or who have access to nonpublic information regarding the Fund Portfolio⁹ and/or the Tracking Basket or changes thereto are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding such portfolio and/or Tracking Basket. The Funds’ sub-adviser, Invesco Advisers, Inc. (the “Sub-Adviser”), is not registered as a broker-dealer but is affiliated with broker-dealers. Sub-Adviser personnel who make decisions regarding a Fund’s Fund Portfolio and/or Tracking Basket or who have access to information regarding the Fund Portfolio and/or the Tracking Basket or changes thereto are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund’s portfolio and/or Tracking Basket.

⁷ The Trust is registered under the 1940 Act. On September 25, 2020, the Trust filed post-effective amendments to its registration statement on Form N–1A relating to each Fund (File No. 811–22148) (the “Registration Statement”). The descriptions of the Funds and the Shares contained herein are based, in part, on information included in the Registration Statement. The Commission has issued an order granting certain exemptive relief to the Trust (the “Exemptive Order”) under the 1940 Act. See Investment Company Act of 1940 Release No. 34076 (October 27, 2020).

⁸ As defined in Rule 14.11(m)(3)(E), the term “Tracking Basket” means the identities and quantities of the securities and other assets included in a basket that is designed to closely track the daily performance of the Fund Portfolio, as provided in the exemptive relief under the 1940 Act applicable to a series of Tracking Fund Shares.

⁹ As defined in Rule 14.11(m)(3)(B), the term “Fund Portfolio” means the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company’s calculation of net asset value at the end of the business day.

In the event that (a) the Adviser or a Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer; or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes newly affiliated with a broker-dealer; it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the Fund Portfolio and/or Tracking Basket, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio and/or Tracking Basket. Any person or entity, including any service provider for the Funds, who has access to nonpublic information regarding a Fund Portfolio or Tracking Basket or changes thereto for a Fund or Funds will be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or Tracking Basket or changes thereto. Further, any such person or entity that is registered as a broker-dealer or affiliated with a broker-dealer, has erected and will maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio or Tracking Basket. Each Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

The Shares will conform to the initial and continued listing criteria under Rule 14.11(m) as well as all terms in the Exemptive Order. The Exchange represents that, for initial and/or continued listing, each Fund will be in compliance with Rule 10A–3 under the Act.¹⁰ A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares of each Fund that the NAV per share of each Fund will be calculated daily and will be made available to all market participants at the same time. Each Fund’s investments will be consistent with its investment objective and will not be used to enhance leverage.

Invesco Real Assets ESG ETF

The Fund’s holdings will conform to the permissible investments as set forth in the Exemptive Relief and the holdings will be consistent with all

requirements in the Exemptive Relief.¹¹ Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the Intermarket Surveillance Group (“ISG”)¹² or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Fund seeks capital appreciation as its investment objective with a secondary objective of current income. The Fund seeks to achieve its investment objective by investing primarily in exchange-traded equity securities of “real assets” companies (as identified below) located in North America that meet high environmental, social and governance (“ESG”) standards, as determined by the Sub-Adviser. Real assets are characterized by having physical attributes, including real estate, infrastructure, natural resources and timber. The Sub-Adviser considers “real assets” companies to be those that own, operate, or derive a significant portion of their value from real assets or the production thereof. In selecting equity securities for the Fund, the investment team uses fundamental analysis to identify securities that adhere to ESG principals described herein and are viewed to have relatively favorable long-term prospects. Some of the factors that the investment team considers include, but are not limited to: Assessment of long term fundamental growth, sustainable dividends, attractive physical and locational attributes and capital structure viability. As a result of the analysis, the investment team generally favors companies with a balanced mix of the factors above. The investment team will consider selling a security when it no longer meets the investment criteria, or a more attractive alternative is identified. The Fund may invest in companies of any market capitalization.

¹¹ Pursuant to the Exemptive Relief, the Fund’s permissible investments include only the following instruments: ETFs, exchange-traded notes, exchange-traded common stocks, common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Shares (“foreign common stocks”), exchange-traded preferred stocks, exchange-traded American Depositary Receipts (“ADRs”), exchange-traded real estate investment trusts, exchange-traded commodity pools, exchange-traded metals trusts, exchange-traded currency trusts, and exchange-traded futures that trade contemporaneously with the Shares, as well as cash and cash equivalents. With the exception of foreign common stocks and cash and cash equivalents, all holdings of the Fund will be listed on a U.S. national securities exchange.

¹² For a list of the current members of ISG, see www.isgportal.com. The Exchange notes that all components, except the cash and cash equivalent components, of the Funds may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Invesco US Large Cap Core ESG ETF

The Fund’s holdings will conform to the permissible investments as set forth in the Exemptive Relief and the holdings will be consistent with all requirements in the Exemptive Relief.¹³ Any foreign common stocks held by the Fund will be traded on an exchange that is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.¹⁴

The Fund seeks capital appreciation as its investment objective. The Fund seeks to achieve its investment objective by investing, under Normal Market Conditions,¹⁵ at least 80% of its net assets (plus any borrowings for investment purposes) in exchange-traded equity securities of U.S. large capitalization issuers. Additionally, the Fund seeks to achieve its investment objective by investing mainly in common stock of U.S. companies that meet high ESG standards, as determined by the Sub-Adviser.

Trading Halts

Rule 14.11(m)(4)(B)(iv) provides that (a) the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Tracking Fund Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (i) The extent to which trading is not occurring in the securities and/or the financial instruments composing the Tracking Basket or Fund Portfolio; or (ii) whether other unusual conditions or circumstances detrimental to the

¹³ Pursuant to the Exemptive Relief, the Fund’s permissible investments include only the following instruments: ETFs, exchange-traded notes, exchange-traded common stocks, foreign common stocks, exchange-traded preferred stocks, ADRs, exchange-traded real estate investment trusts, exchange-traded commodity pools, exchange-traded metals trusts, exchange-traded currency trusts, and exchange-traded futures that trade contemporaneously with the Shares, as well as cash and cash equivalents. With the exception of foreign common stocks and cash and cash equivalents, all holdings of the Fund will be listed on a U.S. national securities exchange.

¹⁴ For a list of the current members of ISG, see www.isgportal.com. The Exchange notes that all components, except the cash and cash equivalent components, of the Funds may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

¹⁵ As defined in Rule 14.11(m)(3)(D), the term “Normal Market Conditions” includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

¹⁰ See 17 CFR 240.10A–3.

maintenance of a fair and orderly market are present; and (b) if the Exchange becomes aware that one of the following is not being made available to all market participants at the same time: The net asset value, the Tracking Basket, or the Fund Portfolio with respect to a series of Tracking Fund Shares, then the Exchange will halt trading in such series until such time as the net asset value, the Tracking Basket, or the Fund Portfolio is available to all market participants, as applicable.

Trading Rules

The Exchange deems Tracking Fund Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.¹⁶ As provided in Rule 14.11(m)(2)(C), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is \$0.01. The Exchange has appropriate rules to facilitate trading in Tracking Fund Shares during all trading sessions.

Tracking Basket for the Proposed Funds

For the Funds, the Tracking Basket will consist of a combination of the Fund's recently disclosed portfolio holdings and representative ETFs. The Exchange notes that the Tracking Basket methodology used by the Fund is substantively identical to a proposal previously approved by the Commission.¹⁷ ETFs selected for inclusion in the Tracking Basket will be consistent with the Fund's objective and selected based on certain criteria, including, but not limited to, liquidity, assets under management, holding limits and compliance considerations. Representative ETFs can provide a useful mechanism to reflect a Fund's holdings' exposures within the Tracking Basket without revealing a Fund's exact positions.¹⁸ Intraday pricing information for all constituents of the Tracking Basket that are exchange-

traded, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges on which they are traded and through subscription services. Intraday pricing information for cash equivalents will be available through subscription services and/or pricing services. The Exchange notes that each Fund's NAV will form the basis for creations and redemptions for the Funds and creations and redemptions will work in a manner substantively identical to that of series of Managed Fund Shares. The Adviser expects that the Shares of the Funds will generally be created and redeemed in-kind, with limited exceptions. The names and quantities of the instruments that constitute the basket of securities for creations and redemptions will be the same as a Fund's Tracking Basket, except to the extent purchases and redemptions are made entirely or in part on a cash basis. In the event that the value of the Tracking Basket is not the same as a Fund's NAV, the creation and redemption baskets will consist of the securities included in the Tracking Basket plus or minus an amount of cash equal to the difference between the NAV and the value of the Tracking Basket, as further described below.

The Tracking Basket will be constructed utilizing a covariance matrix based on an optimization process to minimize deviations in the return of the Tracking Basket relative to the Fund. The proprietary optimization process mathematically seeks to minimize three key parameters that the Adviser believes are important to the effectiveness of the Tracking Basket as a hedge: Tracking error (standard deviation of return differentials between the Tracking Basket and the Fund), turnover cost, and basket creation cost.¹⁹ Typically, the Tracking Basket is expected to be rebalanced on schedule with the public disclosure of the Fund's holdings; however, a new optimized Tracking Basket may be generated as frequently as daily, and therefore, rebalancing may occur more frequently at the Adviser's discretion. In determining whether to rebalance a new optimized Tracking Basket, the Adviser will consider various factors, including liquidity of the securities in the Tracking Basket, tracking error, and the cost to create and trade the Tracking Basket.²⁰ For

example, if the Adviser determines that a new Tracking Basket would reduce the variability of return differentials between the Tracking Basket and the Fund when balanced against the cost to trade the new Tracking Basket, rebalancing may be appropriate. The Adviser will periodically review the Tracking Basket parameters and Tracking Basket performance and process.

As noted above, each Fund will also disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio, at a minimum within at least 60 days following the end of every fiscal quarter. The Exchange notes that the concept of the Tracking Basket employed under this structure is designed to provide investors with the traditional benefits of ETFs while protecting the Funds from the potential for front running or free riding of portfolio transactions, which could adversely impact the performance of a Fund.

The Exchange believes that the particular instruments that may be included in each of the Fund's respective Fund Portfolio and Tracking Basket do not raise any concerns related to the Tracking Baskets being able to closely track the NAV of the Funds because such instruments include only instruments that trade on an exchange contemporaneously with the Shares.²¹ In addition, each Fund's Tracking Basket will be optimized so that it reliably and consistently correlates to the performance of the Fund.

The Adviser anticipates that the returns between a Fund and its respective Tracking Basket will have a consistent relationship and that the deviation in the returns between a Fund and its Tracking Basket will be sufficiently small such that the Tracking Basket will provide authorized participants, arbitrageurs, and certain other market participants (collectively, "Market Makers") with a reliable hedging vehicle that they can use to effectuate low-risk arbitrage trades in Fund Shares. The Exchange believes

the Tracking Basket, *i.e.*, the cost to put on the hedge for the Authorized Participant, and (2) the cost of any adjustments that need to be made to the composition of the Tracking Basket, *i.e.*, the cost to the Authorized Participant to change or maintain the hedge position. The inclusion of the trading cost model in the optimization process is intended to result in a Tracking Basket that is cost effective and liquid without compromising its tracking ability.

²¹ The Exchange notes that to the extent that the Fund Portfolio or Tracking Basket include any foreign common stocks, such securities will be traded on an exchange that is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

¹⁶ With respect to trading in Tracking Fund Shares, all of the BZX Member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange will continue to monitor its Members for compliance with such requirements.

¹⁷ See Tracking Fund Shares Approval Order.

¹⁸ The set of ETFs that are "representative" to be used in the Tracking Basket will depend on certain factors, including the Fund's investment objective, past holdings, and benchmark, and may change from time to time. For example, a U.S. diversified fund benchmarked to a diversified U.S. index would use liquid U.S. exchange-traded ETFs to capture size (large, mid or small capitalization), style (growth or value) and/or sector exposures in the Fund's portfolio. Leveraged and inverse ETFs will not be included in the Tracking Basket. ETFs may constitute no more than 50% of the Tracking Basket's assets.

¹⁹ Tracking error measures the deviations between the Tracking Basket and Fund. Turnover cost and basket creation cost are measures of the cost to create and maintain the Tracking Basket as a hedge.

²⁰ The Adviser uses a trading cost model to develop estimates of costs to trade a new Tracking Basket. There are essentially two elements to this cost: (1) The cost to purchase securities constituting

that the disclosures provided by the Funds will allow Market Makers to understand the relationship between the performance of a Fund and its Tracking Basket. Market Makers will be able to estimate the value of and hedge positions in a Fund's Shares, which the Exchange believes will facilitate the arbitrage process and help ensure that the Fund's Shares normally will trade at market prices close to their NAV. The Exchange also believes that competitive market making, where traders are looking to take advantage of differences in bid-ask spread, will aid in keeping spreads tight.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act²² in general and Section 6(b)(5) of the Act²³ in particular in that 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.

The Exchange notes that a significant amount of information about each Fund and its Fund Portfolio will be publicly available at all times. Each Fund will disclose the Tracking Basket, which is designed to closely track the daily performance of the Fund Portfolio, on a daily basis. Each Fund will at a minimum publicly disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio within at least 60 days following the end of every fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act. The website will include additional quantitative information updated on a daily basis, including, on a per Share basis for each Fund, the prior business day's NAV and the closing price or bid/ask price at the time of calculation of such NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV. The website will also disclose the percentage weight overlap between the holdings of the Tracking Basket compared to the Fund Holdings for the prior business day and any information regarding the bid/ask spread for each

Fund as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended. Price information for the exchange-listed instruments held by the Funds, including both U.S. and non-U.S. listed equity securities and U.S. exchange-listed futures will be available through major market data vendors or securities exchanges listing and trading such securities.

The Exchange represents that the Shares of the Funds will continue to comply with all other requirements applicable to Tracking Fund Shares, including the dissemination of key information such as the Tracking Basket, the Fund Portfolio, and NAV, suspension of trading or removal, trading halts, surveillance, minimum price variation for quoting and order entry, an information circular informing members of the special characteristics and risks associated with trading in the Shares, and firewalls as set forth in the Rules applicable to Tracking Fund Shares and the order approving such rules. Moreover, U.S.-listed equity securities held by the Funds will trade on markets that are a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.²⁴ All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference asset (as applicable), or the applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by a Fund or Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures with respect to such Fund under Exchange Rule 14.12.

The Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices in that the Rules relating to listing and trading of Tracking Fund Shares provide specific initial and

continued listing criteria required to be met by such securities.

Rules 14.11(m)(4)(B)(iii) and (iv) provide that the Exchange will consider the suspension of trading in and will commence delisting proceedings for a Fund pursuant to Rule 14.12 under any of the circumstances described above and that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Tracking Fund Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

Additionally, the Exchange believes that the requirements related to information protection enumerated under Rule 14.11(m)(2)(F) will act as a strong safeguard against any misuse and improper dissemination of information related to a Fund Portfolio, the Tracking Basket, or changes thereto. The requirement that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio or the Tracking Basket or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or the Tracking Basket or changes thereto will act to prevent any individual or entity from sharing such information externally.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Tracking Fund Shares. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees. Any foreign common stocks held by the Fund will be traded on an exchange that is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. All futures contracts that the Funds may invest in will be traded on a U.S. futures exchange. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares,

²² 15 U.S.C. 78f.

²³ 15 U.S.C. 78f(b)(5).

²⁴ See *supra* note 14.

underlying U.S. exchange-listed equity securities, and U.S. exchange-listed futures with other markets and other entities that are members of ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, underlying equity securities, and U.S. exchange-listed futures from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

As provided in Rule 14.11(m)(2)(D), the Adviser will upon request make available to the Exchange and/or FINRA, on behalf of the Exchange, the daily Fund Portfolio of each Fund. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading the Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of the Shares.

In addition, Form N–PORT requires reporting of a fund’s complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund’s Statement of Additional Information, its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A fund’s SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission’s website at www.sec.gov. The Exchange also notes that the Exemptive Relief provides that the Funds will comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material non-public information, which otherwise do not apply to issuers of Tracking Fund Shares.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services. Information regarding the previous day’s closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the CTA high-speed

line. The Exchange deems Tracking Fund Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange’s existing rules governing the trading of equity securities. As provided in Rule 14.11(m)(2)(C), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is \$0.01.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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 purpose of the Act. Rather, the Exchange notes that the proposed rule change will facilitate the listing of several new series of actively-managed exchange-traded products, thus enhancing competition among both market participants and listing venues, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁵ and Rule 19b–4(f)(6) thereunder.²⁶

A proposed rule change filed under Rule 19b–4(f)(6)²⁷ normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),²⁸ the Commission

²⁵ 15 U.S.C. 78s(b)(3)(A).

²⁶ 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²⁷ 17 CFR 240.19b–4(f)(6).

²⁸ 17 CFR 240.19b–4(f)(6)(iii).

may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The proposed rule change is substantially similar to other Tracking Fund Shares the Commission previously approved²⁹ and does not raise any novel regulatory issues. Accordingly, the Commission waives the 30-day operative delay and designates the proposal operative upon filing.³⁰

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 will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR–CboeBZX–2020–090 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.

²⁹ See Securities Exchange Act Release No. 88887 (May 15, 2020), 85 FR 30990 (May 21, 2020) (SR–CboeBZX–2019–107) (Notice of Filing of Amendment No. 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 5, to Adopt Rule 14.11(m), Tracking Fund Shares, and to List and Trade Shares of the Fidelity Blue Chip Value ETF, Fidelity Blue Chip Growth ETF, and Fidelity New Millennium ETF). See also Securities Exchange Act Release No. 90530 (November 30, 2020), 85 FR 78366 (December 4, 2020) (SR–CboeBZX–2020–085) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to List and Trade Shares of the Fidelity Growth Opportunities ETF, Fidelity Magellan ETF, Fidelity Real Estate Investment ETF, and Fidelity Small-Mid Cap Opportunities ETF).

³⁰ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

All submissions should refer to File Number SR–CboeBZX–2020–090. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2020–090 and should be submitted on or before January 12, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020–28150 Filed 12–21–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90701; File No. SR–OCC–2020–806]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Partial Amendment No. 1 and Notice of No Objection To Advance Notice, as Modified by Partial Amendment No. 1, Related to Proposed Changes To Update the Options Clearing Corporation’s Recovery and Orderly Wind-Down Plan

December 17, 2020.

I. Introduction

On October 20, 2020, the Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) advance notice SR–OCC–2020–806 (“Advance Notice”) pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (“Clearing Supervision Act”)¹ and Rule 19b–4(n)(1)(i)² under the Securities Exchange Act of 1934 (“Exchange Act”)³ to make changes to OCC’s Recovery and Orderly Wind-Down Plan (“RWD Plan”).⁴ The Advance Notice was published for public comment in the **Federal Register** on November 18, 2020,⁵ and the Commission has received no comments regarding the changes proposed in the Advance Notice.⁶ On November 18, 2020, OCC filed a partial amendment (“Partial Amendment No. 1”) to modify the Advance Notice.⁷ The

¹ 12 U.S.C. 5465(e)(1).

² 17 CFR 240.19b–4(n)(1)(i).

³ 15 U.S.C. 78a *et seq.*

⁴ See Notice of Filing *infra* note 5, at 85 FR 73553.

⁵ Securities Exchange Act Release No. 90416 (Nov. 13, 2020), 85 FR 73553 (Nov. 18, 2020) (File No. SR–OCC–2020–806) (“Notice of Filing”). On October 20, 2020, OCC also filed a related proposed rule change (SR–OCC–2020–013) with the Commission pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b–4 thereunder (“Proposed Rule Change”). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively. In the Proposed Rule Change, which was published in the **Federal Register** on November 9, 2020, OCC seeks approval of proposed changes to its rules necessary to implement the Advance Notice. Securities Exchange Act Release No. 90315 (Nov. 3, 2020), 85 FR 71384 (Nov. 9, 2020) (File No. SR–OCC–2020–013). The comment period for the related Proposed Rule Change filing closed on November 30, 2020.

⁶ Since the proposal contained in the Advance Notice was also filed as a proposed rule change, all public comments received on the proposal are considered regardless of whether the comments are submitted on the Proposed Rule Change or the Advance Notice.

⁷ In Partial Amendment No. 1, OCC corrects and updates a confidential Exhibit 5 to the materials filed on October 20, 2020 regarding File No. SR–OCC–2020–806. Partial Amendment No. 1 corrects

Commission is publishing this notice to solicit comments on Partial Amendment No. 1 from interested persons and, for the reasons discussed below, is hereby providing notice of no objection to the Advance Notice.

II. Background⁸

The Advance Notice concerns changes to OCC’s RWD Plan. As described in greater detail below, OCC proposes to (1) update the RWD Plan to reflect changes to OCC’s capital structure resulting from the disapproval of OCC’s previously approved “Capital Plan”⁹ and the subsequent approval of OCC’s “Capital Management Policy,”¹⁰ and (2) implement changes identified during OCC’s annual review of the RWD Plan. The changes arise out of OCC’s annual review of the RWD Plan and include factual updates (*e.g.*, market share and contract volume data) and streamlined discussions in the RWD Plan (*e.g.*, replacement of detailed overview of OCC’s risk management program with a more concise summary).

Capital Management Policy Updates. As a result of the implementation of the Capital Management Policy, OCC is proposing changes to Chapters 2, 5, and 6 of its RWD Plan. In Chapter 2, OCC is proposing to revise its discussion of fee management for consistency with the Capital Management Policy. In Chapter 5, OCC is proposing to (i) replace its discussion of the Replenishment Plan established under the disapproved Capital Plan with a discussion of the replenishment structure adopted under the Capital Management Policy; (ii) replace references to the discretionary use of OCC’s current and/or retained earnings with references to the mandatory contribution—immediately following the use of margin, deposits in lieu of margin and the Clearing Fund deposits of the suspended Clearing Member—of OCC’s current and retained earnings greater than 110% of OCC’s annually-established “Target Capital Requirement;” (iii) update the description of how OCC could increase the minimum required cash

an error in the proposed rule text and updates the list of vendor agreements attached to the RWD Plan, but did not change the purpose or basis for the Advance Notice. References to the Advance Notice from this point forward refer to the Advance Notice, as amended by Partial Amendment No. 1.

⁸ Capitalized terms used but not defined herein have the meanings specified in OCC’s Rules and By-Laws, available at <https://www.theocc.com/about/publications/bylaws.jsp>.

⁹ See Securities Exchange Act Release No. 85121 (Feb. 13, 2019), 84 FR 5157 (Feb. 20, 2019) (File No. SR–OCC–2015–02).

¹⁰ See Securities Exchange Act Release No. 86725 (Aug. 21, 2019), 84 FR 44952 (Aug. 27, 2019) (File No. SR–OCC–2019–007).

³¹ 17 CFR 200.30–3(a)(12).

contribution to the Clearing Fund to reflect enhancements to OCC's liquidity risk management framework that the Commission approved in 2020;¹¹ and (iv) include a discussion of the mandatory contribution of any unvested portions of OCC's Executive Deferred Compensation Plan ("EDCP") in proportion to any charges against the mutualized portion of OCC's Clearing Fund. OCC also proposes to revise the list of "Recovery Trigger Events" in Chapter 5 to: (a) Delete one of the Recovery Trigger Events that was derived from a defined term in the Capital Plan; (b) consolidate two other Recovery Trigger Events into a single, operational loss-related recovery trigger; and (c) add a qualification onto an existing liquidity loss-related recovery trigger. In Chapter 6, OCC is proposing to update discussion of the tools by which OCC could recapitalize in certain recovery and wind-down scenarios. Further, OCC is proposing to revise the list of Wind-Down Plan Trigger Events ("WDP Triggers"). Specifically, OCC proposes to consolidate two current WDP Triggers into a single WDP Trigger related to OCC's financial resource requirements and to consolidate two other WDP Triggers into a single WDP Trigger related to operational disruption. Similar to the changes OCC proposes in Chapter 5, the changes proposed in Chapter 6 would be designed to reflect OCC's current replenishment plan under the Capital Management Policy.

Annual Review Updates. As a result of its annual review and update process, OCC is proposing changes to Chapters 2, 3, 5, 6, 7, and 8 of its RWD Plan. In Chapter 2, OCC is proposing to update (i) market share and contract volume data; (ii) lists of the securities options exchanges and other markets for which OCC provides clearing services; (iii) organizational charts, headcount numbers, discussions of OCC's management structure and descriptions of management roles and responsibilities; (iv) updated descriptions of OCC's Board's responsibilities and procedures, lists of Board members and descriptions of OCC's Board committees' roles and responsibilities; and (v) graphs of total monthly deposits to OCC's Clearing Fund. OCC is also proposing revisions to reflect certain program changes that have occurred at OCC since the initial approval of the RWD Plan in 2018 (e.g., changes to cross-margining arrangements, credit facilities,

investment counterparties, and vendors) as well as changes to OCC's retirement plan obligations. In Chapter 3, the RWD Plan lists OCC's internal support functions. OCC is proposing the addition of two new internal support functions to that list and the removal of the Office of the Corporate Executive from the list. The net result of the proposed changes would bring the total number of internal support functions listed from fourteen to sixteen. OCC also proposes to update the descriptions of all OCC's internal support functions so they align with OCC's internal descriptions of such functions.

In Chapter 6, OCC is proposing to (i) update references to OCC's internal support functions; and (ii) certain references to headcount. In Chapter 7, OCC is proposing to update staff titles to reflect changes in related office titles. In Chapter 8, OCC is proposing to update lists of (i) Clearing Members; (ii) Board participation; (iii) settlement bank and letter of credit bank; (iv) OCC's vendors and service providers; (v) updates to the extreme hypothetical scenarios designed by OCC that, if such scenarios occurred, could cause OCC to activate the RWD Plan; and (vi) key agreements.

Administrative and Streamlining Changes. In addition to the updates described above, OCC is also proposing several administrative and streamlining changes throughout the RWD Plan. OCC proposes to align the executive summary and overview section of the RWD Plan with the changes described above. OCC also proposes moving annual report excerpts from Chapter 2 to an appendix to the RWD Plan, replace the current overview of OCC's risk management program with a more concise summary, and update a summary description of OCC's interconnections with external vendors and a list of vendors that provide OCC critical technology and information reporting services. In Chapter 4, OCC proposes to update certain factual references and make other minor changes to reflect the use of a single term for Critical Services that are currently identified separately. OCC also proposes to revise the mapping of Critical Services to Support Functions in Chapter 4 to reflect the categorization of Support Functions as either "primary," "secondary," or "non-critical." In Chapter 5, OCC proposes to (i) clean up references to its by-laws that are now rules; (ii) consolidate two recovery triggers into a single, operational loss-related recovery trigger; and (iii) add qualifying language to an existing liquidity loss-related recovery trigger.

III. Commission Findings and Notice of No Objection

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, the stated purpose of the Clearing Supervision Act is instructive: To mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for SIFMUs and strengthening the liquidity of SIFMUs.¹²

Section 805(a)(2) of the Clearing Supervision Act authorizes the Commission to prescribe regulations containing risk management standards for the payment, clearing, and settlement activities of designated clearing entities engaged in designated activities for which the Commission is the supervisory agency.¹³ Section 805(b) of the Clearing Supervision Act provides the following objectives and principles for the Commission's risk management standards prescribed under Section 805(a):¹⁴

- To promote robust risk management;
- to promote safety and soundness;
- to reduce systemic risks; and
- to support the stability of the broader financial system.

Section 805(c) provides, in addition, that the Commission's risk management standards may address such areas as risk management and default policies and procedures, among other areas.¹⁵

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and Section 17A of the Exchange Act (the "Clearing Agency Rules").¹⁶ The Clearing Agency Rules require, among other things, each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for its operations and risk management practices on an ongoing basis.¹⁷ As such, it is appropriate for the Commission to review advance notices against the Clearing Agency Rules and the objectives and principles of these risk management standards as described

¹² See 12 U.S.C. 5461(b).

¹³ 12 U.S.C. 5464(a)(2).

¹⁴ 12 U.S.C. 5464(b).

¹⁵ 12 U.S.C. 5464(c).

¹⁶ 17 CFR 240.17Ad-22. See Securities Exchange Act Release No. 68080 (Oct. 22, 2012), 77 FR 66220 (Nov. 2, 2012) (S7-08-11). See also Covered Clearing Agency Standards, 81 FR 70786. The Commission established an effective date of December 12, 2016 and a compliance date of April 11, 2017 for the Covered Clearing Agency Standards. OCC is a "covered clearing agency" as defined in Rule 17Ad-22(a)(5).

¹⁷ 17 CFR 240.17Ad-22.

¹¹ See Securities Exchange Act Release No. 89014 (Jun. 4, 2020), 85 FR 35446 (Jun. 10, 2020) (File No. SR-OCC-2020-003).

in Section 805(b) of the Clearing Supervision Act. As discussed below, the Commission believes the changes proposed in the Advance Notice are consistent with the objectives and principles described in Section 805(b) of the Clearing Supervision Act,¹⁸ and in the Clearing Agency Rules, in particular Rule 17Ad-22(e)(3)(ii).¹⁹

A. Consistency With Section 805(b) of the Clearing Supervision Act

The Commission believes that the proposal contained in OCC's Advance Notice is consistent with the stated objectives and principles of Section 805(b) of the Clearing Supervision Act. Specifically, as discussed below, the Commission believes that the changes proposed in the Advance Notice are consistent with promoting robust risk management, promoting safety and soundness, reducing systemic risks, and supporting the stability of the broader financial system.²⁰

The Commission believes that the proposed changes to OCC's RWD Plan are consistent with promoting robust risk management, in particular risks arising out of severe financial or operational stress that could be presented to OCC as well as promoting safety and soundness, reducing systemic risk, and supporting the broader financial system. As a central counterparty and SIFMU,²¹ it is imperative for OCC to have a plan in place to address extreme stresses or crises with the aim of maintaining OCC's viability and ability to provide critical services. In the event that OCC's recovery efforts are not successful, the RWD Plan would seek to increase the possibility that a resolution of OCC's operations could be conducted in an orderly manner. The Commission continues to believe that OCC specifying the steps that it would take in either a recovery or orderly wind-down would enhance OCC's ability to address circumstances specific to an extreme stress event.²² The Commission also continues to believe that, by increasing the likelihood that recovery would be orderly, efficient, and successful, the RWD Plan enhances OCC's ability to maintain the continuity of its critical

services (including clearance and settlement services) during, through, and following periods of extreme stress giving rise to the need for recovery.²³

As described above, OCC proposes to (1) update the RWD Plan to reflect changes to OCC's capital structure resulting from the disapproval of OCC's previously approved "Capital Plan"²⁴ and the subsequent approval of OCC's "Capital Management Policy,"²⁵ and (2) implement changes identified during OCC's annual review of the RWD Plan. Consistent with the Commission's prior statements regarding disclosure of documents describing a covered clearing agency's recovery and wind-down plans, the Commission believes that such recovery and wind-down plans should be updated regularly or more frequently as necessary.²⁶ OCC also proposes to update and streamline the data and descriptions provided in the RWD Plan.²⁷ The Commission believes that keeping the RWD Plan updated with current information, and refining the descriptions to make it more concise, makes it a more accurate and useful document. As such, the Commission believes that the proposal would promote both robust risk management and safety and soundness, reduce systemic risk, and support the broader financial system consistent with Section 805(b) of the Clearing Supervision Act.²⁸

Accordingly, and for the reasons stated above, the Commission believes the changes proposed in the Advance Notice are consistent with Section 805(b) of the Clearing Supervision Act.²⁹

B. Consistency With Rule 17Ad-22(e)(3)(ii) Under the Exchange Act

Rule 17Ad-22(e)(3)(ii) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain a sound risk management

framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.³⁰

The Commission continues to believe that the RWD Plan (i) clearly describes OCC's recovery tools, which enhance OCC's ability to recover from credit losses, liquidity shortfalls, general business risk losses, or other losses, consistent with Rule 17Ad-22(e)(3)(ii); and (ii) supports OCC's ability to use risk management and recovery tools effectively to bring about a recovery by identifying in advance which tools may be most effective for different situations or needs, consistent with Rule 17Ad-22(e)(3)(ii).³¹ As described above, the RWD Plan sets forth OCC's plans to recover or wind-down its operations as a result of severe financial or operational stress in an orderly fashion. The proposed updates will make the information provided in the RWD Plan more accurate and useful. The revised RWD Plan would, in turn, provide a more accurate and usable playbook for OCC or source of information for a resolution authority. Accordingly, the Commission believes that the proposed changes to the RWD Plan are consistent with Rule 17Ad-22(e)(3)(ii) under the Exchange Act.³²

IV. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act, that the Commission *does not object* to Advance Notice (SR-OCC-2020-806) and that OCC is *authorized* to implement the proposed change as of the date of this notice or the date of an order by the Commission approving proposed rule change SR-OCC-2020-013, as modified by Partial Amendment No. 1, whichever is later.

By the Commission.

Vanessa A. Countryman,
Secretary.

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¹⁸ 12 U.S.C. 5464(b).

¹⁹ 17 CFR 240.17Ad-22(e)(3)(ii).

²⁰ 12 U.S.C. 5464(b).

²¹ See Financial Stability Oversight Council ("FSOC") 2012 Annual Report, Appendix A, available at <https://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf>.

²² See Securities Exchange Act Release No. 83918 (Aug. 23, 2018), 83 FR 44091, 44094 (Aug. 29, 2018) (File No. SR-OCC-2017-021); Securities Exchange Release No. 83928 (Aug. 23, 2018), 83 FR 44109, 44112 (Aug. 29, 2018) (File No. SR-OCC-2017-810).

²³ See *id.*

²⁴ See Securities Exchange Act Release No. 85121 (Feb. 13, 2019), 84 FR 5157 (Feb. 20, 2019) (File No. SR-OCC-2015-02).

²⁵ See Securities Exchange Act Release No. 86725 (Aug. 21, 2019), 84 FR 44952 (Aug. 27, 2019) (File No. SR-OCC-2019-007).

²⁶ See Securities Exchange Act Release No. 34-78961 (Oct. 13, 2016), 81 FR 70786, 70808 (Oct. 13, 2016) (File No. S7-03-14).

²⁷ For example, OCC is proposing to update its market share and contract volume data, lists of the securities options exchanges and other markets for which OCC provides clearing services, organizational charts, and headcount numbers. OCC also proposes to replace the detailed overview of OCC's risk management program with a more concise summary.

²⁸ 12 U.S.C. 5464(b).

²⁹ 12 U.S.C. 5464(b).

³⁰ 17 CFR 240.17Ad-22(e)(3)(ii).

³¹ See Securities Exchange Act Release No. 83918 (Aug. 23, 2018), 83 FR 44091, 44095 (Aug. 29, 2018) (File No. SR-OCC-2017-021); Securities Exchange Release No. 83928 (Aug. 23, 2018), 83 FR 44109, 44113 (Aug. 29, 2018) (File No. SR-OCC-2017-810).

³² 17 CFR 240.17Ad-22(e)(3)(ii).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90683; File No. SR-NYSEArca-2020-94]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendments No. 1 and No. 2, To List and Trade Shares of the AdvisorShares Q Portfolio Blended Allocation ETF and AdvisorShares Q Dynamic Growth ETF Under NYSE Arca Rule 8.900-E

December 16, 2020.

I. Introduction

On October 20, 2020, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ a proposed rule change to list and trade shares (“Shares”) of the following funds under NYSE Arca Rule 8.900-E (Managed Portfolio Shares): AdvisorShares Q Portfolio Blended Allocation ETF and AdvisorShares Q Dynamic Growth ETF (each a “Fund” and, collectively, the “Funds”). The proposed rule change was published for comment in the **Federal Register** on November 9, 2020.⁴ On December 9, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed, and on December 10, 2020, the Exchange filed Amendment No. 2 to the proposed rule change.⁵ The Commission has received no comment letters on the proposal. This order approves the proposed rule change, as modified by Amendments No. 1 and No. 2.

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 No. 90323 (November 3, 2020), 85 FR 71366.

⁵ In Amendment No. 1, the Exchange: (1) Updated the status of the application for exemptive relief filed by the Trust (defined below); (2) modified its representation regarding the use of the Funds’ investments; (3) supplemented its description of the Funds’ NAVs; (4) disclosed the minimum number of shares that would be outstanding at the commencement of trading on the Exchange; and (5) made technical changes. In Amendment No. 2, the Exchange clarified its representation regarding the minimum number of Shares outstanding at the commencement of trading on the Exchange. Because Amendments No. 1 and No. 2 do not materially alter the substance of the proposed rule change, Amendment No. 2 is not subject to notice and comment. Both amendments are available on the Commission’s website at: <https://www.sec.gov/comments/sr-nysearca-2020-94/srnysearca202094.htm>.

II. Description of the Proposal⁶

NYSE Arca Rule 8.900-E(b)(1) requires the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Managed Portfolio Shares on the Exchange; thus, the Exchange submitted this proposal to list and trade the Shares. The Shares will be issued by the AdvisorShares Trust (“Trust”), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.⁷ The investment adviser to each Fund will be AdvisorShares Investments, LLC (“Adviser”). The investment sub-advisor to each Fund will be ThinkBetter, LLC. Foreside Fund Services, LLC (“Distributor”) will serve as the distributor of the Shares.

Each Fund’s holdings will conform to the permissible investments as set forth in the Exemptive Application and Exemptive Order. Pursuant to the Exemptive Order, the only permissible investments for the Funds are the following, all of which trade on a U.S. exchange contemporaneously with the Shares: Exchange-traded funds (“ETFs”), exchange-traded notes, exchange-listed common stocks, exchange-traded American Depositary Receipts, exchange-traded real estate investment trusts, exchange-traded commodity pools, exchange-traded metals trusts, exchange-traded currency trusts and exchange-traded futures, as well as cash and cash equivalents (short-term U.S. Treasury securities, government money market funds, and repurchase agreements).⁸

The AdvisorShares Q Portfolio Blended Allocation ETF is an actively managed ETF that is primarily a “fund of funds.” Its investment objective is to seek to maximize total return over the long-term. The Fund will invest in ETFs representing all asset classes, including, but not limited to, treasury bonds, municipal bonds, investment grade corporate bonds, high-yield U.S.

corporate bonds, U.S. and foreign equities, and commodities.

The AdvisorShares Q Dynamic Growth ETF is an actively managed ETF that is primarily a “fund of funds.” It will seek to achieve long-term growth by investing in ETFs representing all asset classes, including, but not limited to, treasury bonds, municipal bonds, investment grade corporate bonds, high-yield U.S. corporate bonds, U.S. and foreign equities, commodities, and volatility products.

Each Fund’s investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). Each Fund’s investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.*, 2X or -3X) of the Fund’s benchmark.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendments No. 1 and No. 2, to list and trade the Shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.⁹ In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,¹⁰ which requires, among other things, that the Exchange’s rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer.¹¹ The Adviser has implemented and will maintain a “fire wall” with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to a Fund’s portfolio and Creation Basket.¹² Any person related to the Adviser or the Trust who makes decisions pertaining to a Fund’s portfolio composition or that has access to information regarding a Fund’s portfolio or changes thereto or the

⁹ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ See Amendment No. 1, *supra* note 5, at 5.

¹² See *id.* See also NYSE Arca Rule 8.900-E(c)(5) (defining “Creation Basket”).

⁶ Additional information regarding the Fund, the Trust (defined *infra*), and the Shares can be found in Amendments No. 1 and No. 2, *supra* note 5, and the Registration Statement, *infra* note 7.

⁷ The Trust is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”). On September 11, 2020, the Trust filed a registration statement on Form N-1A under the Securities Act of 1933 and the 1940 Act for the Funds (File Nos. 333-157876 and 811-22110) (“Registration Statement”). The Commission issued an order granting exemptive relief to the Trust (“Exemptive Order”) under the 1940 Act on December 8, 2020 (Investment Company Act Release No. 31431). The Exemptive Order was granted in response to the Trust’s application for exemptive relief (“Exemptive Application”) (File No. 812-15146).

⁸ See Amendment No. 1, *supra* note 5, at 6, n.7.

Creation Basket will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio or changes thereto and the Creation Basket.¹³ Further, any person or entity, including an AP Representative,¹⁴ custodian, Reporting Authority, distributor, or administrator, who has access to information regarding the Fund's portfolio composition or changes thereto or its Creation Basket, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund portfolio or changes thereto or the Creation Basket.¹⁵ Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity must erect and maintain a "fire wall" between the person or entity and the broker-dealer with respect to access to information concerning the composition of and/or changes to such Fund's portfolio or Creation Basket.¹⁶

The Exchange states that trading in the Shares will be subject to the Exchange's surveillance procedures for derivative products, and that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.¹⁷ NYSE Arca Rule 8.900-E(b)(3) requires each Fund's investment adviser to, upon request by the Exchange, or the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, to make available the daily portfolio holdings of each series of Managed Portfolio Shares. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.¹⁸ Similarly, FINRA Rule 9910(d) generally prohibits FINRA employees from

disseminating or disclosing, for a purpose unnecessary to the performance of FINRA job responsibilities any nonpublic information obtained in the course of his or her employment.

The Commission also finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,¹⁹ which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. For the reasons discussed below, the Commission believes that the proposal is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading in the Shares when a reasonable degree of certain pricing transparency cannot be assured and, as such, the Commission believes the proposal is reasonably designed to maintain a fair and orderly market for trading the Shares. Specifically, as required by NYSE Arca Rule 8.900-E(d)(1)(B), the Exchange will obtain a representation from the issuer that the net asset value ("NAV") per Share of each Fund will be calculated daily and will be made available to all market participants at the same time.²⁰ Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services.²¹ Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association high-speed line.²² In addition, the Verified Intraday Indicative Value ("VIIV"), as defined in NYSE Arca Rule 8.900-E(c)(2),²³ will be

widely disseminated by the Reporting Authority and/or one or more major market data vendors in one second intervals during the Exchange's Core Trading Session and will be disseminated to all market participants at the same time.²⁴ Moreover, the Funds' website, www.advisorshares.com, will include a form of the prospectus for each Fund that may be downloaded. The Funds' website will include additional quantitative information updated on a daily basis, including, for each Fund, the prior Business Day's NAV, market closing price or mid-point of the bid/ask spread at the time of calculation of such NAV ("Bid/Ask Price"),²⁵ and a calculation of the premium and discount of the market closing price or Bid/Ask Price against the NAV. The website and information will be publicly available at no charge.²⁶

Additionally, the Exchange's rules regarding trading halts should help ensure the maintenance of fair and orderly markets for the Shares. Trading in the Shares will be subject to NYSE Arca Rule 8.900-E(d)(2)(C), which sets forth circumstances under which trading in the Shares will be halted. NYSE Arca Rule 8.900-E(d)(2)(C)(i) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.²⁷ Further, NYSE

issuance, redemption, or trading of Managed Portfolio Shares. A series of Managed Portfolio Shares may have more than one Reporting Authority, each having different functions.

²⁴ See Amendment No. 1, *supra* note 5, at 11–12.

²⁵ The Bid/Ask Price of the Shares will be the mid-point between the current national best bid and offer at the time of calculation of a Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Funds or their service providers. See Amendment No. 1, *supra* note 5, at 11, n.15.

²⁶ See *id.* at 11.

²⁷ The Exemptive Application provides that the Investment Company or their agent will request that the Exchange halt trading in the applicable series of Managed Portfolio Shares where: (i) The intraday indicative values calculated by the calculation engines differ by more than 25 basis points for 60 seconds in connection with pricing of the VIIV; or (ii) holdings representing 10% or more of a series of Managed Portfolio Shares' portfolio have become subject to a trading halt or otherwise do not have readily available market quotations. Any such requests will be one of many factors considered in

¹⁹ 15 U.S.C. 78k-1(a)(1)(C)(iii).

²⁰ See Amendment No. 1, *supra* note 5, at 14.

²¹ See *id.* at 11.

²² See *id.*

²³ NYSE Arca Rule 8.900-E(c)(2) defines the term "Verified Intraday Indicative Value" as the indicative value of a Managed Portfolio Share based on all of the holdings of a series of Managed Portfolio Shares as of the close of business on the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, priced and disseminated in one second intervals during the Core Trading Session by the Reporting Authority. NYSE Arca Rule 8.900-E(c)(8) defines the term "Reporting Authority" with respect to a particular series of Managed Portfolio Shares as the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Managed Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges), as the official source for calculating and reporting information relating to such series, including, but not limited to, the NAV, the VIIV, or other information relating to the

¹³ See Amendment No. 1, *supra* note 5, at 5.

Furthermore, the Exchange represents that in the event that (a) the Adviser or any sub-adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, the Adviser will implement and maintain a fire wall with respect to personnel of the broker-dealer or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio and/or Creation Basket. See *id.*

¹⁴ See NYSE Arca Rule 8.900-E(c)(5) (defining "AP Representative").

¹⁵ See Amendment No. 1, *supra* note 5, at 5–6. See also NYSE Arca Rule 8.900-E(b)(5).

¹⁶ See Amendment No. 1, *supra* note 5, at 6. See also NYSE Arca Rule 8.900-E(b)(5).

¹⁷ See Amendment No. 1, *supra* note 5, at 14.

¹⁸ See *id.*

Arca Rule 8.900–E(d)(2)(C)(ii) provides that, if the Exchange becomes aware that: (i) The VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (ii) the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (iii) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (iv) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the applicable Exemptive Order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), it will halt trading in such series until such time as the VIIV, the NAV, or the holdings are available, as required.

In support of this proposal, the Exchange has also made the following representations:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.900–E, as well as all terms in the Exemptive Order.²⁸

(2) The Exchange states that a minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange.²⁹

(3) The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.³⁰

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders ("ETP Holders") in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares.³¹

order to determine whether to halt trading in a series of Managed Portfolio Shares, and the Exchange retains sole discretion in determining whether trading should be halted. As provided in the Exemptive Application, each series of Managed Portfolio Shares would employ a pricing verification agent to continuously compare two intraday indicative values during regular trading hours in order to ensure the accuracy of the VIIV. See *id.* at 13, n.19.

²⁸ See *id.* at 14.

²⁹ See Amendment No. 2, *supra* note 5, at 3.

³⁰ See Amendment No. 1, *supra* note 5, at 13.

³¹ The Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares; (2) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the VIIV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) trading

(5) FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, will communicate as needed regarding trading in the Shares and certain exchange-traded instruments with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG"), and FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, may obtain trading information regarding trading such securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and certain exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.³²

(6) The Exchange represents that, for initial and/or continued listing, each Fund will be in compliance with Rule 10A–3 under the Act.³³

This approval order is based on all of the Exchange's statements and representations set forth above and in Amendments No. 1 and No. 2.

Additionally, the Exchange states that all statements and representations made in its proposal regarding (a) the description of the portfolio or reference assets, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules shall constitute continued listing requirements for listing the Shares on the Exchange, as provided under NYSE Arca Rule 8.900–E(b)(1). The issuer of the Shares will be required to represent to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).³⁴

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendments No. 1 and No. 2, is consistent with Section 6(b)(5) of the Act³⁵ and Section 11A(a)(1)(C)(iii) of the Act³⁶ and the rules and regulations

information; and (6) that the portfolio holdings of the Shares are not disclosed on a daily basis. See *id.* at 14–15.

³² See *id.* at 14.

³³ See *id.* at 6, n.6.

³⁴ See *id.* at 14.

³⁵ 15 U.S.C. 78f(b)(5).

³⁶ 15 U.S.C. 78k–1(a)(1)(C)(iii).

thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³⁷ that the proposed rule change (SR–NYSEArca–2020–94), as modified by Amendments No. 1 and No. 2, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁸

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020–28147 Filed 12–21–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90689]

Order Granting Temporary Exemptive Relief, Pursuant to Section 36 of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 608(e) of Regulation NMS Under the Exchange Act, From Section 8.1.1 and Section 8.1.2 of Appendix D of the National Market System Plan Governing the Consolidated Audit Trail

December 16, 2020.

I. Introduction

By letter dated December 1, 2020 ("Participant Letter"), BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc. ("FINRA"), Investors Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, Miami International Securities Exchange LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the "Participants") request that the Securities and Exchange Commission (the "Commission"), pursuant to the Commission's authority under Section 36 of the Exchange Act¹ and Rule 608(e) of Regulation NMS under the Exchange Act,² grant exemptive relief from the national market system plan governing the

³⁷ 15 U.S.C. 78s(b)(2).

³⁸ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78mm.

² 17 CFR 242.608(e).

consolidated audit trail (the “CAT NMS Plan”).³ Specifically, the Participants request that the Commission provide temporary exemptive relief from certain requirements of the CAT NMS Plan that relate to the online targeted query tool (“OTQT”) described in Section 6.10(c)(i) of the CAT NMS Plan.⁴

For the reasons set forth below, this Order grants the Participants’ request for temporary exemptive relief from the above-described provisions of the CAT NMS Plan, subject to certain conditions.

II. Request for Relief

In their letter, the Participants explain that Section 6.10(c)(i) of the CAT NMS Plan requires the Plan Processor⁵ to provide Participants and the Commission with access to all CAT Data⁶ stored in the Central Repository⁷ through three different methods: (1) The OTQT, (2) user-defined direct queries, and (3) and bulk extracts.⁸ Sections 8.1.1 and 8.1.2 of Appendix D of the CAT NMS Plan set forth certain functionality requirements for the OTQT from which the Participants seek relief.

³ The Commission approved the CAT NMS Plan, as modified, on November 15, 2016. See Securities Exchange Act Release Nos. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (“CAT NMS Plan Approval Order”). The CAT NMS Plan functions as the limited liability company agreement of the jointly owned limited liability company formed under Delaware state law through which the Participants conduct activities related to the consolidated audit trail (the “Company”).

⁴ See *id.* at Appendix D, Section 8.1.1. See also Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission, dated December 1, 2020, available at <https://catnmsplan.com/sites/default/files/2020-12/12.01.20-CAT-Exemption-Request-OTQT.pdf> (“Participant Letter”). The Participants state that this exemptive relief request amends and replaces in its entirety the request previously submitted to the Commission on November 16, 2020. See *id.* at 2 n.5.

⁵ “Plan Processor” is a defined term under the CAT NMS Plan and means “the Initial Plan Processor or any other Person selected by the Operating Committee pursuant to SEC Rule 613 and Sections 4.3(b)(i) and 6.1, and with regard to the Initial Plan Processor, the Selection Plan, to perform the CAT processing functions required by SEC Rule 613 and set forth in this Agreement.” See CAT NMS Plan, *supra* note 3, at Section 1.1.

⁶ “CAT Data” is a defined term under the CAT NMS Plan and means “data derived from Participant Data, Industry Member Data, SIP Data, and such other data as the Operating Committee may designate as “CAT Data” from time to time.” See *id.*

⁷ “Central Repository” is a defined term under the CAT NMS Plan and means “the repository responsible for the receipt, consolidation, and retention of all information reported to the CAT pursuant to SEC Rule 613 and this Agreement.” See *id.*

⁸ See Participant Letter, *supra* note 4, at 2; see also CAT NMS Plan, *supra* note 3, at Section 6.10(c)(i).

A. Error Correction Rate Functionality

The Participants state that the OTQT must “provide authorized users with the ability to retrieve CAT Data via an online query screen that includes the ability to choose from a variety of pre-defined selection criteria,”⁹ including, among other things, the “CAT Reporter correction rate over time.”¹⁰ The Participants request temporary exemptive relief from compliance with the requirement in Section 8.1.1 of Appendix D of the CAT NMS Plan that authorized users must be able to conduct targeted queries through the OTQT with respect to the CAT Reporter correction rate over time (the “Error Correction Rate Functionality”).¹¹ The Participants state that the Plan Processor needs additional time to incorporate the Error Correction Rate Functionality to the OTQT.¹² Specifically, the Participants believe that regulators will be able to perform searches with respect to the CAT Reporter correction rate over time by April 30, 2021.¹³ The Participants therefore request that any exemptive relief granted by the Commission with respect to the Error Correction Rate Functionality extend until April 30, 2021.¹⁴

To support their request, the Participants state that the Participants and the Commission currently have access to “a variety of fields of processed CAT Data and/or validated (unlinked) data” via existing Plan Processor tools called DIVER and MIRS.¹⁵ The Participants further represent that, by December 2020, the Participants and the Commission will have access to information regarding the CAT Reporter correction rate over time for “compliance review purposes” either through the CAT Reporter Portal or through another existing Plan Processor tool called BDSQL,¹⁶ such

⁹ See CAT NMS Plan, *supra* note 3, at 6.10(c)(i)(A).

¹⁰ See *id.* at Appendix D, Section 8.1.1. See also Participant Letter, *supra* note 4, at 2.

¹¹ See Participant Letter, *supra* note 4, at 2–3. The Participants describe this functionality as “Error Correction Time Functionality,” but the Commission believes that the term “Error Correction Rate Functionality” more accurately describes the functionality.

¹² See Participant Letter, *supra* note 4, at 3.

¹³ See *id.* at 3. The Participants note that this schedule would align the release of the Error Correction Rate Functionality with other functionality releases that will add data for OTQT queries concerning “the new equity exchange order book and volume concentration using equity exchange data.” See *id.* at 3.

¹⁴ See *id.* at 2.

¹⁵ See *id.* at 3. The Participants note that “DIVER” and “MIRS” are FINRA CAT’s versions of the OTQT. See *id.* at 2 n.6

¹⁶ “BDSQL” is the name used by FINRA to describe its proprietary user-defined direct query tool.

that providing the CAT Reporter correction rate over time through the OTQT would in many ways be duplicative.¹⁷

B. Search Return Functionality and Simultaneous Query Functionality

The Participants state that Section 8.1.2 of Appendix D of the CAT NMS Plan sets forth various performance requirements for OTQT searches. One of these requirements sets forth timeframes in which results must be returned for various types of queries (“Search Return Functionality”).¹⁸ Another requirement set forth in Section 8.1.2 of Appendix D is that the OTQT must “be able to process up to 300 simultaneous query requests with no performance degradation” (“Simultaneous Query Functionality”).¹⁹

According to the Participant Letter, the OTQT provided by the Plan Processor is based on a data mart model that “supports multi-day/month/year queries on any field in the CAT and can return all records to the regulatory user for further filtering and analytics.”²⁰ The Participants state that this model has been used by FINRA in its surveillance and market oversight operations for approximately five years that “has proven to be an effective and reliable surveillance tool that produces timely results for regulatory use cases.”²¹ “[I]f the user requests data for a single symbol during a specified time period on a single trade date, all data for that date and symbol (hundreds of millions of records) must be scanned to locate the specific records requested.”²² A data mart is then created which allows a regulatory user to perform any subsequent filtering and analysis.²³ The Participants state that, once a data mart has been created, the results from any subsequent filtering and analysis are returned “well within the timeframes set forth in Section 8.1.2 of Appendix

¹⁷ See *id.* at 3.

¹⁸ See *id.* at 3. See also CAT NMS Plan, *supra* note 3, at Appendix D, Section 8.1.2 (setting out the following timeframes: (1) “Within 1 minute for all trades and related lifecycle events for a specific Customer or CAT Reporter with the ability to filter by security and time range for a specified time window up to and including an entire day,” (2) “within 30 minutes for all trades and related lifecycle events for a specific Customer or CAT Reporter in a specified date range (maximum 1 month),” and (3) “within 6 hours for all trades and related lifecycle events for a specific Customer or CAT Reporter in a specified date range (maximum 12-month duration from the most recent 24 months)”).

¹⁹ See Participant Letter, *supra* note 4, at 4. See also CAT NMS Plan, *supra* note 3, at Section 8.1.2.

²⁰ See Participant Letter, *supra* note 4, at 4.

²¹ See *id.* at 4–5.

²² See *id.* at 4.

²³ See *id.*

D.”²⁴ In some instances, however, the Participants acknowledge that the amount of time required by the OTQT to populate a data mart is longer than the timeframes set forth in the CAT NMS Plan.²⁵ They state, for example, that “[i]t typically currently takes up to four minutes for queries for a single day involving equities trades and up to six minutes for options trade queries for a single day for the OTQT to create and return a data mart in response to targeted search requests with a required response time of one minute under Section 8.1.2 of Appendix D.”²⁶

The Participants therefore request temporary exemptive relief from compliance with the Search Return Functionality and the Simultaneous Query Functionality requirements of Section 8.1.2 of Appendix D of the CAT NMS Plan until July 31, 2023.²⁷ During the period of the exemption, the Participants assert that they will “continue to assess the performance of the OTQT and look for opportunities to further reduce the time that it takes to build the data mart in response to OTQT queries on a consistent basis.”²⁸ In this respect, the Participants represent that they have been working with the Plan Processor to reduce the time that it takes to populate an OTQT data mart.²⁹ They explain that the Plan Processor runs “multiple benchmark queries each day that are designed to measure system performance given CAT Data sets and query usage, including the times to create data marts for various types of queries and responses during simultaneous querying,” and shares its results with the Participants and the Commission to identify areas for potential performance enhancements.³⁰ The Participant Letter further states that such efforts have already reduced the

time required to populate data marts in the OTQT.³¹

III. Discussion

As the Participants note, Sections 6.10(c) and Appendix D, Section 8.1.1 of the CAT NMS Plan require the OTQT to “provide authorized users with the ability to retrieve CAT Data via an online query screen that includes the ability to choose from a variety of pre-defined selection criteria,”³² including, among other things, the “CAT Reporter correction rate over time” (or, the “Error Correction Rate Functionality”).³³ Section 8.1.2 of Appendix D of the CAT NMS Plan further sets forth minimum performance requirements for OTQT searches that include equities and options trade data only in the search criteria, including returning results within the following timeframes: (1) “within 1 minute for all trades and related lifecycle events for a specific Customer or CAT Reporter with the ability to filter by security and time range for a specified time window up to and including an entire day”; (2) “within 30 minutes for all trades and related lifecycle events for a specific Customer or CAT Reporter in a specified date range (maximum 1 month)”; and (3) “within 6 hours for all trades and related lifecycle events for a specific Customer or CAT Reporter in a specified date range (maximum 12-month duration from the most recent 24 months).”³⁴

The timeframe for “returning results” in Section 8.1.2 of Appendix D (*i.e.*, the time to “return results” or the “Search Return Functionality”) begins with the submission of the query in the OTQT and ends with the return of the results of the query to the user; it does not begin with the population of a data mart. “Returning results” captures the entirety of the time it takes to generate results in response to the user’s initial query. If the query response time requirements for “returning results” begins at a time later than the time the query was submitted, query response times would fail to fully reflect the total time necessary for the OTQT to generate results, and display them to the user.³⁵

This would be inconsistent with the plain meaning of the CAT NMS Plan language concerning query response time requirements and would undermine the purpose of the performance standard.

Appendix D, Section 8.1.2 of the CAT NMS Plan sets forth requirements for “related lifecycle events” and “complex queries.” “Related lifecycle events” are covered by the 1 minute, 30 minute, and 6 hour requirements in the CAT NMS Plan set forth above,³⁶ whereas Appendix D, Section 8.1.2 of the CAT NMS Plan separately provides that “[f]or the complex queries that either scan large volumes of data (*e.g.*, multiple trade dates) or return large result sets ($\leq 1M$ records), the response time must generally be available within 24 hours of the submission of the request.”³⁷ Under the CAT NMS Plan, therefore, queries for “related lifecycle events” are not “complex queries” and thus the 24 hour requirement does not apply. If queries including “related lifecycle events” were “complex queries,” then any query that included “related lifecycle events” would be subject to the 24 hour requirement. This is not consistent with the language of the CAT NMS Plan. Rather, based on the language of the CAT NMS Plan, “related lifecycle events” are included in, and thus are subject to, the 1 minute, 30 minute, and 6 hour requirements for OTQT searches that include equities and options trade data only as search criteria. Interpreting any query that includes “related lifecycle events” as a “complex query” contradicts the presence of “related lifecycle events” in the CAT NMS Plan language setting forth the 1 minute, 30 minute, and 6 hour requirements.

Appendix D, Section 8.1.2 also requires that “[t]he online targeted query tool must be able to process up to 300 simultaneous query requests with no performance degradation” (or, the “Simultaneous Query Functionality”).³⁸ As stated above, the timeframe for “returning results” begins with the submission of the query in the OTQT and ends with the return of the results of the query to the user. The Commission understands that the Participants have not yet determined the meaning of “performance degradation,”

8.1.1. Since the CAT NMS Plan requires the OTQT to record the date and time the query request is submitted, the query response times set forth in the CAT NMS Plan should be based on this information.

³⁶ See, *e.g.*, note 34 *supra*.

³⁷ See CAT NMS Plan, *supra* note 3, at Appendix D, Section 8.1.2.

³⁸ See CAT NMS Plan, *supra* note 3, at Appendix D, Section 8.1.1.

²⁴ See *id.* With respect to complex queries, the Participants state that the OTQT returns data marts to regulatory users “well before” the 24-hour time limit set forth in the CAT NMS Plan. See *id.*; see also CAT NMS Plan, *supra* note 3, at Appendix D, Section 8.1.2. However, the Participants also state that “a request for related lifecycles makes a query complex.” See Participant Letter, *supra* note 4, at 5 n.18. The Commission does not agree that a request for related lifecycles makes a query complex. See Part III *infra* for further discussion of the OTQT requirements set forth in the CAT NMS Plan. In addition, and as discussed in Part III *infra*, the Commission believes that the timeframe for “returning results” in Section 8.1.2 of Appendix D of the CAT NMS Plan begins with the submission of the query in the OTQT and ends with the return of the results of the query to the user inclusive of related linkages.

²⁵ See Participant Letter, *supra* note 4, at 4.

²⁶ See *id.* at 4–5.

²⁷ See *id.* at 6.

²⁸ See *id.*

²⁹ See *id.* at 5.

³⁰ See *id.*

³¹ See *id.*

³² See CAT NMS Plan, *supra* note 3, at 6.10(c)(i)(A).

³³ See *id.* at Appendix D, Section 8.1.1.

³⁴ See *id.* at Appendix D, Section 8.1.2.

³⁵ Appendix D, Section 8.1.1 requires that the OTQT “must provide a record count of the result set, the date and time the query request is submitted, and the date and time the result set is provided to the users.” It also requires that the OTQT must “log submitted queries and parameters used in the query, the user ID of the submitter, the date and time of the submission, as well as the delivery of results.” See *id.* at Appendix D, Section

but the Commission believes “performance degradation” on query requests should be based on the ability of the OTQT to meet the above-described timeframes set forth by Appendix D, Section 8.1.2 of the CAT NMS Plan.³⁹ Performance degradation is a deterioration in performance as measured according to a certain standard. The Commission believes it is reasonable to assess “performance degradation” based on a measurement of performance against the CAT NMS Plan and service level agreement (“SLA”) requirements,⁴⁰ because the Participants are already required to meet these standards. Thus, if the OTQT is able to process up to 300 simultaneous query requests while meeting the CAT NMS Plan and SLA requirements, there would be no “performance degradation.”⁴¹

Section 36 of the Exchange Act grants the Commission the authority, with certain limitations, to “conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.”⁴² Rule 608(e) of Regulation NMS under the Exchange Act authorizes the Commission to exempt, either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, from the provisions of the rule if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system.⁴³

The Commission believes that, pursuant to Section 36 of the Exchange Act, the temporary exemptive relief requested by the Participants is appropriate in the public interest and consistent with the protection of investors, and that, pursuant to Rule 608(e) under the Exchange Act, the temporary exemptive relief requested by the Participants is consistent with the public interest, the protection of

investors, the maintenance of fair and orderly markets and the removal of impediments to, and the perfection of the mechanisms of, a national market system. The OTQT is an important regulatory tool required by the CAT NMS Plan; it is one of only three access methods that regulators have to query CAT Data, and it is the only method that can be used by regulatory staff without programming experience to directly access the CAT using tools provided by the Plan Processor. Thus, it is consistent with the public interest, the protection of investors, and the maintenance of fair and orderly markets that all facets of the OTQT are implemented consistent with the CAT NMS Plan. The Commission understands that implementing the above-described functionality will require software development and architectural changes to the existing OTQT. Providing the requested temporary exemptive relief will give the Participants additional time to properly implement the above-described functionality. The Commission believes that the long-term benefits of allowing the Participants sufficient time to correctly implement these facets of the OTQT outweigh any concerns regarding the impact of delayed implementation.

The Commission also believes that providing the requested exemptive relief on the schedule proposed by the Participants is appropriate. With respect to the Error Correction Rate Functionality requirements, the Participants request that temporary exemptive relief be granted until April 30, 2021. This schedule will align the release of the Error Correction Rate Functionality with another planned functionality release,⁴⁴ while still providing a certain deadline that will encourage progress towards the implementation of the required OTQT functionality. The Commission believes that such alignment will enable the SROs to leverage planned functionality release activities—including user acceptance testing, documentation, and approvals—for the release of the Error Correction Rate Functionality. Moreover, the Commission believes that granting the requested exemptive relief on the schedule proposed by the Participants would have only a limited impact on regulators’ utilization of the OTQT. As stated in the Participant Letter, the Participants and the Commission currently have access to a variety of fields of processed CAT Data

and/or validated (unlinked) data via the OTQT,⁴⁵ and information regarding the CAT Reporter correction rate over time will likewise be available for compliance review purposes through the CAT Reporter Portal and/or the Plan Processor’s BDSQL tool by December 2020.⁴⁶

With respect to the Search Return Functionality and the Simultaneous Query Functionality requirements, the Participants request that temporary exemptive relief be granted until July 31, 2023. The Commission believes this deadline will give the Participants and the Plan Processor sufficient time to develop the necessary systems and technology.

The Commission is also conditioning this temporary exemptive relief on the following:

First, as a condition to this exemptive relief, the Participants would be required to satisfy all other requirements of the Full Implementation of Core Equity Reporting Requirements milestone by December 31, 2020.⁴⁷

Second, to better enable the Commission to monitor progress towards the reduction of query response times, the Participants would be required, as a condition to this exemptive relief, to perform the following benchmark queries to measure, on a monthly basis, the timeframes in which the OTQT returns results for the following types of queries: (1) All trades and related lifecycle linkages and/or events for a specific Customer or CAT Reporter with the ability to filter by security and time range for a specified time window up to and including an entire day; (2) all trades and related lifecycle linkages and/or events for a specific Customer or CAT Reporter in a specified date range

⁴⁵ See *id.* at 3.

⁴⁶ See *id.* at 3. However, the Error Correction Rate Functionality is still critical, as it will facilitate a regulatory user’s ability to determine the quality of CAT Data for regulatory use (versus compliance review purposes).

⁴⁷ See note 13 *supra*. To the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, including requirements relating to Error Correction Rate Functionality, Search Return Functionality, and Simultaneous Query Functionality, such requirement shall not be included in the requirements for the Full Implementation of Core Equity Reporting Requirements milestone, provided that the conditions of the exemption are satisfied. However, to meet the Full Implementation of Core Equity Reporting Requirements milestone, all other functionality required by Section 8.1.1 and Section 8.1.2 of Appendix D of the CAT NMS Plan must incorporate the relevant equities transaction data and be available to Participants and to the Commission. See CAT NMS Plan, *supra* note 3, at Section 1.1 (“Full Implementation of Core Equity Requirements” definition).

³⁹ See, e.g., notes 34–37 and associated text *supra*.

⁴⁰ See CAT NMS Plan, *supra* note 3, at Appendix D, Section 8.5 (requiring the establishment of SLAs for “query performance and response times”).

⁴¹ The OTQT is required at all times to meet the CAT NMS Plan requirement to process up to 300 simultaneous query requests with no performance degradation.

⁴² 15 U.S.C. 78mm(a)(1).

⁴³ 17 CFR 242.608(e).

⁴⁴ This release will include, among other things, industry member reporting of new equity exchange order book and volume concentration data and expanded OTQT functionality related to this data. See *id.* at 3.

(maximum 1 month); and (3) all trades and related lifecycle linkages and/or events for a specific Customer or CAT Reporter in a specified date range (maximum 12-month duration from the most recent 24 months). For each benchmark query, the Participants should provide the average, standard deviation, maximum, and minimum timeframes in which the OTQT returns results, as the Commission believes it is important to capture not only information regarding the average timeframes in which the OTQT returns results, but also information regarding the variability and consistency of the timeframes in which the OTQT returns results. In addition, for each benchmark query, the Participants should use all available CAT Data, including Participant data submitted by FINRA and national securities exchanges, data submitted by Industry Members,⁴⁸ and other data. Finally, the Participants should provide monthly reports regarding any actual queries done by regulatory users with the average, standard deviation, maximum, and minimum timeframes in which the OTQT returns results for actual queries. All of the above-described measurements should be provided to the Operating Committee on a monthly basis and should be clearly set forth as factual indicators in the Quarterly Progress Reports required by Section 6.6(c) of the CAT NMS Plan. This condition will permit the Commission and the public to track the Participants' progress towards meeting the above-described CAT NMS Plan requirements and providing regulators with an effective OTQT by the July 31, 2023 deadline.⁴⁹

Third, to better enable the Commission to monitor their progress towards meeting the parallel processing requirements of the CAT NMS Plan, the Participants would also be required, as a condition to this exemptive relief, to measure on a monthly basis, using benchmark queries, the time it takes to provide results to users from OTQT searches that are run concurrently with either 50–100, 100–200, or 200–300 queries, and to evaluate whether such results otherwise meet current CAT NMS Plan and SLA performance requirements for targeted and complex

queries. These measurements should be provided to the Operating Committee on a monthly basis and should be clearly set forth as factual indicators in the Quarterly Progress Reports required by Section 6.6(c) of the CAT NMS Plan.

IV. Conclusion

Accordingly, *it is hereby ordered*, pursuant to Section 36(a)(1) of the Exchange Act⁵⁰ and Rule 608(e) under the Exchange Act,⁵¹ that the Commission grants the Participants' request for temporary exemptive relief, as set forth in the Participant Letter and subject to the conditions described herein, from the requirements in Section 8.1.1 of Appendix D of the CAT NMS Plan with respect to the Error Correction Rate Functionality until April 30, 2021 and from the requirements in Section 8.1.2 of Appendix D of the CAT NMS Plan with respect to the Search Return Functionality and the Simultaneous Query Functionality until July 31, 2023.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–28153 Filed 12–21–20; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 11284]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: “Fotoclubismo: Brazilian Modernist Photography, 1946–1964” Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition “Fotoclubismo: Brazilian Modernist Photography, 1946–1964” at The Museum of Modern Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: section2459@state.gov). The mailing address is U.S. Department of State,

L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Marie Therese Porter Royce,

Assistant Secretary, Educational and Cultural Affairs, Department of State.

[FR Doc. 2020–28165 Filed 12–21–20; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2020–0997]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 21, 2020.

DATES: Written comments should be submitted by January 21, 2021.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to oir_submission@omb.eop.gov, or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

⁴⁸ “Industry Member” is a defined term under the CAT NMS Plan and means “means a member of a national securities exchange or a member of a national securities association.” See CAT NMS Plan, *supra* note 3, at Section 1.1.

⁴⁹ Pursuant to Section 6.6(c)(ii) of the CAT NMS Plan, Quarterly Progress Reports must be filed with the Commission and made publicly available on each SRO’s website or collectively on the CAT NMS Plan website.

⁵⁰ 15 U.S.C. 78mm(a)(1).

⁵¹ 17 CFR 242.608(e).

FOR FURTHER INFORMATION CONTACT:

Sandy Liu by email at: sandy.liu@faa.gov; phone: 202-267-4748

SUPPLEMENTARY INFORMATION:

The collection involves the noise certification regulations of 14 CFR part 36 for aircraft. This includes information collection requirements for the noise certification of subsonic aircraft—jet airplanes and subsonic transport category large airplanes, small propeller driven airplanes and rotorcraft. The information collected are the results of noise certification tests that demonstrate compliance with 14 CFR part 36. The original information collection was implemented to show compliance in accordance with the Aircraft Noise Abatement Act of 1968; that statute is now part of the overall codification of the FAA's regulatory authority over aircraft noise in 49 U.S.C. 44715. The noise compliance report is used by the FAA in making a finding that the airplane is in noise compliance with the regulations. These compliance reports are required only once when an applicant wants to certificate an aircraft type. Without this data collection, the FAA would be unable to make the required noise certification compliance finding.

OMB Control Number: 2120-0659.

Title: Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes.

Form Numbers: None.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 21, 2020 (85 FR 67089). The aircraft noise information collected are the results of noise certification tests that demonstrate compliance with 14 CFR part 36. The original information collection was implemented to show compliance in accordance with the Aircraft Noise Abatement Act of 1968; that statute is now part of the overall codification of the FAA's regulatory authority over aircraft noise in 49 U.S.C. 44715. For the recent NPRM, the FAA proposes to revise this PRA collection to include noise test data collections of supersonic aircraft, for an increased estimate of 16 total noise certification projects per year. Each applicant's collected information is incorporated into a noise compliance report that is provided to and approved by the FAA. The noise compliance report is used by the FAA in making a finding that the airplane is in noise compliance with the regulations. These compliance reports are required only once when an

applicant wants to certificate an aircraft type. Without this data collection, the FAA would be unable to make the required noise certification compliance finding.

Respondents: Aircraft manufacturer/applicant seeking type certification;

Frequency: Estimated 14 total applicants per year;

Estimated Average Burden per Response: Estimated 200 hours per applicant for the compliance report; and
Estimated Total Annual Burden: \$25,000 per applicant or cumulative total \$350,000 per year for 14 applicants.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on December 17, 2020.

Sandy Liu,

Engineer, Office of Environment and Energy, Noise Division (AEE-100).

[FR Doc. 2020-28225 Filed 12-21-20; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration**

[Docket No. FAA-2020-0862]

COVID-19 Related Relief Concerning Operations at Chicago O'Hare International Airport, John F. Kennedy International Airport, Los Angeles International Airport, Newark Liberty International Airport, New York LaGuardia Airport, Ronald Reagan Washington National Airport, and San Francisco International Airport for the Summer 2021 Scheduling Season

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

ACTION: Notice of proposed extension of a limited, conditional waiver of the minimum slot usage requirement.

SUMMARY: Due to ongoing coronavirus disease 2019 (COVID-19)-related impacts on demand for air travel, the FAA seeks comment on providing additional relief at slot-controlled and designated International Air Transport

Association (IATA) Level 2 airports in the United States with regard to the Summer 2021 scheduling season ending on October 30, 2021. Two options are presented for comment: Continuation of the existing relief that the FAA has provided at these airports through March 27, 2021, on the same terms currently in effect; and a proposal by the Worldwide Airport Slot Board (WASB), which includes representatives of IATA, the Airports Council International-World (ACI World), and the Worldwide Airport Coordinators Group (WWACG). The FAA invites comment on these two different approaches for the Summer 2021 scheduling season and anticipates subsequently providing notice of its final decision. Commenters may also propose different or additional options for relief. The FAA further invites comment on whether the proposal adopted by the FAA should make relief available for the full duration of the Summer 2021 scheduling season, which ends on October 30, 2021.

DATES: Submit comments on or before December 29, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001; telephone: (800) 647-5527, or (202) 366-9826. You must identify FAA Docket Number FAA-2020-0862 at the beginning of your comments. You may also submit comments through the internet at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Bonnie Dragotto, Office of the Chief Counsel, Regulations Division, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-3808; email: bonnie.dragotto@faa.gov.

SUPPLEMENTARY INFORMATION:

Current Slot Usage and Related Relief Due to COVID-19

In a notice published in the **Federal Register** on October 7, 2020 (85 FR 63335),¹ the FAA made available to slot holders at John F. Kennedy International Airport (JFK), New York LaGuardia Airport (LGA), and Ronald

¹ The FAA has authority for developing "plans and policy for the use of the navigable airspace and for assigning "by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace." 49 U.S.C. 40103(b)(1). The FAA manages slot usage requirements under the authority of 14 CFR 93.227 at DCA and under the authority of Orders at JFK and LGA. See Operating Limitations at John F. Kennedy International Airport, 85 FR 58258 (Sep. 18, 2020); Operating Limitations at New York LaGuardia Airport, 85 FR 58255 (Sep. 18, 2020).

Reagan Washington National Airport (DCA) a waiver from the minimum slot usage requirements due to continuing COVID-19 impacts through March 27, 2021,² subject to each of the following conditions:

(1) All slots not intended to be operated must be returned at least four weeks prior to the date of the FAA-approved operation to allow other carriers an opportunity to operate these slots on an *ad hoc* basis without historic precedence.

(2) The waiver does not apply to slots newly allocated for initial use during the Winter 2020/2021 season. New allocations meeting minimum usage requirements remain eligible for historic precedence. The waiver does not apply to historic in-kind slots within any 30-minute or 60-minute time period, as applicable, in which a carrier seeks and obtains a similar new allocation (*i.e.*, arrival or departure, air carrier or commuter, if applicable).

(3) The waiver does not apply to slots newly transferred on an uneven basis (*i.e.*, via one-way slot transaction/lease) after October 15, 2020, for the duration of the transfer. Slots transferred prior to this date may benefit from the waiver if all other conditions are met. Slots granted historic precedence for subsequent seasons based on this relief are not eligible for transfer if the slot holder ceases all operations at the airport.

Additionally, an exception may be granted and the waiver therefore applied, if a government's official action (*e.g.*, travel prohibition or other restriction due to COVID-19), prevents the operation of a flight on a particular route that a carrier otherwise intended to operate. This exception is being administered by the FAA in coordination with the Office of the Secretary of Transportation (OST). This exception applies under extraordinary circumstances only in which a carrier is able to demonstrate an inability to operate a particular flight or comply with the conditions of the proposed waiver due to an official governmental prohibition or restriction.

In addition, at designated IATA Level 2 U.S. airports—Chicago O'Hare

² Although DCA and LGA are not designated as IATA Level 3 slot-controlled airports given that these airports primarily serve domestic destinations, the FAA limits operations at these airports via rules at DCA and an Order at LGA that are equivalent to IATA Level 3. See FN 1. The FAA reiterates that the relief provided in the March 16, 2020, notice (85 FR 15018), the April 17, 2020, notice (85 FR 21500), and the October 7, 2020, notice (85 FR 63335), extends to all allocated slots, including slots allocated by exemption. As proposed in this notice, either option would similarly apply to all allocated slots, including slots allocated by exemption.

International Airport (ORD), Newark Liberty International Airport (EWR), Los Angeles International Airport (LAX), and San Francisco International Airport (SFO)—the FAA determined to extend through March 27, 2021 its policy for prioritizing flights canceled due to COVID-19 for purposes of establishing a carrier's operational baseline in the next corresponding season, subject to the following conditions:

(1) All schedules as initially submitted by carriers and approved by the FAA and not intended to be operated must be returned at least four weeks prior to the date of the FAA-approved operation to allow other carriers an opportunity to operate these times on an *ad hoc* basis without historic precedence.

(2) The priority for FAA schedules approved for Winter 2020/2021 does not apply to net-newly approved operations for initial use during the Winter 2020/2021 season. New approved times would remain eligible for priority consideration in Winter 2021/2022 if actually operated in Winter 2020/2021 according to established processes.

Consistent with the policy for slot-controlled airports, limited exceptions may be granted from either or both of these conditions at Level 2 airports under extraordinary circumstances if a government's official action (*e.g.*, travel prohibition or other restriction due to COVID-19), prevents the operation of a flight on a particular route that a carrier otherwise intended to operate. This exception applies under extraordinary circumstances only in which a carrier is able to demonstrate an inability to operate a particular flight or comply with the conditions of the proposed waiver due to an official governmental prohibition or restriction. If the exception is determined not to apply, carriers are expected to meet the conditions for relief or operate consistent with standard expectations for the Level 2 environment. This limited, conditional relief remains available through March 27, 2021.

Current COVID-19 Situation

Since the FAA's October 7, 2020 notice was published, COVID-19 has continued to cause disruption globally and within the United States. The World Health Organization (WHO) reports COVID-19 cases in more than 200 countries, areas, and territories worldwide. For the week ending December 13, 2020, the WHO reported approximately 4.3 million new COVID-19 cases and over 75,000 new deaths, bringing the cumulative total to 70.5 million reported COVID-19 cases and

1.6 million deaths globally since the start of the public health emergency.³

International travel advisories issued by the U.S. Department of State's Global Health Advisory remain in effect worldwide, including designations of either Level 3—Reconsider Travel or Level 4—Do Not Travel for more than 175 destinations.⁴ The U.S. Department of State advises that challenges to any international travel at this time may include mandatory quarantines, travel restrictions, and closed borders. The U.S. Department of State notes further that foreign governments may implement restrictions with little notice, even in destinations that were previously low risk.⁵ Accordingly, the U.S. Department of State warns Americans choosing to travel internationally that their trip may be disrupted severely and it may be difficult to arrange travel back to the United States.⁶

Moreover, international travel recommendations from the Centers for Disease Control and Prevention (CDC) categorize nearly 175 countries, areas, and territories worldwide under Level 4—COVID-19 Risk Is Very High.⁷ Within the United States, the CDC reported 16,756,581 total cases and 306,427 deaths from COVID-19 as of December 17, 2020, with 1,485,010 new cases in the prior seven days.⁸ The CDC advises prospective domestic travelers to consider whether their destination has requirements or restrictions for travelers, and notes that State, local, and territorial governments may have travel restrictions in place, including testing requirements, stay-at-home orders, and quarantine requirements upon arrival. A national emergency related to COVID-19 remains in effect pursuant to the President's March 13, 2020 Proclamation.⁹

³ COVID-19 weekly epidemiological update, December 15, 2020, available at: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/situation-reports> See also [https://covid19.who.int/for WHO COVID-19 Dashboard with the most current number of cases reported](https://covid19.who.int/for-WHO-COVID-19-Dashboard-with-the-most-current-number-of-cases-reported).

⁴ <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories.html/>.

⁵ <https://travel.state.gov/content/travel/en/traveladvisories/ea/covid-19-information.html>.

⁶ *Id.*

⁷ <https://www.cdc.gov/coronavirus/2019-ncov/travelers/map-and-travel-notices.html>.

⁸ CDC COVID Data Tracker, updated October 2, 2020, available at https://covid.cdc.gov/covid-data-tracker/?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fcases-in-us.html#cases_casesinlast7days.

⁹ <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

On May 15, 2020, the President announced the establishment of Operation Warp Speed (OWS), a national program to accelerate the development, manufacturing, and distribution of COVID-19 vaccines, therapeutics, and diagnostics.¹⁰ On December 11, 2020, the Food and Drug Administration (FDA) granted an emergency use authorization for a COVID-19 vaccine and phased distribution of that vaccine is now underway in the United States; FDA also is nearing potential authorization of a second vaccine.¹¹ Vaccine distribution also has begun on a limited basis elsewhere in the world.

Standard Applicable to This Waiver Proceeding

The FAA reiterates the standards applicable to petitions for waivers of the minimum slot usage requirements in effect at DCA, JFK, and LGA, as discussed in the FAA's initial decision extending relief due to COVID-19 impacts.¹²

At JFK and LGA, each slot must be used at least 80 percent of the time.¹³ Slots not meeting the minimum usage requirements will be withdrawn. The FAA may waive the 80 percent usage requirement in the event of a highly unusual and unpredictable condition that is beyond the control of the slot-holding air carrier and which affects carrier operations for a period of five consecutive days or more.¹⁴

At DCA, any slot not used at least 80 percent of the time over a two-month period also will be recalled by the FAA.¹⁵ The FAA may waive this minimum usage requirement in the event of a highly unusual and unpredictable condition that is beyond the control of the slot-holding carrier and which exists for a period of nine or more days.¹⁶

¹⁰ <https://www.hhs.gov/about/news/2020/05/15/trump-administration-announces-framework-and-leadership-for-operation-warp-speed.html>.

¹¹ <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-vaccines>.

¹² See 85 FR 15018 (Mar. 16, 2020).

¹³ Operating Limitations at John F. Kennedy International Airport, 85 FR 58258 (Sep. 18, 2020); Operating Limitations at New York LaGuardia Airport, 85 FR 47065 at 58255 (Sep. 18, 2020).

¹⁴ At JFK, historical rights to operating authorizations and withdrawal of those rights due to insufficient usage will be determined on a seasonal basis and in accordance with the schedule approved by the FAA prior to the commencement of the applicable season. See JFK Order, 85 FR 58260. At LGA, any operating authorization not used at least 80 percent of the time over a two-month period will be withdrawn by the FAA. See LGA Order, 85 FR at 58257.

¹⁵ See 14 CFR 93.227(a).

¹⁶ See 14 CFR 93.227(j).

When making decisions concerning historical rights to allocated slots, including whether to grant a waiver of the usage requirement, the FAA seeks to ensure the efficient use of valuable aviation infrastructure and maximize the benefits to airport users and the traveling public. This minimum usage requirement is expected to accommodate routine cancellations under all but the most unusual circumstances. Carriers proceed at risk if, at any time prior to a final decision, they make decisions in anticipation of the FAA granting a slot usage waiver.

Discussion of Proposals for Additional Relief

At the present time, COVID-19 continues to present a highly unusual and unpredictable condition that is beyond the control of carriers. According to data submitted by Airlines for America (A4A), passenger demand has weakened dramatically as a result of the recent COVID-19 resurgence and a return to 2019 passenger volumes is not expected until calendar year 2023 or 2024.¹⁷ The ultimate duration and severity of COVID-19 impacts on passenger demand in the United States and internationally remain unclear even as the distribution of a vaccine is underway in certain parts of the world.

Since the FAA's determination in October 2020 to extend relief on a conditional basis through March 27, 2021, the FAA has received submissions from stakeholders regarding whether the FAA should extend additional relief beyond March 27, 2021.¹⁸ The FAA seeks comment on two proposals with respect to continuing relief with regard to the Summer 2021 scheduling season, which ends on October 30, 2021. Commenters may also suggest other options for consideration. Absent further relief, the existing relief will expire on March 27, 2021 and standard requirements and policies will apply.

Extension of Current Relief Made Available by the FAA on a Conditional Basis

As one option for consideration, the FAA is proposing to extend through October 30, 2021, the COVID-19-related limited waiver of the minimum slot usage requirement at JFK, LGA, and DCA that the FAA has already made available on a conditional basis through

¹⁷ See December 7, 2020 presentation by Airlines for America titled "Tracking the Impacts of COVID-19," a copy of which has been placed in the docket for this notice.

¹⁸ Copies of all submissions to the DOT and FAA concerning the continuation of COVID-related relief have been placed in the docket associated with this notice.

March 27, 2021. As part of this option, the FAA would also extend through October 30, 2021 its COVID-19-related policy for prioritizing flights canceled or otherwise not operated as originally intended at designated IATA Level 2 airports in the United States on a conditional basis, for purposes of establishing a carrier's operational baseline in the next corresponding season (*i.e.*, Summer 2022). The proposed extension would be made available on the same terms announced in the FAA's October 7, 2020 decision (85 FR 63335), as summarized previously in this notice in the section titled *Current Slot Usage and Related Relief Due to COVID-19*.

As explained in the FAA's October 7, 2020 decision, the FAA believes the relief provided on a conditional basis through the end of the Winter 2020/2021 season at slot-controlled and designated IATA Level 2 airports in the United States addresses ongoing COVID-19-related impacts. The FAA continues to believe this approach provides carriers with flexibility during this unprecedented situation, supports the long-term viability of carrier operations at slot-controlled airports while also supporting economic recovery, and reduces the potential to suppress flight operations for which demand exists. The FAA believes an extension of the current waiver would also be generally consistent with the approach taken by other jurisdictions to date.

WASB Proposal

Another option for consideration is the WASB proposal. WASB is a forum for bringing together representatives from the airport, airline, and slot coordinator communities to develop positions on slot management rules and standards to be applied globally in the Worldwide Airport Slot Guidelines (WASG).¹⁹ The WASB proposal includes the following provisions, which are described herein as they would be applied in the United States:

- Slot holders that ensure the return of any slot as allocated by the FAA for the duration of the Summer 2021 season (identified by Slot ID and/or flight number, as appropriate) on or before February 8, 2021 (approximately 7 weeks before the start of the season) would retain historic precedence for that slot in the Summer 2022 scheduling season; newly allocated slots are not eligible for this provision; eligible slots

¹⁹ The detailed proposal can be accessed in the docket for this notice and at the following website: <https://www.iata.org/contentassets/37a569b171504493be1d2ddd7d531f2/wasb-recommendation-s21airportslotallocation.pdf>.

returned before the deadline would be available for re-allocation on a non-permanent basis for operation during the Summer 2021 season; slots operated as approved on a non-historic basis in Summer 2021 would have priority over new demands for the same timings in the next equivalent season, subject to capacity availability and any other legal conditions;

- For slots not returned by February 8, 2021, the usual minimum slot usage threshold of 80 percent would be reduced to 50 percent during the Summer 2021 scheduling season; and,

- For slots not returned by February 8, 2021, an exception from the reduced slot usage threshold of 50 percent would be available under circumstances that may prevent airlines from operating scheduled flights for reasons other than commercial cancellations for the duration of the circumstance plus up to a 6-week recovery period; as proposed, the FAA would accept as valid justification for the non-utilization of slots, any government restrictions that prevent or severely restrict travel to specific airports, destinations (including intermediate points) or countries for which the slot was held, such as the following examples—

- Government travel restrictions based on nationality, closed borders, government advisories related to COVID-19 that warn against all but essential travel, or complete bans on flights from/to certain countries or geographic areas;

- Severe government restrictions related to COVID-19 on the maximum number of arriving or departing passengers on a specific flight or through a specific airport;

- Government restrictions on movement or quarantine/isolation measures within the country or region where the airport or destination (including intermediate points) is located;

- Government-imposed closure of businesses essential to support aviation activities (*e.g.*, closure of hotels); and

- Unforeseeable restrictions on airline crew, including sudden bans on entry or crew stranded in unexpected locations due to quarantine measures.

- The following conditions would apply:

- Relief would not apply to slots held by an airline that permanently ceases operations at the airport; and,
- New uneven transfers would not be eligible for the pre-season return provision, but would be eligible for other slot relief measures during the Summer 2021 season.

The FAA notes that the WASB proposal is silent concerning a position

on further relief for prioritizing flights canceled due to COVID-19 at designated IATA Level 2 airports. The FAA further notes that certain provisions and concepts of the detailed WASB proposal would not necessarily apply in the United States to the extent that there are established differences in effect under established rules and orders governing slot management in the United States. For example, traditional concepts of “series of slots” and provision 8.7.2.2 of the WASG have not been adopted in the United States.²⁰ The FAA received written submissions from IATA, A4A, Delta Air Lines, Inc., and Virgin Atlantic Airways, Ltd. expressing support for FAA adoption of this proposal.

Additional Submission Regarding Relief Beyond March 27, 2021

In addition, the FAA has received an alternative proposal concerning relief beyond March 27, 2021 from Southwest Airlines Co., which takes no position on the WASB proposal relative to JFK, opposes the WASB proposal relative to DCA and LGA, and suggests extending the FAA’s current relief at DCA and LGA for an additional half season at most, through June 27, 2021. This submission has been placed in the docket associated with this notice.

Invitation for Comment

The FAA seeks views and information regarding these or other proposals. The FAA further invites comment on whether the proposal adopted by the FAA should make relief available for the full duration of the Summer 2021 scheduling season, which ends on October 30, 2021. Written views and supporting data may be submitted no later than December 29, 2020 to the docket associated with this notice as explained previously in this notice. Information submitted to the FAA may be subject to disclosure under the Freedom of Information Act.

The FAA recognizes that commenters may seek to submit business information that is both customarily and actually treated as confidential. Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain

²⁰ <https://www.iata.org/en/policy/slots/slot-guidelines/> The FAA reiterates that under current policy and procedures, the FAA continues to apply version 9 of the Worldwide Slot Guidelines (Jan. 1, 2019), a copy of which has been placed in the docket for this notice.

commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments, or any relevant portions thereof, as CBI. Please mark each page of your submission containing CBI as “PROPIN.” Comments containing PROPIN may be submitted by email to the Air Traffic Organization Slot Administration Office at 9-FAA-Slot-Policy@faa.gov. The FAA will treat such marked submissions as confidential under FOIA, and will not place confidential content in the public docket for this notice. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this notice. The FAA will take the necessary steps to protect properly designated information to the extent allowable by law. All routine slot administration matters unrelated to this proceeding, including schedule updates, requested changes, and information requests, should continue to be submitted to 7-awa-slotadmin@faa.gov.

After receiving and reviewing comments, the FAA anticipates subsequently providing notice of its final decision.

Issued in Washington, DC, on December 17, 2020.

Lorelei Dinges Peter,

Assistant Chief Counsel for Regulations.

Virginia T. Boyle,

Acting Vice President, System Operations Services.

[FR Doc. 2020–28324 Filed 12–18–20; 12:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2020–0563]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Aircraft Noise Certification Documents for International Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information

collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 5, 2020. The collection aids to make the aircraft noise certification information easily accessible to the flight crew and presentable upon request to the appropriate foreign officials for international airline operation of U.S. carriers. The information to be collected upholds the U.S. obligations under the Convention on International Civil Aviation and for which FAA policy comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. Thus the FAA has adopted ICAO's Standards and Recommended Practices as US regulations as a means of compliance with Annex 16 and requires noise documentation be carried on board aircraft that leave the United States.

DATES: Written comments should be submitted by January 21, 2021.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to oir_submission@omb.eop.gov, or faxed to (202) 395-6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Sandy R. Liu by email at: sandy.liu@faa.gov; phone: 202-267-4748.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120-0737.

Title: Aircraft Noise Certification Documents for International Operations.

Form Numbers: None. Reference: ICAO Annex 16, Vol.1—Aircraft Noise, Eighth edition (July 2017) Attachment G for format.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 5, 2020 (85 FR 34711). On March 2, 2010, the FAA published the final rule Notice No. 91-312, Aircraft Noise Certification Documents for International Operations (75 FR 9327). It requires operators that fly outside the United States, using aircraft subject to ICAO, Annex 16, Volume 1, to carry aircraft noise certification information on board the aircraft. This collection is needed to ensure consistent international compliance with the ICAO, Annex 16, Volume 1, Amendment 8 that requires certain noise information be carried on board the aircraft. This information must be easily accessible to the flight crew and presentable upon request to the appropriate foreign National Aviation Authority (NAA) officials. The collection is mandatory based on U.S. regulations and international standards.

Respondents: Operators of U.S. registered civil aircraft flying outside the United States.

Frequency: 70 airplanes.

Estimated Average Burden per

Response: 25 minutes (0.42 hours).

Estimated Total Annual Burden: \$25 per airplane × 70 airplanes affected = \$1,750.

Issued in Washington, DC, on December 17, 2020.

Sandy Liu,

Engineer, Noise Division, Office of Environment and Energy, Noise Division (AEE-100).

[FR Doc. 2020-28226 Filed 12-21-20; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of Anti-Money Laundering Program Requirements for Casinos

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comments on the proposed renewal, without change, of a currently approved information collection found in existing Bank Secrecy Act regulations. Specifically,

the regulations require casinos to develop and implement written anti-money laundering programs reasonably designed to ensure and monitor compliance with the requirements set forth in the Bank Secrecy Act regulations. Although no changes are proposed to the information collection itself, this request for comments covers a future expansion of the scope of the annual hourly burden and cost estimate associated with these regulations. This request for comments is made pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments are welcome, and must be received on or before February 22, 2021.

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

- *Federal E-rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. Refer to Docket Number FINCEN-2020-0015 and the specific Office of Management and Budget (OMB) control number 1506-0051.

- *Mail:* Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN-2020-0015 and OMB control number 1506-0051.

Please submit comments by one method only. Comments will also be incorporated into FinCEN's review of existing regulations, as provided by Treasury's 2011 Plan for Retrospective Analysis of Existing Rules. All comments submitted in response to this notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Support Section at 1-800-767-2825 or electronically at frc@fincen.gov.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Provisions

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.¹ Regulations implementing 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.²

Section 352 of the USA PATRIOT Act added subsection (h) to 31 U.S.C. 5318 of the BSA. Section 352 mandates that financial institutions establish AML programs in order to guard against money laundering. Such AML programs must include, at a minimum, the following: (a) The development of internal policies, procedures, and controls, (b) the designation of a compliance officer, (c) an ongoing employee training program, and (d) an independent audit function to test programs. Pursuant to section 352, FinCEN issued a regulation requiring casinos to develop and implement written AML programs.³ This notice only proposes to renew the OMB control number associated with the casino AML program regulations.⁴

II. Paperwork Reduction Act of 1995 (PRA)⁵

Title: AML program requirements for casinos (31 CFR 1021.210, 31 CFR 1021.410(b)(10)).

OMB Control Number: 1506-0051.

Report Number: Not applicable.

Abstract: FinCEN is issuing this notice to renew the OMB control number for the AML program regulatory requirements for casinos.

Affected Public: Businesses or other for-profit institutions, and non-profit institutions.

Type of Review:

- Renewal without change of a currently approved information collection.
- Propose for review and comment a renewal of the portion of the PRA burden that has been subject to notice and comment in the past (the “traditional annual PRA burden”).

¹ Section 358 of the USA PATRIOT Act added language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism.

² Treasury Order 180-01 (re-affirmed Jan. 14, 2020).

³ 31 CFR 1021.210.

⁴ Card clubs are included in the casino AML program regulations, and any reference to casinos used in BSA regulations includes card clubs, unless specifically noted. See 31 CFR 1010.100(t)(5)(iii).

⁵ Public Law 104-13, 44 U.S.C. 3506(c)(2)(A).

- Propose for review and comment a future expansion of the scope of the PRA burden (the “future annual PRA burden”).

Frequency: As required.

Estimated Number of Respondents: 993 casinos.⁶

Estimated Recordkeeping Burden:

Part 1 of this notice describes the breakdown of the estimated number of casinos, by type. Part 2 proposes for review and comment a renewal of the estimate of the traditional annual PRA hourly burden, which includes an annual hourly burden estimate per casino similar to the estimate used in the past, with the incorporation of a more robust cost estimate. The scope and methodology used in the past assigned a total annual hourly burden estimate, per casino, to multiple recordkeeping requirements within the regulations, rather than assigning an annual hourly burden estimate, per casino, to each unique AML recordkeeping requirement.⁷ In the past, one annual hourly burden estimate per casino was used to encompass all of the recordkeeping requirements included in the AML program requirements for casinos. Part 3 of this notice proposes for review and comment a methodology for a future estimate of an annual PRA burden. The estimate would include the PRA burden and cost broken down by each recordkeeping requirement in the casino AML program regulations. Finally, Part 4 solicits input from the public about: (a) The accuracy of the traditional annual PRA burden estimate; (b) the more granular calculation needed to establish a future annual PRA burden, of the hourly and cost burden per casino AML program recordkeeping requirement; (c) the criteria, metrics, and most appropriate questions FinCEN should consider when researching the information to estimate the future annual PRA burden; and (d) any other comments about the regulations and the current and proposed future hourly

⁶ Table 1, *infra*, below sets forth a breakdown of the types of casinos covered by this notice.

⁷ The casino AML program regulations have two unique requirements. Specifically, 31 CFR 1021.210(b)(2)(v) provides that a casino must establish procedures for using all available information to determine, when required by the BSA regulatory requirements, the name, address, social security number, and other information, and verification of the same, of a person; the occurrence of any transactions or patterns of transactions required to be reported pursuant to 31 CFR 1021.320; and whether any record as described in subpart D of part 1010 or part 1021 must be made and retained. 31 CFR 1021.210(b)(2)(vi) provides that, for those casinos that have automated data processing systems, their AML compliance program must provide for the use of automated programs to aid in ensuring compliance.

burden and cost estimates of these requirements.

Part 1. Breakdown of the Casinos⁸ Covered by This Notice

The breakdown of casinos, by type, covered by this notice is reflected in Table 1 below:

TABLE 1—BREAKDOWN OF CASINOS COVERED BY THIS NOTICE, BY TYPE OF FINANCIAL INSTITUTION

| Type of casino | Number of casinos |
|-------------------------------|-------------------|
| Casino | ⁹ 466 |
| Tribal Casino | ¹⁰ 527 |
| Total number of casinos | ¹¹ 993 |

Part 2. Traditional Annual PRA Burden and Cost

The scope of the traditional annual PRA burden and cost estimates in this renewal encompasses all of the recordkeeping requirements included in the AML program requirements for casinos, notably: Maintaining and updating the written AML program (Action A); storing the written AML program (Action B); producing a copy of the written AML program if requested by regulatory examiners or law enforcement (Action C); and complying with the requirements in 31 CFR 1021.210(b)(2)(v) and (vi) (Action D). The prior renewal did not break the requirements down into a burden estimate for each recordkeeping requirement, but instead estimated that all of the requirements combined would require 100 hours.¹² In future estimates, FinCEN intends to estimate burden based on each individual requirement set out in 31 CFR 1021.210.

For purposes of the estimate of the AML program traditional annual PRA burden, FinCEN has made the following assumptions:

- (a) The written AML program is stored as an electronic file. The estimated annual burden (5 minutes per

⁸ Card clubs are not included in the breakdown of casinos covered by this notice. The omission of card clubs in the total number of casinos in Table 1 will reduce the total hourly burden estimate in Table 2, *infra*, from its actual number.

⁹ According to numbers provided to FinCEN by the American Gaming Association (AGA), there are 466 commercial casinos as of October 20, 2020.

¹⁰ According to numbers provided to FinCEN by the AGA, there are 527 tribal properties as of October 20, 2020.

¹¹ According to numbers provided to FinCEN by the AGA, the total number of casinos includes 223 commercial and tribal casinos in Nevada as of October 20, 2020. This number does not include restricted locations, *i.e.*, those with 15 slot machines or fewer.

¹² See 82 FR 31636 (July 7, 2017).

financial institution) represents the administrative burden involved in processing the storage of the written program, and not just the time of actual electronic storage, which would be nearly instantaneous.

(b) Producing the written AML program electronically to regulatory or

law enforcement agencies, upon their request. FinCEN estimates the annual burden of producing the written program at 5 minutes per financial institution. The estimated annual burden represents the administrative burden involved in producing the program upon request, and not just the

time required to make the program available to the requestor for inspection (for example, the actual electronic transmission), which would be nearly instantaneous.

The estimated burden associated with each portion of the traditional annual PRA estimate is as follows:

TABLE 2—BURDEN ASSOCIATED WITH EACH PORTION OF THE TRADITIONAL ANNUAL PRA ESTIMATE

| Action | Instances per year | Time per instance | Number of casinos ¹³ | Total hourly burden |
|---|--------------------|----------------------------|---------------------------------|---------------------|
| A. Maintaining and updating the written AML program. | 1 per casino | 1 hour ¹⁴ | 993 | 993 |
| B. Storing the written AML program | 1 per casino | 5 minutes | 993 | * 83 |
| C. Producing the AML program upon request | 1 per casino | 5 minutes | 993 | * 83 |
| D. Ongoing Compliance with the requirements in 31 CFR 1021.210(b)(2)(v) and (vi). | 1 per casino | 99 hours | 993 | 98,307 |
| Total Hourly Burden ..... | ..... | ..... | ..... | 99,466 |

* 82.75 rounded to 83.

To calculate the hourly costs of the burden estimate, FinCEN identified three roles and corresponding staff positions involved in maintaining an AML program: (i) General supervision (providing process oversight); (ii) direct supervision (reviewing operational-level

work and cross-checking all or a sample of the work product against supporting documentation); and (iii) clerical work (engaging in research and administrative review and filing and producing the AML program on request).

FinCEN calculated the fully-loaded hourly wage for each of these three roles by using the median wage estimated by the U.S. Bureau of Labor Statistics (BLS),¹⁵ and computing an additional benefits cost as follows:

TABLE 3—FULLY-LOADED HOURLY WAGE BY ROLE AND BLS JOB POSITION FOR ALL FINANCIAL INSTITUTIONS COVERED BY THIS NOTICE

| Role | BLS-code | BLS-name | Median hourly wage | Benefit factor | Fully-loaded hourly wage |
|--|----------|--------------------------|--------------------|----------------|--------------------------|
| General supervision | 11-3031 | Financial Manager | \$62.45 | 1.50 | \$93.68 |
| Direct supervision | 13-1041 | Compliance Officer | 33.20 | 1.50 | 49.80 |
| Clerical work (research, review, and filing and producing the program upon request). | 43-3099 | Financial Clerk | 20.40 | 1.50 | 30.60 |

FinCEN estimates that, *in general and on average*,¹⁶ each role would spend different amounts of time on each

portion of the traditional annual PRA burden, as follows:

For Action A set out in Table 2 above, annually maintaining and updating the

AML program documentation, the cost of each hour of burden is estimated to be \$48.00, as shown in Table 4 below.

TABLE 4—WEIGHTED AVERAGE HOURLY COST OF MAINTAINING AND UPDATING AML PROGRAM DOCUMENTATION

| General supervision | | Direct supervision | | Clerical work (case review) | | Weighted average hourly cost |
|---------------------|-------------|--------------------|-------------|-----------------------------|-------------|------------------------------|
| % time | Hourly cost | % time | Hourly cost | % time | Hourly cost | |
| 10 | \$9.37 | 60 | \$29.88 | 30 | \$9.18 | * \$48.00 |

*\$48.43 rounded to \$48.00.

¹³ As set out in Table 1 above.

¹⁴ We are estimating the annual recordkeeping burden per recordkeeper as 1 hour for casinos, consistent with our calculation of 1 hour for maintaining and updating the written AML program in the 60-day notice to renew AML programs for certain financial institutions (85 FR 49418 (Aug. 13, 2020)).

¹⁵ The U.S. Bureau of Labor Statistics, Occupational Employment Statistics-National, May

2019, available at <https://www.bls.gov/oes/tables.htm>. The most recent data from the BLS corresponds to May 2019. For the benefits component of total compensation, see U.S. Bureau of Labor Statistics, Employer's Cost per Employee Compensation as of December 2019, available at <https://www.bls.gov/news.release/eccec.nr0.htm>. The ratio between benefits and wages for financial activities is \$15.95 (hourly benefits)/\$32.05 (hourly wages) = 0.50. The benefit factor is 1 plus the

benefit/wages ratio, or 1.50. Multiplying each hourly wage by the benefit factor produces the fully-loaded hourly wage per position.

¹⁶ By "in general," FinCEN means without regard to outliers (e.g., financial institutions with AML programs with complexities that are uncommonly higher or lower than those of the population at large). By "on average," FinCEN means the mean of the distribution of each subset of the population.

For Actions B, C, and D set out in Table 2 above, the cost of each hour of burden is estimated to be \$33.00, as shown in Table 5 below:

- Action B—storing the AML program.
- Action C—producing of the AML program upon request.

- Action D—complying with requirements in 31 CFR 1021.210(b)(2)(v) and (vi).

TABLE 5—WEIGHTED AVERAGE HOURLY COST OF STORING AND PRODUCING AML PROGRAM DOCUMENTATION UPON REQUEST, AND COMPLYING WITH REQUIREMENTS IN 31 CFR 1021.210(b)(2)(v) AND (vi)

| General supervision | | Direct supervision | | Clerical work (recordkeeping) | | Weighted average hourly cost |
|---------------------|-------------|--------------------|-------------|-------------------------------|-------------|------------------------------|
| % time | Hourly cost | % time | Hourly cost | % time | Hourly cost | |
| 1 | \$0.94 | 9 | \$4.48 | 90 | \$27.54 | *\$33.00 |

*\$32.96 rounded to \$33.00.

The total cost of the traditional annual PRA burden would be \$3,297,273 as reflected in Table 6 below:

TABLE 6—TOTAL COST OF TRADITIONAL ANNUAL PRA BURDEN

| Action | Total burden in hours (Table 2) | Hourly cost | | Total cost |
|---|------------------------------------|-------------|---------------|------------------|
| | | \$ | Source | |
| A. Maintaining and updating the written AML program | 993 | \$48.00 | Table 4 | \$47,664 |
| B. Storing the written AML program | *83 | 33.00 | Table 5 | 2,739 |
| C. Producing the written AML program upon request | *83 | 33.00 | Table 5 | 2,739 |
| D. Ongoing compliance with the requirements in 31 CFR 1021.210(b)(2)(v) and (vi). | 98,307 | 33.00 | Table 6 | 3,244,131 |
| Total Cost ..... | ..... | ..... | ..... | 3,297,273 |

*\$2.75 rounded to 83.

Part 3. Future Annual PRA Burden

In the future, FinCEN intends to be more granular in estimating the annual PRA burden, by calculating the burden and cost attributed to certain, but not all, activities necessary to implement the four key elements of an AML program.¹⁷

The burden hours and cost of two of the key elements of an AML program (internal controls, and designation of a BSA compliance officer) are accounted for individually across all of the 42 OMB control numbers FinCEN maintains for the various BSA regulatory requirements because those requirements necessitate that internal controls be put in place and that a BSA compliance officer be designated. For that reason, for the OMB control

numbers and related regulations renewed in this notice, FinCEN generally does not intend to estimate burden hours and cost applicable to these two key elements in the future annual PRA burden.

The future annual PRA burden calculation will include the estimated burden and cost to implement the other two key elements of an AML program ((c) BSA training, and (d) independent audit) relating to the regulations and corresponding OMB control number being renewed in this notice. The future annual PRA burden calculation also will include the estimated burden and cost for a casino to (a) provide procedures to determine customer identification information, and the occurrence of suspicious activity transactions, and (b) use automated programs to aid in ensuring compliance, if the casino has automated data processing systems. These additional two elements are requirements of the casino AML program regulations, which are being renewed in this notice.

To further clarify, below are lists of actions FinCEN intends to (1) include in a future annual PRA burden estimate relating to the regulations and OMB control number renewed in this notice, and (2) cover in OMB control number

renewals associated with other BSA regulatory requirements.

(a) FinCEN *intends to include* the following within a future annual PRA burden estimate for casinos:

i. Any generic BSA-related education and training provided to all levels of the organization, and any training provided to appropriate personnel on BSA issues in excess of that required by their job-specific responsibilities under their financial institution’s AML program.

ii. The burden and cost of any internal or external independent review of compliance with BSA-specific obligations.

iii. The annual burden and cost of implementation of a compliance program that includes procedures to determine customer identification information and the occurrence of suspicious activity transactions.

iv. For casinos that have automated data processing systems, the annual cost and burden of implementation of a compliance program that provides for the use of automated programs to aid in ensuring compliance.

(b) FinCEN *does not intend to include* the following as part of a future annual PRA burden estimate:

i. The annual PRA burden and cost of the policies, procedures, and internal controls established in the AML

¹⁷ Although FinCEN is providing information about burden and cost with respect to the four key elements of an AML program, FinCEN wants to emphasize that the four key elements of an AML program are statutory requirements. The four key elements of an AML program are: (a) Establishing policies, procedures, and internal controls reasonably designed to ensure compliance with the BSA; (b) designating a person to ensure day to day compliance with the AML program and the BSA; (c) providing education and training to appropriate personnel concerning their responsibilities under the AML program; and (d) implementing an independent review to monitor and maintain an adequate AML program.

program to ensure compliance with the BSA;¹⁸

ii. the designation of a person to ensure day to day compliance with the financial institution's AML program and the BSA;¹⁹ and

iii. AML education and training provided to personnel relating to their job specific responsibilities.²⁰

FinCEN does not have the necessary information to provide a tentative estimate for the PRA hourly burdens and costs it intends to address in the future. In addition, FinCEN does not have all the necessary information to more accurately estimate the traditional annual PRA burden. For that reason, FinCEN is relying on estimates used in prior renewals of this OMB control number and the applicable regulations. FinCEN further recognizes that after receiving public comments as a result of this notice, future traditional annual PRA hourly burden and cost estimates may vary significantly. FinCEN intends to conduct more granular studies of the actions included in the proposed scope of the annual PRA burden in the near future, to arrive at more accurate estimates of net BSA hourly burden and cost.²¹ The data obtained in these studies also may result in a significant variation of the estimated traditional annual PRA burden.

Estimated Recordkeeping Burden: The average estimated annual PRA burden, measured in hours per respondent, is: 1 hour per casino, for maintaining and updating the AML program (Action A); 5 minutes per casino, for storing the

¹⁸ As noted above, the burden hours and cost of internal controls will be accounted for individually across all of the 42 OMB control numbers FinCEN maintains for the various BSA regulatory requirements because those requirements necessitate that internal controls be put in place.

¹⁹ As noted above, the burden hours and cost of a BSA compliance officer will be accounted for individually across all of the 42 OMB control numbers FinCEN maintains for the various BSA regulatory requirements because those requirements necessitate that a BSA compliance officer be designated.

²⁰ As noted above, generic BSA-related training provided to all levels of the organization will be included in future burden and cost estimates corresponding to the OMB control numbers being renewed in this notice. Job-specific training related to specific BSA requirements, will be covered in the OMB control numbers corresponding to those specific BSA requirements.

²¹ Net hourly burden and cost are the burden and cost a financial institution incurs to comply with requirements that are unique to the BSA, and that do not support any other business purpose or regulatory obligation of the financial institution. Burden for purposes of the PRA does not include the time and financial resources needed to comply with an information collection, if the time and resources are for things a business (or other person) does in the ordinary course of its activities if the agency demonstrates that the reporting activities needed to comply are usual and customary. 5 CFR 1320.3(b)(2).

written AML program (Action B); 5 minutes per casino, for producing a copy of the AML program if requested by regulatory examiners or law enforcement (Action C); and 99 hours per casino, for complying with the requirements in 31 CFR 1021.210(b)(2)(v) and (vi) (Action D).

Estimated Number of Respondents: 993, as set out in Table 1.

Estimated Total Annual Recordkeeping Burden: The estimated total annual PRA burden is 99,466 hours, as set out in Table 2.

Estimated Total Annual Recordkeeping Cost: The estimated total annual PRA cost is \$3,297,273, as set out in Table 6.

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. Records required to be retained under the BSA must be retained for five years.

Part 4. Request for Comments

(a) Specific request for comments on the traditional annual PRA hourly burden and cost.

FinCEN invites comments on any aspect of the traditional annual PRA burden, as set out in Part 2 of this notice. In particular, FinCEN seeks comments on the adequacy of: (i) FinCEN's assumptions underlying its burden estimate; (ii) the estimated number of hours required by each portion of the burden; and (iii) the organizational roles of the casino engaged in each portion of the burden, the roles' estimated hourly remuneration, and the estimated proportion of time spent by each role on the requirements. FinCEN encourages commenters to include any publicly available sources for alternative estimates or methodologies.

(b) Specific request for comments on the appropriate criteria, methodology, and questionnaire required to obtain information to more precisely estimate the future annual PRA hourly burden and cost.

FinCEN invites comments on the most appropriate and comprehensive means to question financial institutions about the annual hourly burden and cost. For example, as it relates to training, independent review, and maintaining and updating the AML program:

Training:

(1) How much time is spent on creating and implementing the AML training plan?

(2) How much time is spent on delivering instructor led training or creating web-based training?

(3) How much time does the casino's compliance department spend on creating AML related training content, or is the training function conducted by a team outside of the casino's compliance department?

(4) How much time is spent identifying the proper audience for training?

(5) How much time is spent tracking, and reporting on, AML-related training?

Independent Review:

(1) How much of the casino's compliance department's time is spent on responding to inquiries or correcting deficiencies related to the independent review of the AML program?

(2) If the independent review is conducted by an internal audit department, how much of the internal audit department's time is spent creating and implementing the required testing plan for the independent review?

Updating and Maintaining a Written AML Program:

On average, how many times per year does your casino update its AML program?

The future annual PRA hourly burden and cost estimate of the recordkeeping necessary to comply with the AML program requirements for casinos must take into consideration only the effort involved in obtaining those data elements that are used exclusively for complying with requirements under 31 CFR 1021.210. Given the complexity in determining what portion of the effort to include in the estimate, FinCEN seeks comments from the public regarding any questions we should consider posing in future notices, in addition to the specific questions for comment outlined directly below. FinCEN welcomes any suggestions as to how to derive these estimates by using publicly available financial information.

(c) Specific questions for comment associated with implementing a compliance program that includes procedures to determine customer identification information and the occurrence of suspicious activity transactions, when required by BSA regulations.

(1) Customer Identification Procedures

- On average, how long does it take your casino to establish procedures for using all available information to determine and verify the name, address, social security number, and other information, of a person?

- Does your casino have a review and approval process involving senior management to evaluate the procedures used for determining and verifying customer identification information? On average, how long does the review

process take and how many approvals are necessary?

- How frequently does your casino collect and verify the name, address, social security number, and other information, of a person?
- On average how many new accounts does your casino open per year?
- How many accounts are for new customers?
- How long does it take your casino to open a new account for an existing customer?
- How long does it take your casino to conduct identity verification procedures for a new personal or business account?
- Is the collection of customer identification information exclusively to comply with customer identification requirements, or is it also to comply with other regulatory requirements or for other business reasons?

(2) Suspicious Activity Procedures

- On average, how long does it take your casino to establish procedures for using all available information, including your automated systems and your surveillance system and surveillance logs, to determine the occurrence of any transactions or patterns of transactions required to be reported as suspicious?
- Does your casino have a review and approval process involving senior management to evaluate the procedures used for determining suspicious activity? On average, how long does the review process take and how many approvals are necessary?

(d) Specific questions for comment associated with implementation of a compliance program that provides for the use of automated programs to aid in ensuring compliance, for casinos that have automated data processing systems:

- Does your casino use automated data processing systems?
- How does your casino use its automated data processing systems to aid in ensuring compliance?
- Does your casino have a review and approval process involving senior management to evaluate the use of its automated data processing systems? On average, how long does the review process take and how many approvals are necessary?

(e) General 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: (i) 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; (ii) the accuracy of the agency's estimate of the burden of the collection of information; (iii) ways to enhance the quality, utility, and clarity of the information to be collected; (iv) 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 (v) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Michael G. Mosier,
Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 2020-28255 Filed 12-21-20; 8:45 am]

BILLING CODE 4810-02-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0059]

Agency Information Collection Activity Under OMB Review: Statement of Person Claiming To Have Stood in Relation of Parent (VA Form 21P-524)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by search function. Refer to "OMB Control No. 2900-0059."

FOR FURTHER INFORMATION CONTACT: Danny S. Green, Enterprise Records Service (005R1B), 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. 2900-0059" in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 1310 & 1315.

Title: Statement of Person Claiming to Have Stood in Relation to Parent.

OMB Control Number: 2900-0059.

Type of Review: Reinstatement of a previously approved collection.

Abstract: 38 U.S.C. 1315 established Dependency Indemnity Compensation to Parents (known as Parents' DIC). Parent's DIC is a monthly benefit payable to the parent(s) of a deceased Veteran. The payable monthly benefit is based on the parent's (parents') annual income. Additional funds are payable to the parent(s) if they are in a patient in a nursing home, blind, so nearly blind or significantly disabled as to need or require the regular aid and attendance of another person.

38 CFR 3.59 defines the term parent as ". . . a natural mother or father (including the mother of an illegitimate child or the father of an illegitimate child if the usual family relationship existed), mother or father through adoption, or a person who for a period of not less than 1 year stood in the relationship of a parent to a Veteran at any time before his or her entry into active service."

The information collected will be used by VBA to evaluate a claimant's parental relationship to a deceased Veteran when the claimant is not the Veteran's natural mother or father or adopted mother or father.

Federal Register Notice with a 60-day comment period soliciting comments on this collection of information was published at 85 FR, 197 on October 9th, 2020, page 64231.

Affected Public: Individuals or Households.

Estimated Annual Burden: 800.

Estimated Average Burden per Respondent: 2 Hours (120) minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 200.

By direction of the Secretary.

Danny S. Green,
VA PRA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020-28185 Filed 12-21-20; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activity: Survey of Individuals Using Their Entitlement to Educational Assistance Under the Educational Assistance Programs Administered by the Secretary of Veterans Affairs

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed new collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each new proposed collection of information, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 22, 2021.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at www.Regulations.gov or to Nancy J. Kessinger, Veterans, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to nancy.kessinger@va.gov. Please refer to “OMB Control No. 2900–NEW” in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Danny S. Green at (202) 421–1354.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA’s functions, including whether the information will have practical utility; (2) the accuracy of VBA’s estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4)

ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 44 U.S.C. 3501–21.

Title: Survey of Individuals Using Their Entitlement To Educational Assistance Under The Educational Assistance Programs Administered By The Secretary of Veterans Affairs.

OMB Control Number: 2900–NEW.

Type of Review: New data collection.

Abstract: The Educational Assistance Program Feedback Survey is designed to measure experience of beneficiaries of educational assistance programs administered by the Veterans Affairs (VA), including under chapters 30, 32, 33, and 35 of title 38 United States Code. The information will help the VA improve programs and better serve Veterans interested in educational assistance. Educational Assistance Program feedback data will be collected using an online transactional survey or paper disseminated via an invitation email or mailed letter sent to selected beneficiaries. The survey questionnaire includes 52 questions, though in actuality due to branching depending on responses to each question respondents will complete anywhere from 8–49 questions (8 if respondents passed their benefit to dependents; 39–49 questions for all other respondents). The survey contains general rating-scale questions (e.g., a scale of 1–5 from Very dissatisfied to Very satisfied; or Not at all effective to Extremely effective) to assess satisfaction with educational assistance programs, resources, training as well as questions assessing education/training outcomes (completion of program, current income level) and has been approved by the Education Service leadership. These questions have been mapped to the Public Law 114–315 (December 15, 2016) section 414. After the survey has been distributed, recipients will have two weeks to complete the survey. Invitees will receive a reminder email or mailed letter after one week. The sample will be distributed across four Education Benefit Programs: Post-9/11 GI Bill (Chapter 33), Montgomery GI Bill—Active Duty (Chapter 30), Veterans Education Assistance Program (VEAP; Chapter 32), and Survivors’ and Dependents’ Educational Assistance (DEA; Chapter 35). The overall sample size is determined so that the reliability of survey estimate is 3% Margin of Error at a 95% Confidence Level. Once data collection is completed, the participant responses in the survey will be weighted so that the samples more

closely represent the overall population. Weighting models will rely on beneficiary age and gender.

Affected Public: Individuals.

Estimated Annual Burden: 180 hours.

Estimated Average Burden per

Respondent: 10 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,080.

By direction of the Secretary.

Danny S. Green,

VA PRA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020–28183 Filed 12–21–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS**Solicitation of Nomination for Appointment to the Veterans’ Advisory Committee on Rehabilitation**

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA), Veterans Benefits Administration (VBA), is seeking nominations of qualified candidates to be considered for appointment as members of the Veterans’ Advisory Committee on Rehabilitation (hereinafter referred to as “the Committee”).

DATES: Nominations for membership on the Committee must be received by January 14, 2021, no later than 4:00 p.m., eastern standard time. Packages received after this time will not be considered for the current membership cycle.

ADDRESSES: All nomination packages should be emailed to the Designated Federal Officer, Latrese Arnold at Latrese.Arnold@va.gov.

SUPPLEMENTARY INFORMATION: In carrying out the duties set forth, the Committee responsibilities include, but are not limited to, submitting to the Secretary an annual report on the rehabilitation programs and activities of the VA.

Membership Criteria: VBA is requesting nominations for upcoming vacancies on the Committee. Members of the Committee are appointed by the Secretary from the general public, including but not limited to:

(1) Veterans with service-connected disabilities;

(2) Persons who have distinguished themselves in the public and private sectors in the fields of rehabilitation medicine, vocational guidance, vocational rehabilitation, and employment and training programs

(3) Ex officio members of the Committee shall include one representative from the Veterans Health Administration and one from the Veterans Benefits Administration; one representative each from the Rehabilitation Services Administration of the Department of Education, and the National Institute for Handicapped Research of the Department of Education; and one representative of the Assistant Secretary for Veterans' Employment and Training of the Department of Labor.

Authority: The Committee was established pursuant to 38 U.S.C. 3121, to advise the Secretary of VA with respect to the administration of Veterans' rehabilitation programs. Nominations of qualified candidates are being sought to fill upcoming vacancies on the Committee.

To the extent possible, the Secretary seeks members who have diverse professional and personal qualifications. We ask that nominations include information of this type so that VA can ensure a balanced Committee membership.

Individuals appointed to the Committee by the Secretary shall be

invited to serve a three-year term. The Secretary may reappoint a member for an additional term of service. In accordance with Federal Travel Regulation, Committee members will receive travel expenses and a per diem allowance for any travel made in association with duties as members of the Committee and within federal travel guidelines. Self-nominations are acceptable. Any letters of nomination from organizations or other individuals should accompany the package when it is submitted. Non-Veterans are also eligible for nomination.

Requirements for Nomination submission: Nominations should be typed (one nomination per nominator). Nomination package should include:

(1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.*, specific attributes which qualify the nominee for service in this capacity), and a statement from the nominee indicating that he/she is a U.S. citizen and is willing to serve as a member of the Committee;

(2) the nominee's contact information, including name, mailing address, telephone numbers, and email address;

(3) the nominee's curriculum vitae;

(4) a summary of the nominee's experience and qualifications relative to the membership considerations described above; and

(5) a statement confirming that he/she is not a federally-registered lobbyist.

The Department makes every effort to ensure that the membership of VA Federal advisory committees is balanced in terms of points of view represented and the committee's function. Appointments to this Committee shall be made without discrimination based on a person's race, color, religion, sex, sexual orientation, gender identity, national origin, age, disability, or genetic information. Nominations must state that the nominee appears to have no conflict of interest that would preclude membership. An ethics review is conducted for each selected nominee.

Dated: December 17, 2020.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2020-28254 Filed 12-21-20; 8:45 am]

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Part II

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Parts 2, 5, 7, et al.

Activities and Operations of National Banks and Federal Savings
Associations; Final Rule

DEPARTMENT OF THE TREASURY**Office of the Comptroller of the Currency****12 CFR Parts 4, 5, 7, 145, and 160**

[Docket ID OCC–2020–0003]

RIN 1557–AE74

Activities and Operations of National Banks and Federal Savings Associations**AGENCY:** Office of the Comptroller of the Currency, Treasury.**ACTION:** Final rule.

SUMMARY: The Office of the Comptroller of the Currency is issuing a final rule to revise and reorganize its regulations relating to the activities and operations of national banks and Federal savings associations and to amend its rules relating Federal savings association corporate governance. This rule clarifies and codifies recent OCC interpretations, integrates certain regulations for national banks and Federal savings associations, and updates or eliminates outdated regulatory requirements that no longer reflect the modern financial system. Additionally, this rule includes related technical changes throughout these and other OCC regulations.

DATES: The rule is effective April 1, 2021.

FOR FURTHER INFORMATION CONTACT: Beth Kirby, Assistant Director, Valerie Song, Assistant Director, Heidi M. Thomas, Special Counsel, or Chris Rafferty, Attorney, Chief Counsel's Office, (202) 649–5490, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:**I. Background**

The Office of the Comptroller of the Currency (OCC) periodically reviews its regulations to eliminate outdated or otherwise unnecessary regulatory provisions and, where possible, to clarify or revise requirements imposed on national banks and Federal savings associations.¹ The elimination of unnecessary regulatory impediments together with efforts to revise regulations to reflect changes in the financial industry help to promote

¹ For example, the OCC recently issued a final rule relating to policies and procedures for corporate activities and transactions involving national banks and Federal savings associations, 12 CFR part 5, that updates and clarifies these policies and procedures and eliminate unnecessary requirements consistent with safety and soundness. See 85 FR 80404 (Dec. 11, 2020).

economic growth for consumers, businesses and communities.

These reviews are in addition to the OCC's decennial review of its regulations as required by the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA).² These reviews also consider, where appropriate, opportunities to integrate rules that apply to national banks with similar rules that apply to Federal savings associations in light of the transfer to the OCC of all functions of the former Office of Thrift Supervision (OTS) relating to Federal savings association by Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).³

As part of this process, the Office of the Comptroller of the Currency (OCC) published a notice of proposed rulemaking (proposal or proposed rule) on July 7, 2020 to revise and reorganize subparts A through D of 12 CFR part 7, Activities and Operations.⁴ The OCC proposed to update part 7 to address developing issues and industry practices, to clarify OCC interpretive positions, and to integrate certain national bank rules by adding Federal savings associations. As examples, the proposed revisions to subpart A included new regulations covering tax equity finance transactions, derivatives activities, and payment system memberships. The proposed revisions to subpart B addressed corporate governance issues, such as expanding the ability of national banks to choose corporate governance provisions under State or other law, clarifying permissible anti-takeover provisions, and adding provisions relating to capital stock-related activities of national banks. The OCC also proposed to update and integrate rules relating to bank hours and closings in subpart C and to update rules relating to loan production and deposit production offices and remote service units in subpart D and to move these sections to subpart A to improve

² Public Law 104–208 (1996), codified at 12 U.S.C. 3311(b). Section 2222 of EGRPRA requires that, at least once every 10 years, the OCC along with the other Federal banking agencies and the Federal Financial Institutions Examination Council (FFIEC) conduct a review of their regulations to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions. Specifically, EGRPRA requires the agencies to categorize and publish their regulations for comment, eliminate unnecessary regulations to the extent that such action is appropriate, and submit a report to Congress summarizing their review. The agencies completed their second EGRPRA review on March 2017 and published their report in the *Federal Register*. 82 FR 15900 (March 30, 2017).

³ Public Law 111–203, 124 Stat. 1376 (2010) (transferring to the OCC all functions of the former OTS relating to Federal savings associations).

⁴ 85 FR 40794 (July 7, 2020).

the organization of part 7.⁵ As a companion to the proposed rule, the OCC also issued an Advance Notice of Proposed Rulemaking (ANPR) inviting ideas for revisions on the OCC's rules on electronic banking activities located at subpart E of 12 CFR part 7 and 12 CFR part 155.⁶

The OCC also proposed more general changes throughout part 7 including removing outdated or superfluous regulations; consolidating related regulations into one section; and making various technical changes throughout part 7. In addition, the OCC proposed to integrate a number of rules in part 7 to include Federal savings associations.

The OCC notes that pursuant to section 4(b) of the International Banking Act,⁷ many of the provisions in part 7 apply to Federal branches and agencies. This act provides that, subject to certain exceptions, the operations of a foreign bank at a Federal branch or agency shall be conducted with the same rights and privileges as a national bank at the same location and shall be subject to all the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply under the National Bank Act to a national bank doing business at the same location.⁸ This final rule amends some of the provisions in part 7 to include Federal branches and agencies for ease of reference. However, the lack of inclusion of Federal branches and agencies in a particular provision does not necessarily indicate that the provisions is inapplicable to Federal branches and agencies.

The OCC received 16 comment letters on the proposal from banking organizations and other interested parties. These comments and the OCC's response are discussed in the next section of this **SUPPLEMENTARY INFORMATION**. As described in more detail below, the OCC is adopting the proposal as a final rule with accompanying modifications where noted. The final rule becomes effective on April 1, 2021.

⁵ The OCC has separately issued a final rule that amends 12 CFR 7.4001. See 84 FR 33530 (June 2, 2020) (Permissible Interest on Loans That Are Sold, Assigned, or Otherwise Transferred). The OCC also issued an interim final rule that amends 12 CFR 7.1001 and 7.1003, which this rulemaking finalizes. See 85 FR 31943 (May 28, 2020) (Director, Shareholder, and Member Meetings). Further, the OCC has issued a final rule that adds a new § 7.1031, National Banks and Federal Savings Associations as Lenders. See 85 FR 68742 (October 30, 2020).

⁶ See 85 FR 40827 (July 7, 2020) (National Bank and Federal Savings Association Digital Activities).

⁷ 12 U.S.C. 3101 *et seq.* (Pub. L. 95–369).

⁸ 12 U.S.C. 3102(b) (Pub. L. 95–369). See also 12 CFR 28.13.

II. Description of the Proposed Rule

Subpart A—National Banks and Federal Savings Association Powers

Activities That Are Part of, or Incidental to, the Business of Banking (New § 7.1000)

Section 7.5001 identifies the criteria the OCC uses to determine whether an electronic activity is authorized for national banks as part of, or incidental to, the business of banking under 12 U.S.C. 24(Seventh) or other statutory authority. While this section details those criteria in the context of electronic activities, the OCC uses these same criteria to determine whether any activity is part of, or incidental to, the business of banking. To confirm the broader applicability of the criteria listed in § 7.5001, the OCC proposed to remove the word “electronic” from this section and move § 7.5001 to subpart A of part 7 as new § 7.1000. As part of this move, the proposal redesignated current § 7.1000 as § 7.1024. These changes better organize OCC rules and clarify that the criteria of this new § 7.1000 apply to any potential national bank activity and not just those that are electronic in nature. Further, the OCC believes that new § 7.1000 belongs at the beginning of part 7 because it provides the framework for all national bank powers that follow in subpart A.

The OCC also proposed a technical change to redesignated § 7.1000(c)(1). The current rule provides a four factor test to determine whether an activity is part of the business of banking. However, this four-factor test is not necessary for activities that are specifically included in 12 U.S.C. 24(Seventh) or other statutory authority because they are by express statutory language within the business of banking. Therefore, the proposed rule added language to clarify that this four-factor test applies to activities not specifically included in 12 U.S.C. 24(Seventh) or other statutory authority. This clarification reflects the OCC’s long-standing use of the four-factor test to determine whether an activity not expressly included in a statute is within the business of banking.⁹

The OCC received one comment that supported new § 7.1000. Therefore, the OCC is adopting § 7.1000 as proposed.

The final rule also corrects a technical error in the proposed rule. Current § 7.5001(d)(3) contains an illustrative

list of electronic activities that are incidental to the business of banking. The proposed rule inadvertently removed this list and the final rule restores it as § 7.5001, with conforming changes to the cross-reference to new § 7.1000. The OCC notes that it is reviewing this list in the broader context of potential changes to all of subpart E pursuant to the ANPR on National Bank and Federal Savings Association Digital Activities and may make further changes in the future.¹⁰

National Bank and Federal Savings Association Acting as Finder (§ 7.1002)

The OCC proposed a technical change to its regulation at § 7.1002 relating to when a national bank acts as a finder and invited comment on the inclusion of Federal savings association finder activities in part 7. For the reasons discussed below, the OCC is adopting this technical change and also is amending § 7.1002 to include Federal savings association finder activities.

The OCC has long permitted a national bank to act as a finder to bring together buyers and sellers of financial and nonfinancial products and services.¹¹ The OCC’s regulations include two separate rules relating to permissible national bank finder activities. Section 7.1002, which codifies OCC interpretive letters, provides that finder activities are part of the business of banking.¹² This section also describes permissible finder activities; provides an illustrative, non-exclusive list of permissible finder activities; clarifies that a national bank’s finder authority does not allow it to engage in brokerage activities that have not been found to be permissible for national banks; and authorizes a national bank to advertise and accept fees for finder services unless otherwise prohibited by Federal law. Section 7.5002 provides that a national bank generally may perform, provide, or deliver through electronic means and facilities any activity, function, product, or service that is otherwise permissible. Section 7.5002(a)(1) clarifies that a national bank may act as an electronic finder and includes a list of permissible electronic finder activities.

The OCC proposed amending its regulations by adding a new § 7.1002(b)(8) that would cross-reference the permissible electronic finder activities listed in § 7.5002(a)(1). This change would reference all examples of

permissible finder activities for national banks in one rule.

The OCC received one comment letter on § 7.1002. The commenter recommended revising the list of examples to reflect how finder authority is exercised in the modern financial system. The commenter specifically suggested that the OCC consider consolidating the finder authority in §§ 7.1002 and 7.5002. The OCC disagrees with this recommendation. The cross-reference sufficiently clarifies that additional finder activities are listed in that section. Further, the OCC’s ANPR on National Bank and Federal Savings Association Digital Activities requested comment on the electronic finder activities list in 12 CFR 7.5002(a)(1).¹³ Through that rulemaking process, the OCC will consider further revisions related to electronic finder activities. A cross-reference will capture these possible revisions without again having to revise § 7.1002. The OCC also may consider consolidating the finder authority in §§ 7.1002 and 7.5002 during the subpart E revision process.

The commenter further suggested that the final rule add to the list in § 7.1002(b) the making or receiving of a referral to or from a third party for a fee, and more generally suggested that the rule permit banks to accept reasonable finder fees. The OCC notes that § 7.1002 contemplates making referrals for a fee, and the list of examples in § 7.1002 includes “[a]rranging for third-party providers to offer reduced rates to those customers referred by the bank.”¹⁴ The OCC also believes that continuing to limit fees to those permitted by Federal law is appropriate. Therefore, the final rule does not add a reasonableness requirement. However, the OCC notes that the reasonableness of fees received may raise other concerns and that § 7.4002(b) provides considerations for national banks in setting non-interest charges and fees.

The commenter’s recommendation to add receiving a referral for a fee also involves adding a bank receiving and paying for finder services from a third party. Longstanding OCC interpretations confirm that banks may pay for finder services, subject to fact-specific considerations.¹⁵ However, § 7.1002 covers banks acting as finders, and the proposal did not address the authority

¹³ See 85 FR 40827, at 40830.

¹⁴ 12 CFR 7.1002(b)(3).

¹⁵ See, e.g., OCC Interpretive Letter No. 504 (May 18, 1990) (describing how “finder’s fees [paid by a bank] must be high enough to be attractive to potential sources of referrals, yet not so high as to be financially detrimental to the Bank or create an appearance of profit sharing, which could lead to the inference of a joint venture or partnership”).

⁹ The Supreme Court has held that the business of banking is not limited to the enumerated powers listed in 12 U.S.C. 24(Seventh) but encompasses more broadly activities that are part of or incidental to the business of banking. *NationsBank of N.C., N.A. v. Variable Annuity Life Ins. Co.*, 513 U.S. 251, 258–60 (1995).

¹⁰ See 85 FR 40827.

¹¹ See, e.g., OCC Interpretive Letter No. 607 (Aug. 24, 1992).

¹² See, e.g., OCC Interpretive Letter No. 824 (Feb. 27, 1998).

of banks to be finder clients. Accordingly, the OCC does not believe that the final rule should add provisions on banks receiving and paying for finder services.

The same commenter recommended the OCC confirm that payment or collection of finder fees as a share of revenue is permitted. Section 7.1002(d) permits finder fees that do not violate Federal law and does not expressly prohibit specific fee arrangements. The OCC has permitted collection and payment of finder fees as a share of revenue in certain contexts.¹⁶ However, revenue sharing arrangements may raise supervisory and legal concerns, including whether they result in a joint venture and unlimited liability, which national banks do not have the power to assume.¹⁷ Rather than codify the permissibility of any specific fee arrangement, the OCC believes that continuing to permit banks to accept fees except as otherwise prohibited by Federal law is appropriate. As described above, the final rule does not add provisions on banks paying finder services, whether those fees are based on revenue or not.

The commenter further recommended that the final rule codify prior OCC interpretations finding that the sharing of revenue or profit alone in a referral relationship would not constitute a joint venture under State law if the parties express an intent not to create a joint venture. The proposal did not address joint ventures, and we are not inclined to address it in this rulemaking.

The commenter also recommended that the OCC confirm that a bank is not required to disclose finder fees paid or collected. The proposal did not address fee disclosure, and the OCC is not inclined to adopt this recommendation. We also note that OCC precedent requires disclosure of finder fees in certain contexts and inadequate disclosure may raise supervisory and legal concerns.¹⁸

While finder activities are part of the business of banking for a national bank,

a Federal savings association may engage in finder activities only to the extent that the activities are incidental to Federal savings association powers authorized under the Home Owners' Loan Act (HOLA) (12 U.S.C. 1461 *et seq.*).¹⁹ The former OTS determined that, if certain factors are met, a Federal savings association may collect fees for referring customers to third parties²⁰ and may provide services and products to customers indirectly through a third-party discount program²¹ as activities incidental to their statutorily enumerated powers. The OCC also has recognized Federal savings association finder authority in its Retail Nondeposit Investment Products Booklet of the Comptroller's Handbook.²²

As noted above, the OCC did not propose amendments to § 7.1002 related to Federal savings associations but invited comment on whether it should add a separate provision to § 7.1002 to set forth Federal savings association finder authority. In the preamble to the proposed rule, the OCC offered options to integrate Federal savings associations into § 7.1002. It described a provision for a Federal savings association to engage in finder activities to the extent that those activities are incidental to Federal savings association powers expressly authorized under the HOLA. The OCC also suggested a list of Federal savings association finder activities that the former OTS or the OCC have determined are permissible, such as collecting fees for referring customers to third parties and providing services and products indirectly to customers through a third-party discount program. The OCC specifically requested comment on what other Federal savings association finder activities the OCC could add to this list.

No commenters directly responded to the request for input on Federal savings association finder activities. However, one commenter recommended that the rule include new examples of how national banks and Federal savings associations have exercised finder authority. Because the current rule is limited to national banks, the OCC interprets this comment as a

recommendation to incorporate Federal savings associations in § 7.1002.

The OCC agrees that the authority of Federal savings associations to act as finders should be codified in the OCC's regulations. Therefore, the final rule clarifies that Federal savings associations may act as finders to the extent those activities are incidental to their expressly authorized powers under HOLA. In determining whether an activity is incidental, the OCC considers whether (1) the activity facilitates or is similar to the conduct of an activity that Congress expressly authorized, (2) the activity relates to Federal savings associations' intended role as financial intermediaries, (3) the activity is necessary to enable the Federal savings association to remain competitive and relevant in the modern economy, and (4) the activity is consistent with the purpose and function Congress envisioned for Federal savings associations.²³ Each factor need not support the permissibility of an activity, and the relative weights of each factor may vary.²⁴

The source of finder authority for Federal savings associations is more limited and fact-specific than for national banks. The former OTS' approval of referral fees dealt with referrals to registered investment advisors and considered how those services related to a Federal savings association's expressly authorized powers.²⁵ Similarly, the former OTS' approval of the third-party discount program considered how the product offerings would facilitate expressly authorized activities of Federal savings associations.²⁶ The final rule includes both referrals and third-party discount programs as illustrative examples of the types of finder services that a Federal savings association may provide. However, certain referral and discount programs may not be within the incidental powers of Federal savings associations. Therefore, the final rule clarifies that the examples are permissible if they are incidental to a Federal savings association's express powers. It also states that the OCC may

¹⁶ See, e.g., *id.*; OCC Interpretive Letter No. 824.

¹⁷ See, e.g., OCC Interpretive Letter No. 504 ("National banks are not permitted to be members of general partnerships or, by extension, joint ventures."); *Merchants' Nat. Bank of Cincinnati v. Wehrmann*, 202 U.S. 295, 301 (1906) (describing the assumption of unlimited personal liability as "precisely what a national bank has no authority to do"); OCC Interpretive Letter No. 1022 (Feb. 15, 2005).

¹⁸ See, e.g., OCC Interpretive Letter No. 850 (Jan. 27, 1999) (citing OCC precedent on disclosure of finder fees in connection with the marketing of trust services); OCC Corporate Decision No. 2002-11 (June 28, 2002) (describing potential conflicts of interest from receiving finder fees and the OCC's expectation that the bank's "interest in promoting specific" products and services be disclosed).

¹⁹ The OCC and the predecessor agencies previously responsible for the supervision of Federal savings associations "have long recognized that federal savings associations possess 'incidental' powers, i.e., powers that are incident to the express powers of federal savings associations as set forth in the Home Owners' Loan Act." OTS Op. Acting Ch. Couns. at 3 (Mar. 25, 1994).

²⁰ OTS Op. Ch. Couns. (May 5, 2000).

²¹ OTS Op. Ch. Couns. (Aug. 5, 2008).

²² OCC, Comptroller's Handbook: Retail Nondeposit Investment Products Booklet at 9 (Jan. 2015).

²³ See OTS Op. Ch. Couns. (May 5, 2000). All precedents (orders, resolutions, determinations, agreements, regulations, interpretive rules, interpretations, guidelines, procedures, and other advisory materials) made, prescribed, or allowed to become effective by the former OTS or its Director that apply to Federal savings associations remain effective until the OCC modifies, terminates, sets aside, or supersedes those precedents. 12 U.S.C. 5414(b).

²⁴ See OTS Op. Ch. Couns. (May 5, 2000).

²⁵ See *id.*

²⁶ OTS Op. Ch. Couns. (Aug. 5, 2008).

determine that other activities are permissible.

Consistent with the current rule's treatment of national banks, the final rule permits Federal savings associations to advertise the availability of and accept a fee for finder services, unless otherwise prohibited by Federal law, and does not enable a Federal savings association to engage in brokerage activities that have not been found to be permissible for Federal savings associations.

As a result of adding Federal savings associations to § 7.1002, the final rule revises paragraph (a) to include the general description of finder activity currently included in paragraph (b) and the statement of authority for both national bank and Federal savings association finder activity. Paragraph (b)(1) includes the nonexclusive list of permissible finder activities for national banks. Paragraph (b)(2) includes the nonexclusive list of permissible finder activities for Federal savings associations. Paragraphs (c) and (d) remain unchanged except for the addition of Federal savings associations.

Money Lent by a National Bank at Banking Offices or at Facilities Other Than Banking Offices (§ 7.1003)

Twelve U.S.C. 81 provides that a national bank must transact business in the place specified in its organization certificate and in any branches established or maintained in accordance with 12 U.S.C. 36. The OCC interprets 12 U.S.C. 81 to mean that money is deemed to be lent at a bank's main office unless there is a sufficient nexus tying the transaction to another location, in which case that location must be licensed as a branch office.

Twelve U.S.C. 36 and 12 CFR 5.30 define "branch" as a place of business established by the national bank where "deposits are received, or checks paid, or money lent." Section 7.1003 provides that for purposes of what constitutes a branch within the meaning of 12 U.S.C. 36 and 12 CFR 5.30, "money" is deemed to be "lent" only at the place, if any, where the borrower in-person receives loan proceeds directly from bank funds either (1) from the lending bank or its operating subsidiary or (2) at a facility that is established by the lending bank or its operating subsidiary. Section 7.1003(b) further provides that a borrower may receive loan proceeds directly from bank funds in person at a place that is not the bank's main office and is not licensed as a branch without violating 12 U.S.C. 36, 12 U.S.C. 81, and 12 CFR 5.30, provided that a third party is used to deliver the funds and the place is not established by the lending

bank or its operating subsidiary. This paragraph defines a third party to include a person who satisfies the requirements of § 7.1012(c)(2) or one who customarily delivers loan proceeds directly from bank funds under accepted industry practice, such as an attorney or escrow agent at a real estate closing.

The OCC proposed amending § 7.1003 to incorporate an OCC interpretation that further clarifies when the OCC considers money to be lent at a location other than the main office. Specifically, proposed paragraph (c) provided that a national bank operating subsidiary may distribute loan proceeds from its own funds or bank funds directly to the borrower in person at offices the operating subsidiary established without violating 12 U.S.C. 36, 12 U.S.C. 81, and 12 CFR 5.30 if the operating subsidiary provides similar services on substantially similar terms and conditions to customers of unaffiliated entities, including unaffiliated banks.²⁷ Based on Supreme Court precedent,²⁸ OCC interpretations have recognized that a facility must provide a convenience to bank customers that gives the bank a competitive advantage in obtaining customers for the facility to be considered a branch for purposes of 12 U.S.C. 36 and 12 CFR 5.30.²⁹ The OCC has found that a facility where members of the public, customers, and noncustomers alike receive substantially similar services on substantially similar terms is not a facility created to attract bank customers and thus the establishment of this type of facility offers no competitive advantage to the national bank.³⁰ Proposed paragraph (c) reflects this OCC precedent.

The OCC received two comments on this proposed change. One commenter stated that if the distribution of loan proceeds by national bank operating subsidiaries does not constitute lending money then, consistent with OCC precedent, the rule should also require that the operating subsidiary actively solicit and service noncustomers and that providing services to noncustomers comprise the predominate share of the

subsidiary's business. Otherwise, the commenter stated, the proposed rule will result in competitive inequality and thus be detrimental to the dual banking system. The OCC disagrees with this commenter and does not believe it needs to alter proposed paragraph (c) to be consistent with OCC precedent. The provision in the proposed regulation that the operating subsidiary "provides similar services on substantially similar terms and conditions to customers of unaffiliated entities including unaffiliated banks" should be understood to include the requirement that the bank act substantially similarly in soliciting business from customers and noncustomers. Therefore, the proposed change adequately reflects OCC precedent.

The second commenter supported the proposed changes but suggested that § 7.1003 be broadened to apply equally to facilities of either the national bank or its operating subsidiary. The OCC believes that even if a facility of the national bank itself attempted to provide services to both customers and noncustomers on substantially similar terms and conditions, the public would still perceive it as favoring bank customers and would associate it with the bank, thus giving it a competitive advantage in attracting bank customers. Thus, the OCC declines to extend this provision to include national bank facilities.

For the reasons discussed above, the OCC is adopting § 7.1003 as proposed, with a clarifying change to the section heading, clarifying changes throughout to reference "national banks" instead of "banks," and the removal of an unnecessary comma in paragraph (c).

Establishment of a Loan Production Office by a National Bank (§ 7.1004)

Credit Decisions at Other Than Banking Offices of a National Bank (§ 7.1005)

Section 7.1004 provides that a national bank may use the services of persons not employed by the bank for originating loans. It also provides that an employee or agent of a national bank or its subsidiary may originate a loan at a site other than the main office or a branch office of the bank without violating the branching and place of business requirements of 12 U.S.C. 36 and 12 U.S.C. 81 if the loan is approved and made at the main office or a branch office of the bank or at an office of an operating subsidiary located on the premises of, or contiguous to, the main office or branch office of the bank. Section 7.1005 provides that a national bank and its operating subsidiary may make a credit decision regarding a loan

²⁷ See Interpretive Letter No. 814 (Nov. 3, 1997).

²⁸ In *First National Bank in Plant City v. Dickinson*, the Supreme Court explained that because the purpose of 12 U.S.C. 36 is to maintain competitive equality, it is relevant in construing the term "branch" to consider whether the facility gives the bank an advantage in its competition for customers. *First National Bank in Plant City v. Dickinson*, 396 U.S. 122, 136-137 (1969).

²⁹ See OCC Interpretive Letter No. 635 (July 23, 1993). See also 61 FR 60342, at 60347 (Nov. 27, 1996).

³⁰ See OCC Interpretive Letter No. 814 (Nov. 3, 1997).

application at a site other than the main office or a branch office of the bank provided that “money” is not “lent” at those other sites within the meaning of § 7.1003.

Section 7.1004 is not intended to prescribe where a bank must perform certain activities but rather to help avoid violations of the branching laws by defining a “safe harbor” for loan origination activities that will not constitute branching.³¹ Section 7.1005, in turn, which addresses credit decisions made at a site other than offices of the bank, is based on OCC precedent finding that it is permissible for loans originated at an LPO to be approved at separate back office facilities not located on the premises of, or contiguous to, a main or branch office of the bank.³² When the OCC adopted § 7.1005, it noted that it was retaining § 7.1004 despite the potential tension between the two sections because § 7.1004 is a judicially recognized safe harbor and that it did not view a lending related activity that falls outside the scope of § 7.1004, as with § 7.1005, as necessarily violating branching statutes.³³

The OCC proposed amending § 7.1004 to describe the permitted activities as “loan production activities,” and to remove § 7.1005 to simplify and streamline its rules. As proposed, paragraph (a) of § 7.1004 provided that a national bank or its operating subsidiary may engage in loan production activities at a site other than the main office or a branch office of the bank. Proposed paragraph (a) permitted a national bank or its operating subsidiary to solicit loan customers, market loan products, assist persons in completing application forms and related documents to obtain a loan, originate and approve loans, make credit decisions regarding a loan application, and offer other lending-related services such as loan information and applications at a loan production office without violating 12 U.S.C. 36 and 12 U.S.C. 81, provided that “money” is not deemed to be “lent” at that site within the meaning of § 7.1003 and the site does not accept deposits or pay withdrawals. This description of activities is not intended to alter the description of “money lent” in § 7.1003 nor affect the scope of activities that are permissible for a national bank to perform at a non-branch location. Rather, the OCC proposed this description to clarify the activities a national bank may conduct

at a loan production office. The OCC proposed to redesignate former paragraph (a) as paragraph (b) and amend it to reference loan production activities instead of originating loans.

One commenter opposed combining §§ 7.1004 and 7.1005, stating this would allow national bank LPOs to conduct both loan origination and loan approval at an office accessible to the public without causing that LPO to be a branch because under the rule it would not be engaged in lending money. This commenter contends that OCC interpretive rulings and regulations have consistently maintained that money is lent at an office that conducts both loan origination and loan approval because the combination or aggregation of these activities constitutes the substantial equivalent of lending money for purposes of the definition of branch (“aggregation theory”). The commenter therefore claims that although the OCC stated that proposed § 7.1004 was not intended to “affect the scope of activities that are permissible for a national bank to perform at a non-branch location,” this revision does expand the scope of permissible LPO activities and thereby narrows the scope of activities subject to branching restrictions.

The OCC disagrees with this commenter. The proposed revisions to §§ 7.1004 and 7.1005 are consistent with the OCC’s precedent and practice for the last two decades.

The OCC abandoned in the 1990s the aggregation theory relied upon by the commenter.³⁴ Current § 7.1004 is a safe harbor based on specific judicial precedent.³⁵ The proposed revisions remove the § 7.1004 safe harbor because it is redundant with the broader permissibility standard in § 7.1005.

Because proposed § 7.1004 is consistent with the OCC precedent discussed, no changes are needed in response to this comment.

This commenter also stated that the proposed “non-branch” rules conflict with the limits on National Bank Act preemption prescribed by Congress that provide that National Bank Act preemption does not apply to agents, affiliates or subsidiaries of national banks. The OCC disagrees with this comment. The Dodd-Frank Act’s limits on preemption for agents, affiliates, or subsidiaries of national banks are not implicated by this rulemaking. The

proposal incorporated OCC interpretations of what constitutes a branch and a non-branch office and does not raise new preemption issues.

Lastly, this commenter stated that the proposed rule enables banks to avoid Community Reinvestment Act (CRA) obligations associated with licensed branches by expanding what can occur at non-branch national bank offices. However, the new CRA regulation provides that “[a] bank must delineate an assessment area encompassing each location where the bank maintains a main office, a branch, or a non-branch deposit-taking facility that is not an ATM”³⁶ Thus, national banks cannot use non-branch locations to avoid complying with the CRA.

For the reasons discussed above, the OCC adopts § 7.1004 as proposed.

Loan Agreement Providing for a National Bank Share in Profits, Income, or Earnings or for Stock Warrants (§ 7.1006)

Section 7.1006 permits a national bank to take as consideration for a loan: (1) A share in the profit, income, or earnings from a business enterprise of a borrower or (2) a stock warrant issued by the business enterprise of a borrower provided the bank does not exercise the warrant. This arrangement is known as an “equity kicker.” Section 7.1006 further provides that the national bank may take the share or stock warrant in addition to, or in lieu of, interest. However, the national bank may not condition the borrower’s ability to repay principal on the value of the profit, income, earnings of the business enterprise or upon the value of the warrant received.

The former OTS and its predecessor, the Federal Home Loan Bank Board, permitted a Federal savings association to take a share of profit, income, or earnings as consideration for a loan. OTS found this to be not inconsistent with Federal savings association lending authority under HOLA³⁷ to maintain parity with the commercial lending practices of national banks.³⁸ In addition, the former OTS permitted a Federal savings association to acquire warrants as an incidental power of its authority to make secured loans for commercial, corporate, or business purposes under HOLA and applied the

³⁴ OCC Interpretive Letter No. 667 (Oct. 12, 1994); OCC Interpretive Letter No. 902 (Nov. 16 2000); 61 FR 4849, at 4851 (Feb. 9, 1996); 60 FR 11924, at 11926 (March 3, 1995).

³⁵ See *Indep. Bankers Ass’n of America v. Heimann*, 627 F.2d 486, 487 (D.C. Cir. 1980), as discussed in 61 FR 4849, at 4851 (Feb. 9, 1996).

³⁶ 12 CFR 25.09; 85 FR 34734, at 34798 (June 5, 2020).

³⁷ 12 U.S.C. 1464(c)(2).

³⁸ Unpublished letter from Jordan Luke, Gen. Couns., Federal Home Loan Bank Board (Dec. 19, 1988), available on Westlaw: OTS, 1988 WL 1022319.

³¹ OCC Interpretive Letter No. 634 (July 23, 1993).

³² OCC Interpretive Letter No. 667 (Oct. 12, 1994).

³³ 61 FR 4849, at 4851 (Feb. 9, 1996).

same restrictions on exercising those warrants as applied to national banks.³⁹

The OCC proposed to amend § 7.1006 to include Federal savings associations and to codify these interpretations to clarify this authority and to better provide parity with national banks. The OCC received no comments on the proposed change and adopts it in the final rule as proposed.

National Bank Holding Collateral Stock as Nominee (§ 7.1009)

Section 7.1009 states that a national bank may transfer stock it has received as collateral for a loan into the bank's name as nominee.⁴⁰ The OCC proposed to delete this provision as unnecessary.

The OCC permits a bank to perfect its security interests in collateral under applicable State laws consistent with the Uniform Commercial Code.⁴¹ In situations where a bank holds stock as collateral, one method to perfect that interest under State law is to list the bank as nominee on the stock certificate. However, recent versions of the Uniform Commercial Code⁴² provide other potentially less burdensome methods to perfect an interest in securities collateral, for example, by obtaining control over a brokerage account holding the stock. Therefore, the OCC believes that § 7.1009 is not necessary. Removing this provision streamlines the rule while not substantively changing the methods national banks may use to perfect their interests in stock or other securities obtained as collateral for loans, which continue to include being listed as nominee if permitted under State law.

The OCC received one comment on this provision. The commenter argued that removing the provision may cause national banks to believe the OCC is now requiring the use of the least burdensome method for perfecting stock collateral and it is now impermissible to hold collateral stock as nominee. The commenter requested that the OCC retain the provision in the rule.

The OCC disagrees with the commenter's suggestion. Nothing in the former provision or in removing the provision requires a national bank to use the least burdensome method for perfecting its interest in stock collateral or prohibits other methods of perfection. As explained above, the OCC permits a bank to use any legally acceptable method to perfect its security interests

in stock collateral under applicable State laws,⁴³ including by being listed as nominee. In contrast, specifically identifying only a single method to perfect an interest in stock collateral as in § 7.1009 could lead a bank to believe that being listed as nominee is the only acceptable method for perfection. Therefore, the OCC is removing § 7.1009 as proposed.

Postal Services by National Banks and Federal Savings Associations (§ 7.1010)

Section 7.1010 provides that a national bank may operate and receive income from a postal substation on banking premises. It describes permissible services and states that a national bank may advertise to attract customers to the bank. It also requires the bank to operate the substation in accordance with the rules and regulations of the United States Postal Service (USPS) and to keep books and records on the substation, which are subject to inspection by the USPS, separate from those of other banking operations.

The OCC proposed to amend § 7.1010 to also apply to Federal savings associations. This would be consistent with the position taken in agency guidance.⁴⁴ The OCC also proposed to replace the phrase "operate a postal substation" with "provide postal services" because the term "postal substation" is no longer used in USPS regulations. This change in terminology clarifies that national banks and Federal savings associations may offer a limited menu of postal services and are not required to operate full-service post offices.

The OCC received no comments on these proposed amendments and adopts § 7.1010 as proposed.

National Bank and Federal Savings Association Investments in Small Business Investment Companies (§ 7.1015)

Fifteen U.S.C. 682(b)(1) permits a national bank to invest in one or more small business investment companies (SBICs) or in any entity established solely to invest in SBICs, provided that the total amount of all SBIC investments does not exceed five percent of the bank's capital and surplus.⁴⁵ Section 7.1015 provides that a national bank

may purchase stock of a SBIC and receive benefits of the stock ownership. This section further provides that the receipt and retention of a dividend from a SBIC in the form of stock of a corporate borrower of the SBIC is not a purchase of stock within the meaning of 12 U.S.C. 24(Seventh).

The OCC proposed to amend § 7.1015 to provide that a national bank may invest in a SBIC or in any entity established solely to invest in SBICs, and that purchasing stock in a SBIC is one example of this type of investment. This amendment more closely aligns § 7.1015 to 15 U.S.C. 682(b). In addition, the OCC proposed to amend § 7.1015 to provide that a national bank's SBIC investments are subject to appropriate capital limitations.

Fifteen U.S.C. 682(b)(2) provides a Federal savings association with similar authority to invest in SBICs.⁴⁶ This authority is codified in OCC regulations at 12 CFR 160.30. To clarify this authority, the OCC proposed to add a reference to Federal savings association SBIC authority in § 7.1015 and cross-reference to 12 CFR 160.30.

The OCC also proposed to amend § 7.1015 to clarify that a national bank or Federal savings association may invest in a SBIC that is either (1) already organized and has obtained a license from the Small Business Administration or (2) in the process of being organized. The OCC has previously interpreted this authority to permit a national bank to invest in a SBIC that is in the process of being organized.⁴⁷

The OCC did not receive any comments on the proposed amendments to this section. Therefore, the OCC adopts these changes as proposed.

However, the OCC received one comment requesting that the OCC clarify that a national bank may retain an investment in a SBIC that has surrendered its license to operate as a SBIC during its wind-down period so long as it does not make new investments (other than investments in cash equivalents). The commenter further noted that this change would align with the Volcker Rule implementing regulations, which exclude SBICs from the definition of "covered fund," and which were recently revised to make clear that this exclusion would continue to apply where a SBIC issuer has voluntarily

³⁹ See OCC, Comptroller's Handbook: Asset-Based Lending at 21–22 (2017).

⁴⁰ The former OTS previously concluded that Federal savings associations are authorized to operate a postal substation on premises. See OTS Op. Acting Ch. Couns. (Mar. 25, 1994).

⁴¹ National banks also may invest in SBICs pursuant to their community development investment authority. See 12 U.S.C. 24(Eleventh); 12 CFR part 24.

⁴² As with national banks, Federal savings associations also may invest in SBICs pursuant to their community development investment authority. See 12 U.S.C. 1464(c)(4)(B) and 12 CFR 5.59 (Service corporations of Federal savings associations).

⁴³ See OCC Interpretive Letter No. 832 (June 18, 1998).

³⁹ *Id.*

⁴⁰ See 12 U.S.C. 24(Seventh).

⁴¹ See OCC, Comptroller's Handbook: Asset-Based Lending at 21–22 (2017).

⁴² Primarily Articles 8 and 9, which have been substantively adopted by all U.S. jurisdictions. See <https://www.uniformlaws.org/acts/ucc>.

surrendered its license to operate as a SBIC in accordance with 13 CFR 107.1900 and does not make new investments (other than investments in cash equivalents) after such voluntary surrender. Further, the commenter suggested that introducing similar clarity into part 7 would provide certainty to banks wanting to invest in SBICs and would increase investment in small businesses.

The OCC agrees with the commenter that it would be helpful to clarify that a bank may retain an interest in a SBIC during its wind-down period. This change would align with the Volcker Rule implementing regulations, and it would provide certainty to banks planning to invest in SBICs. Therefore, the OCC is revising its final rule to clarify that a national bank may retain an investment in a SBIC that has surrendered its license to operate as a SBIC during its wind-down period so long as it does not make new investments in a SBIC that is winding down (other than investments in cash equivalents).

Independent Undertakings Issued by a National Bank or Federal Savings Association To Pay Against Documents (§ 7.1016)

Pursuant to 12 CFR 7.1016, a national bank may issue letters of credit and other independent undertakings within the scope of the applicable laws or rules of practice. Section 7.1016(b) provides that a national bank entering into an independent undertaking should not expose itself to undue risk and also outlines certain safety and soundness considerations for these activities. Section 7.1016 also describes specific required or recommended protections for certain undertakings, provides that a national bank should possess operational expertise that is commensurate with the sophistication of its independent undertaking activities, and requires a bank to accurately reflect its undertakings in its records.

Pursuant to § 160.50, a Federal savings association may issue letters of credit and may issue other independent undertakings as are approved by the OCC, subject to the restrictions in § 160.120. Section 160.120 contains provisions that are largely similar to the provisions applicable to national banks in § 7.1016.⁴⁸ However, §§ 160.50 and 160.120 provide that, unless it is a letter of credit, a Federal savings association only may issue independent undertakings that have been approved by the OCC. The OTS explained when

it updated its regulation that Federal savings associations were not traditionally involved in international banking transactions, which utilized these independent undertakings, as were national banks.⁴⁹ The OTS stated that the approval requirement provided “the appropriate balance between giving thrifts greater flexibility to potentially engage in new types of transactions while at the same time ensuring that thrifts have properly evaluated the risks posed by a particular transaction consistent with prudent banking practice.”⁵⁰

The OCC proposed to apply § 7.1016 to Federal savings associations and to remove §§ 160.50 and 160.120 because of the similarities between the national bank and Federal savings association independent undertaking regulations. The OCC also proposed technical changes to the footnote to § 7.1016 to reflect updates to the laws and rules of practice cited. The OCC did not receive any comments on these amendments and adopts them as proposed.

The OCC also proposed to clarify that Federal branches and agencies of foreign banks may issue letters of credit and other independent undertakings, consistent with the conditions outlined in § 7.1016.⁵¹ Two commenters requested clarification as to whether the proposed reference to Federal branches and agencies in § 7.1016 implies that other sections in part 7 are not intended to apply to Federal branches and agencies. One commenter recommended that the final rule clarify that nothing in proposed § 7.1016 is meant to imply that other sections of part 7 do not apply equally to Federal branches and agencies as to national banks and Federal savings associations, consistent with the International Banking Act. After considering these comments, the OCC has decided to remove the language regarding Federal branches and agencies. Although the OCC did not intend the clarification that Federal branches and agencies of foreign banks may issue letters of credit and other independent undertakings, consistent with the conditions outlined in § 7.1016, to affect the applicability of the International Banking Act and 12 CFR 28.13 to other sections of part 7, it

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Section 4(b) of the International Banking Act, 12 U.S.C. 3102(b) (Pub. L. 95–369) provides that the operations of a foreign bank at a Federal branch or agency shall be conducted with the same rights and privileges as a national bank at the same location and shall be subject to all the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply under the National Bank Act to a national bank doing business at the same location. *See also* 12 CFR 28.13.

understands that the inclusion of this language in § 7.1016 regarding Federal branches and agencies and not in other sections in part 7 may introduce confusion. Instead, the OCC expects to add this language to § 7.1016 and other provisions of part 7, as appropriate, in a future rulemaking.⁵²

One commenter recommended that the OCC reinforce that the risk management considerations outlined for letters of credit and independent undertakings in § 7.1016 are not mandatory safety and soundness conditions by removing them from the text of the rule. The OCC disagrees. Section 7.1016(b) provides safety and soundness considerations for banks that issue independent undertakings. Section 7.1016(b)(1) states that, as a matter of safety and soundness, banks that issue independent undertakings should not be exposed to undue risk and should, at a minimum, consider the following before issuing independent undertakings: (1) Whether the terms make clear the independence of the undertaking; (2) whether the amount of the undertaking is limited; (3) whether the undertaking is limited in duration or, if not, whether the bank has an ability to end the undertaking or demand cash collateral from the applicant; and (4) whether the undertaking will be collateralized or include a reimbursement right. Section 7.1016(b) provides additional considerations in special circumstances to protect against credit, operational, and market risk. Section 7.1016(b)(3) states that the national bank or Federal savings association should possess operational expertise that is commensurate with the sophistication of its independent undertaking activities. By using the word “should,” these provisions clearly indicate that the listed safety and soundness considerations are not mandatory. Furthermore, the OCC finds that it is helpful to include these recommended considerations in the rule text so that national banks and Federal savings associations understand what the OCC may consider to be undue risk.

Financial Literacy Programs Not Branches of National Banks (§ 7.1021)

Twelve CFR 7.1021 provides that a national bank may participate in a financial literacy program on the

⁵² As indicated below, the final rule adds Federal branches and agencies to § 7.3000, National bank and Federal savings association hours. Because of the difference in corporate structure of these entities as compared to national branches and Federal savings associations, it is necessary to have separate language for Federal branches and agencies in this provision.

⁴⁸ *See* 61 FR 50951, at 50958 (Sept. 30, 1996).

premises of, or at a facility used by, a school. Section 7.1021 also provides that the school premises or facility will not be considered a branch of the bank if: (1) The bank does not establish and operate the school premises or facility on which the financial literacy program is conducted; and (2) the principal purpose of the program is educational.

Facilities or premises are only considered to be branches of a national bank if they are established and operated by the national bank. The proposal provided that the OCC would consider establishment and operation in this context on a case by case basis, considering the facts and circumstances. However, the proposal stated that the premises or facility would not be a branch of the national bank if the bank met the safe harbor test in 12 CFR 7.1012(c)(2) applicable to messenger services established by third parties. The proposal also stated that the factor discussed in § 7.1012(c)(2)(i) could be met if bank employee participation in the financial literacy program consisted of managing the program or conducting or engaging in financial education activities provided the school or other organization retained control over the program and over the premises or facilities at which the program is held.

Further, the OCC proposed expanding the scope of financial literacy programs beyond schools to encompass other community-based organizations, such as non-profit organizations, that provide financial literacy programs. Finally, the proposal moved the definition of financial literacy program to the beginning of the section to clarify that, while a financial literacy program is a program for which the primary purpose is educational, this is not a factor in determining whether the premises or facility is a branch for purposes of section 36.

One commenter provided recommendations for simplifying the requirements for operating financial literacy programs. This commenter suggested incorporating the relevant standards for operating a financial literacy program within the messenger service safe harbor directly into the rule, without cross-referencing the messenger service rule. This commenter also suggested that § 7.1021 directly state, as a stand-alone provision, that a bank employee may manage the financial literacy program or engage in other financial education activities, provided the organization retains control over the program and premises at which the program is held. Along the same lines, this commenter recommended expressly permitting a bank employee to accept checks at a financial literacy program

event, subject to certain safeguards to prevent operation of the program as a branch—such as having a school official accept the checks and deposit them in a portable lockbox which the branch employee could then be responsible for bringing to the branch. Further, this commenter recommended removing language from the proposal indicating that the OCC would consider the facts and circumstances on a case-by-case basis in determining whether other financial literacy programs outside of the safe harbor constitute a branch. Additionally, this commenter suggested not referring to the messenger service safe harbor as a “test” in order to avoid the implication of additional compliance and audit requirements for the operation of financial literacy programs.

The OCC disagrees with this commenter’s recommendations for the reasons set forth below and thus adopts § 7.1021 as proposed. First, the OCC believes that cross referencing the messenger service regulation at § 7.1012 is the best approach for § 7.1021 because the safe harbor for a messenger service may evolve through regulatory changes, statutory changes, new judicial decisions, or new OCC interpretations. By using a cross reference, the OCC automatically incorporates into the financial literacy regulation all evolutions of the messenger service precedent.

Second, the OCC disagrees with the commenter’s suggestion that a bank employee may manage the financial literacy program or engage in other financial education activities without the facility being considered a branch so long as the school or organization retains control over the program and over the premises or facilities at which the program is held. Whether a third party other than a national bank owns or rents the facility involved is only one factor in the safe harbor described in § 7.1012(c)(2) for a messenger service to be clearly “established” by a third-party. The OCC does not believe it is appropriate to disregard all the other factors necessary to qualify for the safe harbor when considering school literacy programs as analysis of other factors in § 7.1012 may be determinative under some circumstances. However, it will continue to evaluate programs that do not fulfill all the factors of the safe harbor on an individual basis.

Third, the OCC disagrees with the commenter’s recommendation of setting forth a provision that expressly permits a bank employee to accept checks at a financial literacy program event, subject to certain safeguards to prevent operation of the program as a branch. A

person transporting items related to branching functions to the bank would be a messenger service, and messenger services are considered branches unless they are established by a third-party.⁵³ If the service is being performed by a bank employee as part of his duties, it is not established by a third party.

Fourth, the OCC is retaining the language regarding the agency’s commitment on a case-by-case basis to evaluate situations outside of the safe harbor. This language is meant to clarify that premises and facilities in such situations will not automatically be found to be branches. This language is not meant to impose an obligation on banks to always submit a request to the OCC for a determination before implementing a financial literacy program outside of the scope of the safe harbor. Banks may forgo asking for an OCC interpretation if they are comfortable with how their program would fit into the OCC’s expectations and precedent.

Finally, the OCC clarifies that, by use of the term “test,” it does not mean to impose any extra audit or other compliance requirements on these programs or to suggest that these programs must be subjected to measurement, ratings, or other performance measures. The OCC has routinely referred to safe harbors as “tests” in interpretive letters, guidance, and regulations without the implication of additional obligations.

For the reasons explained above, the OCC is adopting § 7.1021 as proposed.

National Banks’ Authority To Buy and Sell Exchange, Coin, and Bullion (§ 7.1022) Federal Savings Associations, Prohibition on Industrial or Commercial Metal Dealing or Investing (§ 7.1023)

The OCC proposed a technical change to §§ 7.1022 and 7.1023. Section 7.1022 prohibits a national bank from acquiring or selling industrial or commercial metal for purposes of dealing or investing. Section 7.1022 excludes industrial and commercial metals from the national bank authority to “buy and sell exchange, coin, and bullion.” Section 7.1023 similarly prohibits a Federal savings association from dealing or investing in industrial or commercial metal. Both sections require a national bank and a Federal savings association to dispose of any industrial or commercial metal held as a result of dealing or investing in that metal as soon as practicable, but not later than one year from the effective date of the

⁵³ See *First Nat’l Bank of Plant City v. Dickinson*, 396 U.S. 122 (1969); *Brown v. Clarke*, 878 F.2d 627 (2d Cir. 1989).

regulation. The OCC may grant up to four separate one-year extensions if the bank makes a good faith effort to dispose of the metal and the retention of the metal for an additional year is not inconsistent with the safe and sound operation of the bank. The OCC proposed to replace the phrase “one year from the effective date of this regulation” with the actual effective date of that final rule, April 1, 2018 in each section. The OCC received no comments on this technical change and adopts it as proposed.

Tax Equity Finance Transactions by National Banks and Federal Savings Associations (New § 7.1025)

The OCC proposed a new § 7.1025 that codifies the authority of national banks and Federal savings associations to engage in tax equity finance (TEF) transactions under 12 U.S.C. 24(Seventh) and 1464 lending authority, respectively.⁵⁴ As defined in proposed paragraph (b)(1), a TEF transaction is a transaction in which a national bank or Federal savings association provides equity financing to fund a project that generates tax credits and other tax benefits and the use of an equity-based structure allows the transfer of those tax credits and other tax benefits to the bank or savings association. Specifically, the OCC proposed in paragraph (a) of § 7.1025 that a national bank and Federal savings association may engage in a TEF transaction pursuant to 12 U.S.C. 24(Seventh) and 1464, respectively, if the transaction is the functional equivalent of a loan, as provided in proposed paragraph (c), and if the TEF transaction satisfies the applicable conditions of proposed paragraph (d). Paragraphs (c) and (d) are described below in the context of the comments received.

The OCC received eight comments on this section. One commenter stated that the proposed rule would increase administrative compliance burden and suggested the OCC should not codify a rule that addresses the underwriting process but rather should generally require the institutions it regulates to establish safety and soundness standards consistent with other extensions of credit. The OCC disagrees with this comment. Proposed § 7.1025 distills current precedent and standards. Rather than attempt to prescribe the underwriting process for national banks and Federal savings associations, the proposal required national banks and Federal savings associations to use underwriting and credit approval

criteria and standards that are substantially equivalent to the underwriting and credit approval criteria and standards used for traditional loans. This is consistent with the notion that a permissible TEF transaction is the functional equivalent of a loan.

One commenter stated that there is an existing rental affordability crisis and therefore the OCC should not impose burdensome requirements and restrictions on tax equity finance transactions that might reduce low income housing tax credit investment. The OCC believes the clarity and safety and soundness benefits of § 7.1025 outweigh any potential burden. Moreover, § 7.1025 provides an additional authority for national banks and Federal savings associations to make TEF transactions. It does not limit or impede a national bank or Federal savings association from participating in transactions under other existing authorities. Therefore, if a national bank or Federal savings association wishes to engage in a low income housing tax credit investment under existing public welfare investment or community development authority, it could do so as long as it meets the requirements of those existing authorities.

Relatedly, the OCC received eight comments requesting that the OCC confirm that TEF authority is separate and apart from the public welfare investment authority and community development investment authority under 12 U.S.C. 24(Eleventh), 12 U.S.C. 1464(c)(3)(A), 12 CFR part 24, 12 CFR 160.30, and 12 CFR 160.36, and will not be a replacement authority. To the extent an investment would qualify under multiple authorities, the national bank or Federal savings association may determine which authority it is using to engage in the transaction. To eliminate any confusion on this point, the final rule adds a sentence to § 7.1025(a) indicating that the authority under § 7.1025 is pursuant to 12 U.S.C. 24(Seventh) and 1464 lending authority and is separate from, and does not limit, other investment authorities available to national banks and Federal savings associations.

One commenter supported the intent of the proposed rule but suggested the OCC needs to familiarize itself with, and contemplate the impact of, certain Internal Revenue Service (IRS) rules and standards relating to TEF transactions and structures, including sections 49

and 50 of the Internal Revenue Code, Revenue Procedure 2007–65 and Revenue Procedure 2014–12, and whether the proposed rule would make renewable energy TEF transactions non-compliant with these laws and IRS Procedures. The OCC is familiar with sections 49 and 50 of the Internal Revenue Code, Revenue Procedures 2007–65 and 2014–12, as well as other IRS rules and guidance on tax credits, and believes the TEF provision would not prevent a national bank or Federal savings association from complying with IRS rules, procedures, and standards. Therefore, OCC is finalizing § 7.1025(a) as proposed.

The OCC proposed to define a “tax equity finance transaction” in § 7.1025(b)(1) as a transaction in which a national bank or Federal savings association provides equity financing to fund a project that generates tax credits and other tax benefits and the use of an equity-based structure allows the transfer of those credits to the bank or savings association. The OCC received two comments on this provision. One commenter suggested that the OCC should review current draft legislation for impacts on the terms “generation” and “renewable” if energy storage is added to section 48 of the Internal Revenue Code. Proposed § 7.1025(b)(1) defines a tax equity finance transaction in part to mean a transaction that generates tax credits and other benefits. In response, the OCC notes that, because the definition does not limit tax equity finance transactions to only those that relate to energy generation, if section 48 were amended to add energy storage, national banks and Federal savings associations would be able to engage in transactions involving energy storage that met the requirements of § 7.1025.

Another commenter noted that a TEF structure may involve other tax benefits in addition to tax credits, such as deductions and other items that fall under the category of tax equity. The OCC acknowledges that tax benefits may take many forms and is revising proposed § 7.1025(b)(1), redesignated as § 7.1025(b)(3) in the final rule, to change “generates tax credits and other tax benefits” to “generates tax credits or other tax benefits.”

The OCC also requested comment on whether national banks and Federal savings associations are currently participating in TEF transactions through fund-based structures and, if not, whether national banks and Federal savings associations would want to participate in TEF transactions through fund-based structures. A fund-based structure is a structure in which a national bank or Federal savings

⁵⁴ For a discussion of existing precedent on such authority, see 85 FR 40794 (July 7, 2020).

association invests in a fund that is invested or will invest in multiple TEF transactions. Seven commenters responded to this question and suggested that the final rule should allow TEF investments through investment funds or other funds-based structures. For the reasons discussed by commenters, including diversifying risk, enabling smaller investments, and permitting less experienced national banks and Federal savings associations to participate alongside more experienced TEF investors, the OCC will permit TEF investments through investment funds as long as the investment meets all of the requirements and conditions of § 7.1025. The OCC is revising proposed § 7.1025(b)(1), redesignated as § 7.1025(b)(3) in the final rule, to change “. . . to fund a project that generates tax credits . . .” to “. . . to fund a project or projects that generate tax credits . . .”

The OCC is adopting the proposed definition of “tax equity finance transaction” with these two changes discussed above.

The proposed rule included an aggregate total dollar limitation on TEF transactions that a national bank or Federal savings association could engage in based on a percentage of a national bank or Federal savings association’s capital and surplus. The OCC proposed to define “capital and surplus” in § 7.1025(b)(2) by cross-referencing to its definition in the OCC’s lending limit rule at 12 CFR part 32.⁵⁵ As defined in the lending limit rule, for qualifying community banking organizations that have elected to use the community bank leverage ratio framework as set forth under the OCC’s Capital Adequacy Standards at 12 CFR part 3, “capital and surplus” means a qualifying community banking organization’s tier 1 capital, as used under 12 CFR 3.12, plus a qualifying community banking organization’s allowance for loan and lease losses or adjusted allowances for credit losses, as applicable, as reported in the Consolidated Reports of Condition and Income (Call Report). For all other national banks and Federal savings associations, “capital and surplus” means a national bank’s or savings association’s tier 1 and tier 2 capital, calculated under the risk-based capital standards applicable to the institution as reported in the Call Report, plus the balance of a national bank’s or Federal

savings association’s allowance for loan and lease losses or adjusted allowances for credit losses, as applicable, not included in the bank’s or savings association’s tier 2 capital, for purposes of the calculation of risk-based capital, as reported in the national bank’s or savings association’s Call Report. The OCC received no comments on proposed § 7.1025(b)(2) and is finalizing it as proposed.

Under proposed § 7.1025(c), a TEF transaction would qualify as the functional equivalent of a loan if it meets seven requirements that derive from OCC interpretations. First, paragraph (c)(1) provides that the TEF transaction structure must be necessary for making the tax credits and other tax benefits available to the national bank or Federal savings association. One commenter suggested that the OCC should clarify that the tax equity finance transaction structure may be necessary for making the tax credits or other tax benefits available. The OCC acknowledges that tax benefits may take many forms and is revising proposed § 7.1025(c)(1) to change “making the tax credits and other tax benefits available” to “making the tax credits or other tax benefits available.” With this revision, the OCC is finalizing § 7.1025(c)(1).

Second, paragraph (c)(2) provides that the TEF transaction must be of limited tenure and not indefinite. Under this requirement, a national bank or Federal savings association would need to be able to achieve its targeted return in a reasonable time, and the TEF transaction would need to have a defined termination point. A national bank or Federal savings association could satisfy this requirement if the TEF transaction will terminate within a reasonable time of the transaction’s initiation or if a project sponsor has an option to purchase a national bank’s or Federal savings association’s interest at or near fair market value. The national bank or Federal savings association cannot control whether it retains the interest indefinitely. The proposed rule permitted a national bank or Federal savings association to retain a limited investment interest if that interest is required by law to obtain continuing tax benefits from the TEF transaction. The OCC received five comments on this requirement.

Three commenters requested clarification that the 15-year holding period for LIHTC investments would not violate the limited tenure requirement. The OCC confirms that under § 7.1025(c)(2), a national bank or Federal savings association may hold an investment in order to obtain and retain tax benefits as required by law,

including holding the investment to comply with the 15-year recapture period for LIHTC investments.

Three commenters suggested that a requirement that the sponsor have a call option would have adverse tax consequences in certain TEF transactions and suggested removing that requirement. However, proposed § 7.1025(c)(2) does not require that a sponsor must have a call option in order to comply with § 7.1025; it requires only that the transaction is of limited tenure and is not indefinite, such as a limited investment interest requirement by law to obtain continuing tax benefits. The OCC used a call option as an example in the preamble to the proposed rule as one way a national bank or Federal savings association could comply with the limited tenure requirement. The OCC did not intend this to be an exhaustive list.

One commenter suggested the OCC clarify in the final rule that TEF investments may be retained for the duration needed to obtain the expected rate of return consistent with market practices for such an investment. The OCC agrees with the commenter and is revising § 7.1025(c)(2) to require that the transaction is of limited time and is not indefinite, including retaining a limited investment interest that is (1) required by law to obtain continuing tax benefits or (2) needed to obtain the expected rate of return.

One commenter suggested proposed § 7.1025 could result in the sale of an investment at a price lower than the bank could otherwise obtain. Although a national bank or Federal savings association may exit a TEF transaction through a sale to a third party, the OCC does not expect that sale to be immediate if it would result in fire sale pricing. One commenter suggested the OCC should clarify that it is permissible to have a purchase option price that includes an amount necessary for a national bank or Federal savings association to achieve its expected rate of return. The OCC notes that an option to purchase may include an amount necessary for a national bank or Federal savings association to achieve its expected rate of return, and the OCC believes this would be consistent with the requirements and conditions of § 7.1025.

One commenter requested the OCC explicitly permit other structures that are required by law to obtain tax benefits. This commenter cited to Internal Revenue Service Revenue Procedure 2014–12, which the commenter stated provides a safe harbor for an exit structure in which the investor “puts” its interest back to the

⁵⁵ The OCC recently amended the definition of “capital and surplus” in 12 CFR 32.2 in its recent community bank leverage ratio rule. See 84 FR 61776 (November 13, 2019).

project instead of the sponsor having an option to purchase the interest at or near fair market value. The OCC agrees with the commenter that transaction structures that provide different exit options may satisfy § 7.1025(c) as long as the national bank or Federal savings association does not control whether it retains the interest indefinitely. However, the safe harbor provided in IRS Revenue Procedure 2014–12, in which the national bank or Federal savings association would have a put option that it could have the sponsor purchase the interest at or near market value, would not satisfy, by itself, the requirements of § 7.1025(c)(2) because a put option alone would allow the national bank or Federal savings association to decide whether it would hold the investment indefinitely (*i.e.*, let the put expire). The national bank or Federal savings association could couple the put option with another exit mechanism in which both the IRS safe harbor and the requirements of the TEF provision are met, such as a put option coupled with a contract provision providing that after a certain amount of time has passed or a certain rate of return has been reached, the interest will revert from the national bank or Federal savings association to the sponsor. With the change described above, the OCC is finalizing § 7.1025(c)(2).

Third, paragraph (c)(3) provides that the tax benefits and other payments received by the national bank or Federal savings association from the TEF transaction must repay the investment and provide an implied rate of return. As a result of this proposed requirement, the national bank's or Federal savings association's underwriting could not place undue reliance on the value of any residual stake in the project and the proceeds of disposition following the expiration of the tax credits' compliance period. The OCC received two comments on proposed § 7.1025(c)(3). One commenter suggested that the OCC should clarify in the final rule that the calculation of the rate of return is the expected rate of return at the time the investment is initially made and revise § 7.1025(c)(3) to refer to the expected rate of return at original underwriting. The OCC agrees with the commenter and is revising § 7.1025(c)(3) to refer to the expected rate of return at the time of underwriting.

One commenter suggested that the OCC consider *Sacks v. Commissioner, Internal Revenue Service*⁵⁶ and its use

of "implied rate of return" so that the final rule does not render moot the decision in this case that recognized the congressional purposes underlying Federal tax credits and held that a pretax profit was not required for economic substance purposes. The OCC does not believe that § 7.1025(c)(3) renders this case moot. Consistent with *Sacks*,⁵⁷ § 7.1025(c)(3) does not require a pretax profit, rather, it simply requires an expected rate of return that contemplates the tax credit and other benefits.

One commenter suggested that in matters concerning any residual stake in the project, the IRS true lease authority must be understood, and the OCC should not force or cause a renewable energy project sponsor to violate IRS requirements. Proposed § 7.1025(c)(3) does not contain residual stake language. Rather, as the preamble to the proposed rule explained, a national bank's or Federal savings association's underwriting should not place undue reliance on the value of any residual stake in the project. The OCC does not believe that this language in any way would cause or force a project sponsor to violate IRS requirements. With the revision discussed above, the OCC is finalizing § 7.1025(c)(3).

Fourth, paragraph (c)(4) provides that the national bank or Federal savings association must not rely on appreciation of value in the project or property rights underlying the project for repayment. As discussed in OCC Interpretive Letter No. 1139 (November 13, 2013), wind turbines, solar panels, and other ancillary equipment are not considered real property under 12 U.S.C. 29, and acquisition of interests in real estate incidental to the provision of financing is not inconsistent with 12 U.S.C. 29. The OCC received no comments on this requirement and is finalizing § 7.1025(c)(4) as proposed.

Fifth, paragraph (c)(5) provides that the national bank or Federal savings association must use underwriting and credit approval criteria and standards that are substantially equivalent to the underwriting and credit approval criteria and standards used for a traditional commercial loan. To comply with this requirement, the documents governing the TEF transaction should contain terms and conditions equivalent to those found in documents governing typical lending relationships and transactions. The OCC received no comments on this requirement and is finalizing § 7.1025(c)(5) as proposed.

Sixth, paragraph (c)(6) provides that the national bank or Federal savings

association must be a passive investor in the transaction and must not be able to direct the affairs of the project company. This means that the national bank or Federal savings association is not able to direct day-to-day operations of the project. However, the OCC does not consider temporary management activities in the context of foreclosure or similar proceedings as violating this requirement. One commenter suggested that the OCC should clarify in the final rule that customary protective rights and covenants are permitted and do not violate the "passive investor" requirement of § 7.1025(c)(6). The OCC agrees that customary protective rights and covenants are permitted and do not violate § 7.1025(c)(6). However, the OCC does not believe changing the proposed rule text is necessary. TEF transactions are the functional equivalent of loans and many of the same terms, conditions, and covenants found in lending and lease financing transactions are permissible for TEF transactions. In some cases, these terms, conditions, and covenants may be necessary to comply with the requirement in § 7.1025(c)(5) that underwriting and credit approval criteria and standards must be substantially the same as those used for traditional commercial loans. The OCC is finalizing § 7.1025(c)(6) as proposed.

Seventh, paragraph (c)(7) provides that the national bank or Federal savings association must appropriately account for the transaction initially and on an ongoing basis and document contemporaneously its accounting assessment and conclusion. Although TEF transactions can be the functional equivalent of loans pursuant to a national bank's or Federal savings association's lending authority, the accounting treatment of tax equity investments may differ from the treatment of a loan. Two commenters noted that investments in housing credit transactions are structured as equity investments and requested that those investments be treated as equity investments and not loans for Federal income purposes. The OCC acknowledges that although a transaction may be the functional equivalent of a loan for permissibility purposes, it may be treated as an equity investment for accounting or tax purposes. Section 7.1025(c) provides that a national bank or Federal savings association must appropriately account for the transaction initially and on an ongoing basis and document its accounting assessment and conclusion. The OCC is finalizing § 7.1025(c)(7) as proposed.

Proposed paragraph (d) provides that a national bank or Federal savings

⁵⁶ *Sacks v. Commissioner, Internal Revenue Service*, 69 F.3d 982, 991 (9th Cir. 1995).

⁵⁷ See 69 F.3d at 991.

association only may engage in TEF transactions if it meets the following four additional requirements. First, proposed paragraph (d)(1) provides that the national bank or Federal savings association cannot control the sale of energy, if any, from the project. To satisfy this requirement, a national bank or Federal savings association could enter into a long-term contract with creditworthy counterparties to sell energy from the project, as articulated in OCC Interpretive Letter 1139, or have the project sponsor bear responsibility for selling generated power into the energy market so long as those sales are stabilized by a hedge contract that provides reasonable price and cash flow certainty, as articulated in OCC Interpretive Letter No. 1141 (April 22, 2014). One commenter suggested that the final rule should clarify that national banks and Federal savings associations have appropriate flexibility in satisfying this requirement and that the OCC should not require a long-term contract or hedge if the national bank or Federal savings association has otherwise determined that exposure to cash flow certainty has been adequately mitigated. The OCC confirms that national banks and Federal savings associations have flexibility to satisfy this requirement. Proposed § 7.1025(d)(1) requires that national banks and Federal savings associations cannot control the sale of energy from a project, but the provision does not prescribe that certain agreements or arrangements must be used. Although, the preamble for proposed § 7.1025(d)(1) lists two examples of ways a national bank or Federal savings association could comply with the requirement, these examples are not the only ways a national bank or Federal savings association could satisfy this requirement.

One commenter suggested the OCC should confirm that contracts for the sale of energy can be entered into with affiliates of the national bank or Federal savings association participating in the TEF transaction, so long as such contracts are consistent with the TEF requirements and do not create negative tax consequences. The OCC confirms that a national bank or Federal savings association may enter into energy sale contracts with affiliates as long as the requirements of § 7.1025 are met and any transaction with an affiliate complies with 12 U.S.C. 371c, 12 U.S.C. 371c-1, 12 CFR part 223, and any other applicable laws and regulations regarding affiliate transactions. Similarly, one commenter requested that the OCC explicitly confirm that the

project company's hedging counterparty does not need to be an unaffiliated third party and may be the national bank or Federal savings association itself or an affiliate of the national bank or Federal savings association. The OCC confirms that a project company's hedging counterparty need not be an unaffiliated third party and may be an affiliate of the national bank or Federal savings association so long as the sale meets the requirements of § 7.1025 and any applicable affiliate transactions laws and regulations, including 12 U.S.C. 371c and 371c-1, and 12 CFR part 223, and is conducted in a safe and sound manner (e.g., the counterparty is creditworthy). However, a national bank or Federal savings association itself may not be the hedging counterparty for one of its TEF investments.

One commenter requested the OCC clarify that the right of a national bank or Federal savings association to prohibit certain sales does not constitute inappropriate control of the right to sell power. The OCC confirms a national bank or Federal savings association may prohibit certain sales or institute certain credit or other requirements for third party purchasers of the energy if done pursuant to prudent underwriting to ensure the project's success and not in an attempt to control, influence, or manipulate the energy market. One commenter requested the OCC recognize that a TEF project may sell a portion of the electricity that it generates into the merchant market, and not pursuant to a power purchase agreement or a hedge contract, and permit a national bank or Federal savings association to invest in such projects as long as it has reasonably determined that any merchant sales by the project company contribute favorably to the overall financial health of the project company. The OCC confirms a TEF project may sell energy into a merchant market as long as the national bank or Federal savings association is not controlling the sale of the energy and the TEF transaction otherwise complies with the requirements and conditions of § 7.1025.

One commenter suggested that certain terms, such as "long term," "creditworthy," and "sell" make the provision unworkable given market realities. The OCC recognizes that there may be changes in market practice and standards in the evolving space of TEF transactions, and renewable energy transactions in particular. For that reason, § 7.1025(d)(1) does not prescribe how a national bank or Federal savings association must comply with the requirement not to control energy from the sale of the project. Rather,

§ 7.1025(d)(1) simply requires that a national bank or Federal savings association must not control the sale of energy from the project. In the preamble to the proposed rule, the OCC provided a couple of examples of how a national bank or Federal savings association may satisfy the requirement, but these examples are illustrative only. The terms "creditworthy" and "sell" do not appear in the proposed rule text and instead are used in the proposed rule's preamble to describe examples of how a national bank or Federal savings association may satisfy the requirement in § 7.1025(d)(1). The OCC is finalizing § 7.1025(d)(1) as proposed.

Second, proposed paragraph (d)(2) provides that the national bank or Federal savings association must limit the total dollar amount of TEF transactions to no more than five percent of its capital and surplus unless the OCC determines, by written approval of a written request by the national bank or Federal savings association to exceed the five percent limit, that a higher aggregate limit will not pose an unreasonable risk to the national bank or Federal savings association and that the TEF transactions in the national bank's or Federal savings association's portfolio will not be conducted in an unsafe or unsound manner. In no case may a bank's or Federal savings association's total dollar amount of TEF transactions exceed fifteen percent of its capital and surplus. As provided for public welfare investments under 12 U.S.C. 24(Eleventh) and 12 CFR part 24, a national bank is generally subject to a five percent aggregate investment limit and this limit encourages a national bank to maintain appropriate risk diversification.⁵⁸ The OCC specifically requested comment on whether the OCC should use an alternate measure when calculating the aggregate investment limit and whether the proposed five percent aggregate investment limit is appropriate. One commenter suggested that the final rule should not impose a cap on TEF transactions and instead should continue to be subject to the limits set forth in 12 CFR part 32 and other concentration risk limits, which are appropriate and adequate to any concentration or similar risks presented by TEF transactions. One commenter also suggested that only a small number of national banks and Federal savings associations are able to participate in TEF transactions and that these banks would quickly hit this arbitrary five percent limit. The OCC is retaining the proposed five percent aggregate limit,

⁵⁸ 12 U.S.C. 24(Eleventh); 12 CFR 24.4(a).

which can be increased up to 15 percent with written approval from the OCC. The OCC interpretations that this provision is codifying include a three percent cap on TEF transactions.⁵⁹ The OCC believes that a limit is necessary but that the limit can be safely increased to five percent. Although TEF transactions will be subject to the legal lending limits on loans to one borrower as the commenter correctly pointed out, the OCC believes maintaining the aggregate transaction limitation will allow the OCC to assess how the authority is implemented and any safety and soundness concerns that may arise. The OCC is finalizing § 7.1025(d)(2) as proposed.

Third, proposed paragraph (d)(3) provides that the national bank or Federal savings association must have provided written notification to the OCC prior to engaging in each TEF transaction that includes its evaluation of the risks posed by the transaction. The OCC received four comments on this requirement. The commenters suggested that the OCC should not require national banks and Federal savings associations to provide prior written notification and instead should be allowed to provide after-the-fact notification or follow the post-notification procedures available under the public welfare investment authority.⁶⁰ One commenter also suggested that prior notice for each transaction is overly burdensome and of little value to examiners, and, if necessary, the OCC should limit it to when a bank first engages in TEF activity and not require it for each subsequent transaction. The OCC disagrees with these comments. A national bank or Federal savings association may use the appropriate post-investment notification procedures for investments made pursuant to the public welfare investment authority or other applicable existing authorities, but to the extent that a national bank or Federal savings association is using TEF authority under § 7.1025, it must comply with the requirements and conditions contained in the provision, including prior written notification, before engaging in each transaction. Examiner-in-Charge (EIC) non-objection was required under the OCC's existing interpretations for TEF transactions. The OCC is not creating a new requirement but, rather, is modifying the non-objection requirement to a less onerous notice requirement. The OCC may assess over time whether prior notices

are necessary for subsequent transactions or whether after-the-fact notices would be sufficient, and may revise § 7.1025 as appropriate at that time. A well-managed national bank or Federal savings association engaging in TEF transactions under § 7.1025 authority must provide prior notice as required by § 7.1025 whether engaging in the activity at the bank or savings association-level or through an operating subsidiary. The OCC is finalizing § 7.1025(d)(3) as proposed, with one clarifying change. The final rule clarifies that the notice is to be provided to the appropriate OCC supervisory office, and adds a definition of this term at § 7.1025(b)(1) to mean the OCC office that is responsible for the supervision of a national bank or Federal savings association, as described in subpart A of 12 CFR part 4.⁶¹

Fourth, proposed paragraph (d)(4) provides that the national bank or Federal savings association must be able to identify, measure, monitor, and control the associated risks of its tax equity finance transaction activities individually and as a whole on an ongoing basis to ensure that it conducts such activities in a safe and sound manner. The OCC received one comment related to this provision regarding the use of the word "control." The commenter suggested that the final rule should eliminate the word "control" or otherwise acknowledge that it is not meant to suggest that national banks and Federal savings associations should have more than the limited control over TEF transaction activities that is consistent with the passive nature of these investments. The OCC clarifies that use of the word "control" in relation to risk management of TEF activities is consistent with the passive nature of these transactions and a national bank or Federal savings association satisfying this condition would not be in conflict with the passivity requirement of § 7.1025(c)(6). Similar to how a national bank or Federal savings association identifies, measures, monitors, and controls risks related to loans and other extensions of credit but does not exercise control over the business of the borrower, a national bank or Federal savings association would identify, measure, monitor and control risks related to the transaction but would not be exercising control over the operations of the project or projects underlying the

TEF transaction. The OCC is finalizing § 7.1025(d)(4) as proposed.

The OCC requested comment on whether national banks or Federal savings associations routinely obtain legal opinions regarding the availability of tax credits in connection with these types of finance transactions. One commenter suggested that a national bank or Federal savings association should not be required to obtain a legal opinion on the tax benefits of a TEF transaction, but rather the OCC should require a good faith, reasoned basis for making that determination. The commenter suggested that it is not market practice to obtain a legal opinion that says a TEF structure is "necessary" in order for the tax benefits to be available. Instead, the commenter suggested the OCC should recognize that national banks and Federal savings associations employ a range of approaches to evaluating the tax benefits of TEF transactions.

The OCC agrees with the commenter that there should be flexibility related to the legal analysis underlying the tax availability determination. However, the OCC believes that the final rule should require the national bank or Federal savings association to have a reasonable basis for determining the availability of tax credits in connection with TEF transactions. Therefore, the OCC is including in the final rule a more flexible provision. Specifically, new § 7.1025(d)(5) requires a national bank or Federal savings association to obtain a legal opinion, or to have other good faith, reasoned bases for making the determination that tax credits or other tax benefits are available before engaging in a TEF transaction. A legal opinion includes either an outside counsel opinion or an opinion provided by a national bank or Federal savings association's internal or in-house counsel. Although a legal opinion is not the only means to fulfill this requirement, a good faith, reasoned basis requires more than simply accepting a statement from a person or entity promoting an investment. A national bank or Federal savings association may not rely solely on the assurances of a person or entity promoting a TEF transaction that tax credits will be available.

Proposed paragraph (e) provides that the TEF transaction must be subject to the substantive legal requirements of a loan, including the lending limits prescribed by 12 U.S.C. 84, as implemented by 12 CFR part 32, and, if the active investor or project sponsor of the transaction is an affiliate of the national bank or Federal savings association, the restrictions on

⁵⁹ OCC Interpretive Letter 1139 (Nov. 13, 2013); OCC Interpretive Letter 1141 (Apr. 22, 2014).

⁶⁰ 12 CFR 24.5(a).

⁶¹ This final rule also makes technical changes to part 4, subpart A. See the "Technical Changes" section of this SUPPLEMENTARY INFORMATION.

transactions with affiliates prescribed by 12 U.S.C. 371c and 371c-1, as implemented by 12 CFR part 223. If a national bank or Federal savings association is relying on its lending authority to participate in a TEF transaction, the TEF transaction would be subject to regulatory requirements applicable to loans, including any applicable legal lending limits and affiliate transaction restrictions to the extent applicable. However, the regulatory capital treatment of a national bank or Federal savings association's participation in a TEF transaction would be determined according to the regulatory capital rule (12 CFR part 3). The OCC received no comments on § 7.1025(e) and is finalizing this provision as proposed.

The OCC specifically requested comment on whether the final rule should prohibit a national bank or Federal savings association from entering into TEF transactions for projects involving residential installation TEF transactions not involving utility-scale standalone power-generation facilities. One commenter suggested that the final rule should not prohibit these transactions so as not to arbitrarily reserve it for only one segment of the market. The OCC concurs with this comment and will not limit TEF transactions to only those involving standalone utility-scale power generation facilities in the final rule. A national bank or Federal savings association may participate in a TEF transaction if it meets the requirements and conditions of § 7.1025 and the OCC has not raised safety and soundness concerns related to the particular transaction.

The OCC also requested comment on whether the final rule should permit national banks or Federal savings associations to invest in TEF transactions involving detached single-family residences, multi-family residences, or non-utility commercial buildings. Five commenters suggested that the OCC should permit national banks and Federal savings associations from entering into these transactions, with one commenter suggesting the OCC should affirm longstanding OCC precedent that the legal permissibility of a TEF transaction is agnostic as to end-user segment and underlying asset. The OCC confirms that it will not prohibit a national bank or Federal savings association from entering into TEF projects involving detached single-family residences, multi-family residences, or non-utility-scale commercial buildings. As is the case with loans and leases, the legal permissibility of a TEF transaction is

not dependent on the end-user segment and underlying asset. Therefore, the OCC is finalizing § 7.1025 without a prohibition on residential TEF transactions.

One commenter also requested that the OCC confirm there is no prohibition on, and that tax credit availability would not be affected by, national banks funding a portion of their TEF investment during late stage construction if required to qualify for the tax benefits and adequate protections are in place. The OCC confirms that there is no prohibition on national banks or Federal savings associations funding a portion of their TEF investment during late stage construction if required to qualify for the tax benefits and adequate protections are in place. However, the OCC cannot opine on whether late stage investment would affect the availability of the tax credit and such inquiries should be directed to the IRS.

Further, the OCC requested comment on whether national banks and Federal savings associations should have other contractual remedies available before entering into a TEF transaction. Two commenters suggested that the final rule should not prescribe any particular contractual remedies for TEF transactions, including guarantees or indemnities, but rather, should allow national banks and Federal savings associations the flexibility to choose the most appropriate remedies for a given transaction. Another commenter suggested that requiring certain contractual provisions is not necessary, noting that it is common for national banks and Federal savings association to require such remedies as a business practice when making other investments even though the OCC does not require them and that such remedies are best left up to national banks and Federal savings associations. The OCC agrees with these commenters that national banks and Federal savings associations should be afforded the flexibility to choose contractual remedies as appropriate. Therefore, the OCC is finalizing § 7.1025 without requiring specific contractual remedies.

National Bank and Federal Savings Association Payment System Memberships (New § 7.1026)

Section 7.1026 Payment System Memberships. National banks may join payment systems.⁶² OTS precedent also permits Federal savings associations to

⁶² See, e.g., OCC Conditional Approval Letter No. 220 (Dec. 2, 1996); OCC Interpretive Letter No. 993 (May 16, 1997); OCC Interpretive Letter No. 1140 (Jan. 13, 2014); OCC Interpretive Letter No. 1157 (Nov. 12, 2017).

join payment systems.⁶³ The OCC proposed a new rule that would codify OCC interpretations regarding national bank membership in payment systems and apply this new provision to Federal savings associations. Specifically, proposed § 7.1026 required a national bank or Federal savings association to provide 30-day prior notice to the OCC before joining a payment system if the bank or savings association would be exposed to open-ended liability. The national bank or Federal savings association would need to provide the OCC with a 30-day after-the-fact notice before joining any other payment system where the bank or savings association is not exposed to open-ended liability. These notices must contain representations that the national bank or Federal savings association has identified and evaluated the risks posed by membership in the payment system and will measure, monitor, and control those risks after membership. The proposal permitted a national bank or Federal savings association to consider its liability to a particular payment system to be limited if the bank or savings association obtains an independent legal opinion confirming this limited liability prior to joining the payment system. Finally, the proposal required a national bank or Federal savings association to notify its appropriate OCC supervisory office if its ongoing review identifies a safety and soundness concern as soon as that concern is identified and to take appropriate actions to remediate the risk. Several commenters expressed general support for the proposed approach for joining payment systems and, as explained further below, the OCC is adopting the proposal largely as proposed.

Definitions. In proposed § 7.1026(b), the OCC defined several terms used throughout the new section. First, the proposal defined "appropriate OCC supervisory office" as the OCC office that is responsible for the supervision of a national bank or Federal savings association, as described in subpart A of 12 CFR part 4. The OCC received no comments on this definition and is adopting it as proposed.

Second, because different payment systems may use different terminology, the OCC defined "member" to include a national bank or Federal savings association designated as a "member," a "participant," or other similar role by a payment system, including by a payment system that requires the

⁶³ See, e.g., 12 CFR 145.17; OTS Op. Ch. Couns. (Sept. 15, 1995); OTS Op. Ch. Couns. (Dec. 22, 1995).

national bank or Federal savings association to share in operational losses or maintain a reserve with the payment system to offset potential liability for operational losses. The OCC received one comment that indirect members of payment systems should not be included in the definition of “member” unless they are bound by the rules of the payment system and such rules, including any open-ended liabilities imposed, purport to extend to such indirect members. The OCC agrees with this commenter that it would be appropriate to include indirect members only in these specific circumstances and, thus, is amending the definition of “member” in the final rule to reflect this comment.

Third, the OCC defined “open-ended liability” as liability for operational losses that is not capped under the rules of the payment system and includes indemnifications provided to third parties as a condition of membership in the payment system. For example, as a condition of membership in particular payment systems, national banks and Federal savings associations may provide open-ended indemnifications to Federal Reserve Banks that act as service providers for the payment systems.⁶⁴ This definition is consistent with the definition of open-ended liability in OCC Interpretive Letter 1140.

The OCC received one comment on this definition expressing concern that it did not clearly include a situation in which the indemnification giving rise to an open-ended liability is imposed directly upon the participant by the Federal Reserve Bank, which is acting as a service provider to payment system participants. The OCC agrees with this commenter that the participant would be exposed to open-ended liability in that case and is modifying the definition of “open-ended liability” to reflect the situation described by the commenter. As a result, open-ended liability in the final rule means liability for operational losses that is not capped under the rules of the payment system, and includes indemnifications of third parties provided as a condition of membership in the payment system.

Fourth, although memberships in payment systems expose national banks and Federal savings associations to a variety of risks, OCC legal precedent only has addressed whether a national bank may assume open-ended liability for operational losses at the payment system. The OCC defined “operational loss” as a charge resulting from sources other than defaults by other members of

the payment system. The OCC pointed to examples listed in OCC Interpretive Letter 1140⁶⁵ and requested comment on whether these examples should be included in the definition of “operational loss.” The OCC also asked whether other examples should be included in that list. One commenter supported including the examples in the text of the regulation and recommended adding cybersecurity breaches. A second comment letter also supported adding cybersecurity breaches but did not believe the list of examples should be included in the definition of “operational loss” in the regulatory text. The OCC believes that adding the non-exhaustive list of examples to the body of the regulation will provide greater clarity. The OCC also agrees that it is appropriate to add cybersecurity breaches to the list. Thus, the final rule defines operational loss to mean a charge resulting from sources other than defaults by other members of the payment system. The final rule also adds examples of these operational losses. This nonexclusive list cites losses due to: employee misconduct, fraud, misjudgment, or human error; management failure; information systems failures; disruptions from internal or external events that result in the degradation or failure of services provided by the payment system; security breaches or cybersecurity events; or payment or settlement delays, constrained liquidity, contagious disruptions, and resulting litigation.

Finally, the OCC defined “payment system” in § 7.1026 to mean a “financial market utility” as defined in 12 U.S.C. 5462(6), wherever operating, and that includes both retail and wholesale payment systems. Section 5462(6) provides that “a financial market utility” means “any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person” with certain exclusions.⁶⁶ This definition

excluded derivatives clearing organizations registered under the Commodity Exchange Act⁶⁷ and clearing agencies registered under the Securities Exchange Act of 1934,⁶⁸ and foreign organizations that would be considered a derivatives clearing organization or clearing agency were it operating in the United States.⁶⁹ This definition therefore includes payment systems that operate either in the U.S. or in a foreign jurisdiction. The OCC requested comment on whether this definition appropriately encompasses both foreign and domestic payment systems that national banks and Federal savings associations may join. One commenter requested that the OCC provide guidance for banks and savings associations applying this definition to international clearing organizations or agencies that may not meet the technical requirements necessary to register under the Commodity Exchange Act or Securities Exchange Act of 1934. The OCC notes that the carve-out for clearing organizations and clearing agencies reflects that OCC precedent distinguishes between companies and organizations performing payments, clearing, and settlement functions.⁷⁰ While the proposed rule would codify OCC precedent related to payment system memberships, it would not affect OCC precedent applicable to memberships in clearing and settlement organizations. For example, a national bank or Federal savings association wishing to join a foreign organization subject to OCC Interpretive Letter Nos. 929 or 1102 would continue to follow the process outlined in that precedent rather than the process outlined in § 7.1026. The OCC believes this is sufficiently clear in the proposed rule

controlled by such entities, provided that the exclusions in this clause apply only with respect to the activities that require the entity to be so registered” nor “any broker, dealer, transfer agent, or investment company, or any futures commission merchant, introducing broker, commodity trading advisor, or commodity pool operator, solely by reason of functions performed by such institution as part of brokerage, dealing, transfer agency, or investment company activities, or solely by reason of acting on behalf of a financial market utility or a participant therein in connection with the furnishing by the financial market utility of services to its participants or the use of services of the financial market utility by its participants, provided that services performed by such institution do not constitute critical risk management or processing functions of the financial market utility.” 12 U.S.C. 5462(6)(B).

⁶⁷ 7 U.S.C. 1 *et seq.*

⁶⁸ 15 U.S.C. 78a *et seq.*

⁶⁹ The OCC maintains separate precedent relevant to memberships in these organizations. *See, e.g.*, OCC Interpretive Letter No. 929 (Feb. 11, 2002); OCC Interpretive Letter No. 1102 (Oct. 14, 2008).

⁷⁰ *Id.*

⁶⁴ OCC Interpretive Letter No. 1157 (Nov. 12, 2017).

⁶⁵ OCC Interpretive Letter No. 1140 (Jan. 13, 2014).

⁶⁶ Financial market utility “does not include: designated contract markets, registered futures associations, swap data repositories, and swap execution facilities registered under the Commodity Exchange Act, or national securities exchanges, national securities associations, alternative trading systems, security-based swap data repositories, and swap execution facilities registered under the Securities Exchange Act of 1934, solely by reason of their providing facilities for comparison of data respecting the terms of settlement of securities or futures transactions effected on such exchange or by means of any electronic system operated or

and, therefore, finalizes this definition as proposed.

Notice requirements. Proposed § 7.1026(c) required a national bank or Federal savings association to provide written notice to the appropriate OCC supervisory office at least 30 days prior to joining a payment system that would expose it to open-ended liability. If the payment system does not expose the national bank or Federal savings association to open-ended liability, the proposed rule required the national bank or Federal savings association to provide after-the-fact written notice within 30 days of joining a payment system. The OCC believes membership in a payment system that exposes members to open-ended liability creates additional risks for national banks and Federal savings associations. Thus, the OCC believes prior notice to the OCC is appropriate in these situations.⁷¹

One comment letter supported this process. A second commenter, however, argued that the proposal may make it more difficult for a national bank or Federal savings association to join a new payment system because it would impose an additional regulatory burden not required for non-OCC regulated institutions. The OCC does not agree with this commenter. As explained above and in the preamble to the proposed rule, the notice requirement for payment system memberships codifies existing requirements from a series of interpretive letters governing national bank payment system memberships. Since the publication of these interpretive letters, OCC-regulated institutions have continued to join new payment systems. The OCC believes that this clarity facilitates payment systems memberships by OCC-regulated institutions rather than hindering them and therefore the OCC adopts paragraph (c) as proposed.

Content of notice. Proposed § 7.1026(d) provided that all notices filed under § 7.1026(c) must include representations that the national bank or Federal savings association has complied with the safety and soundness review required by proposed § 7.1026(e)(1) before joining the payment system and will comply with the safety and soundness review and the

notification requirements in proposed § 7.1026(e)(2) and (3) after joining the system. For after-the-fact notices pursuant to paragraph (c)(2), the proposed rule required a national bank or Federal savings association to include a representation that either the rules of the payment system do not impose liability for operational losses on members or that the national bank's or Federal savings association's liability for operational losses is limited by the rules of the payment system to specific and appropriate limits that do not exceed the lower of the legal lending limit specified by 12 CFR part 32 or a limit established for the national bank or Federal savings association by the OCC. One comment letter noted that the proposed notice requires that national banks and Federal savings associations complete their risk assessment of the payment system before joining. However, this commenter explained that some aspects of a national bank's or Federal savings association's risk management processes may occur after joining. Specifically, the commenter cited integration with a payment system's IT functions. The OCC recognizes that full access to the payment system's IT infrastructure may be necessary to analyze fully its potential risks. However, the OCC still expects banks and savings associations to identify in advance these limitations. Thus, the OCC is finalizing paragraph (d) as proposed, with a minor change in wording of the section heading in paragraph (d)(2).

Safety and soundness procedures. The OCC relies upon a number of resources to communicate in detail its safety and soundness guidance for national bank and Federal savings association memberships in payment systems.⁷² At a minimum, the OCC believes a national bank or Federal savings association must be able to identify, evaluate, and control its risks from membership in a particular payment system before joining the system and on an ongoing basis.⁷³ As a prerequisite to joining a payment system and on a continual basis after joining,

proposed § 7.1026(e) required the national bank or Federal savings association to (1) identify and evaluate the risks posed by membership in the payment system, taking into account whether the liability of the bank or savings association is limited, and (2) measure, monitor, and control those risks. The preamble to the proposal explained that national banks and Federal savings associations should review the standards outlined in OCC Interpretive Letter 1140 and OCC Banking Circular 235 to assist with the requirements in paragraph (e). The proposal also required a national bank or Federal savings association to notify the appropriate OCC supervisory office if its ongoing risk management identifies a safety and soundness concern, such as a material change to the bank's or savings association's liability or indemnification responsibilities, as soon as that concern is identified and to take appropriate actions to remediate the risk. The OCC received several comments related to this section.

First, several commenters responded favorably to the OCC's question about whether the characteristics from Interpretive Letter 1140 should be included in the final rule. In Interpretive Letter 1140, the OCC identified key components of a payment system that appropriately mitigates risk and indicated it would expect a national bank to consider these characteristics when analyzing the payment system. The OCC also explained in Interpretive Letter 1140 the characteristics of an effective risk management program at a national bank. These commenters thought doing so would provide greater certainty about the OCC's expectations. Although not an exhaustive list, the OCC agrees that listing the risk management program criteria from Interpretive Letter 1140 in the regulatory text would assist banks and savings associations as they conduct reviews of payment system memberships. The OCC is including in the final rule a new paragraph (f) that recites the criteria it previously outlined in Interpretive Letter 1140.

One commenter also asked the OCC to provide additional guidance about which of these criteria are most important and the circumstances under which each component should be considered in the analysis of a bank or savings association. The OCC does not believe it would be appropriate to identify further individual scenarios in which specific factors would apply because national banks and Federal savings associations are best positioned to evaluate the applicability and

⁷¹ The proposed notice requirement would not apply to existing payment system memberships. However, as explained below, the proposed rule required national banks and Federal savings associations to continuously inform the OCC of changes to bank or savings association operations that would affect the institution's risk profile. Thus, the OCC would be made aware of any payment system membership at a bank or savings association even though the specific timing and information required by this proposed rule would not apply to existing payment systems memberships.

⁷² See, e.g., FFIEC IT Examination Handbook on Retail Payment Systems (Apr. 2016); FFIEC IT Examination Handbook on Wholesale Payment Systems (July 2004); Comptroller's Handbook: Payment Systems and Funds Transfer Activities (March 1990); OCC Banking Circular 235 (May 10, 1989).

⁷³ For example, OCC Banking Circular 235 states "Management of each national bank is responsible for assessing risk in each payment, clearing, and settlement system in which the bank participates. Management must adopt adequate policies, procedures, and controls with respect to these activities." The OCC applied this Banking Circular to Federal savings associations on Oct. 1, 2014.

importance of each factor given the wide variety of global payment systems as well as the varied complexity of and risk tolerances at individual banks and savings associations. The OCC expects banks and savings associations to review the standards and identify the components that are applicable to the payment system and financial institution at issue. Thus, the OCC is not including this information in the final rule.

Finally, a commenter asked that where the open-ended liability derives from a Federal Reserve Bank acting as a service provider to the payment system participant, the OCC clarify that due diligence and risk management activities should be related to the entity providing the service for which the indemnity or open-ended liability is imposed. The OCC agrees that national banks and Federal savings associations should evaluate the risks that derive from all aspects of the payment system membership, including the risks from service providers to whom the payment system member must indemnify or provide open-ended liability as a condition of membership. However, the OCC expects the due diligence and risk management analysis to apply whether the payment system membership introduces open-ended liability or not. The OCC believes that the language in paragraph (e) of the proposal is sufficiently clear and is adopting this section as proposed.

The OCC noted in the preamble to the proposed rule that a national bank's or Federal savings association's liability will vary from payment system to payment system. The rules of some payment systems may expose members to open-ended liability for operational losses but, in reality, the national bank's or Federal savings association's liability may be capped in some other way. For example, a jurisdiction could have a law that prohibits open-ended liability or restricts the amount of liability to the assets of the entity located in that jurisdiction. If that law applies to the payment system, it could effectively cap a member's operational liability. In other situations, a member may negotiate a separate agreement with a payment system that allows the member to limit its potential liability and, as a result, the risks of membership in that payment system. In recognition of these situations, the proposed rule permitted a national bank or Federal savings association to consider its open-ended liability to a particular payment system to be limited for purposes of the review required by proposed § 7.1026(e)(1) and (2) if the bank or savings association obtains an independent legal opinion

prior to joining the payment system. That legal opinion must describe how the payment system allocates liability for operational losses and conclude the potential liability for the national bank or Federal savings association is limited to specific and appropriate limits that do not exceed the legal lending limit specified by 12 CFR part 32 or a lower limit established for the national bank or Federal savings association by the OCC. This legal opinion would enable the OCC to verify that the liability of the national bank or Federal savings association is limited even though the rules of the payment system do not provide any limits.

Two commenters objected to the independent legal opinion requirement. These commenters argued that the OCC should instead require national banks and Federal savings associations to follow a lower standard and provide just a reasonable basis for concluding that its liability is limited. These commenters also suggested that an opinion from in-house counsel should suffice. The OCC does not agree that lowering the standard would be appropriate. However, the OCC believes it is important to make clear that the legal opinion is *not* required to join any payment system; it is only required for the bank or savings association to treat its liability as limited when the payment systems rules indicate open-ended liability. The OCC, however, is persuaded by the commenters' view that an in-house legal opinion is sufficient. Thus, the OCC is amending the final rule to remove the requirement that the legal opinion be independent of the bank or savings association. The final rule does, however, specifically provide for a written opinion. Even with this change, the OCC expects that this option will be exercised rarely. In fact, the OCC believes that this option will be available only in unusual circumstances, typically for a payment system that operates in a foreign jurisdiction where the laws of that jurisdiction effectively limit the liability of the national bank or Federal savings association. The OCC is offering the written legal opinion as an additional option for institutions wishing to join a payment system in which the rules do not limit the liability of members, but the national bank or Federal savings association believes another factor effectively limits its potential liability. If a payment system's rules impose open-ended liability, national banks and Federal savings associations still may join the payment system even if they do not elect—or are unable to obtain—a written legal opinion provided that they

conduct the appropriate safety and soundness analysis and provide the appropriate OCC supervisory office with the 30-day prior notice required by § 7.1026(c)(1). As the OCC explained in the preamble to the proposed rule, a national bank or Federal savings association that obtains a legal opinion may consider its open-ended liability to be limited so long as there were no material changes to the liability or indemnification requirements of the national bank or Federal savings association after the bank or savings association joined the payment system. If there is a material change, the national bank or Federal savings association may no longer rely on that written legal opinion to demonstrate that its liability is limited and must notify the appropriate OCC supervisory office and remediate its risks as described in § 7.1026(e)(3).

One commenter asked for clarification that, once a bank or savings association has joined a payment system and obtained a legal opinion, it does not need to undertake that process again unless there is a material change to the liability or indemnification provisions applicable to the bank or savings association. The OCC intended this result and, thus, is modifying the final rule to clarify that, so long as there are no material changes to the liability or indemnification requirements applicable to the bank or savings association since the issuance of the written legal opinion, the bank or savings association may consider its open-ended liability to be limited.

Establishment and Operation of a Remote Service Unit by a National Bank (New § 7.1027/Former § 7.4003)

Section 7.4003 provides that a national bank can establish and operate a remote service unit (RSU) pursuant to 12 U.S.C. 24(Seventh). This section also states that an RSU does not constitute a branch under 12 U.S.C. 36(j) and is not subject to State geographic or operational restrictions or licensing laws. Section 7.4003 defines an RSU as an automated facility, operated by a customer of a bank, that conducts banking functions, such as receiving deposits, paying withdrawals, or lending money. This section provides examples of an RSU, specifically listing an automated teller machine (ATM), automated loan machine, automated device for receiving deposits, personal computer, telephone, and other similar electronic devices. Finally, this section provides that an RSU may be equipped with a telephone or tele-video device that allows contact with bank personnel.

The OCC proposed to amend § 7.4003 to expand the definition of an RSU to include either an automated or unstaffed facility and to add drop boxes to the list of RSU examples. Although the OCC has historically treated drop boxes as branches, the OCC believes that interpreting both the terms ATM and RSU to require automation leads to incongruous results where a non-automated facility such as a drop box is considered a branch but an automated facility such as an ATM is not, despite a drop box functioning less like a full branch than an ATM. The OCC also proposed to move § 7.4003 to subpart A of part 7 as new § 7.1027 so that it would be in the same subpart as other branching provisions of part 7.

The OCC received one comment on the proposed amendments to § 7.4003. The commenter opposes the changes to § 7.4003 and states that excluding drop boxes from the definition of branch by including them in the definition of RSU is inconsistent with Supreme Court precedent. The commenter states that the change is inconsistent with OCC precedent and the OCC does not have the authority to include drop boxes and other unstaffed facilities within the RSU/ATM exclusion. The commenter also states that when Congress amended 12 U.S.C. 36(j) to exclude ATMs and RSUs from the definition of branch, it chose to only exclude automated facilities and purposefully chose not to exclude drop boxes or other unstaffed facilities that lack automation. Finally, the commenter states that regardless of where the RSU regulations are placed, to the extent that the OCC maintains that State operational and licensing restrictions are preempted with respect to non-branch offices, then, in expanding the scope of permissible non-branch office activities, the OCC is making a “preemption determination” under the National Bank Act that must comply with the procedural and substantive requirements applicable to such determinations.

These comments misunderstand the interaction between judicial precedent and the insertion of the term “remote service unit” into 12 U.S.C. 36(j) and ignore the plain language of 12 U.S.C. 36(j). The Supreme Court decision in *First National Bank in Plant City, Florida v. Dickinson*, 396 U.S. 122 (1969) (*Plant City*), which held that a drop box constituted a branch, was decided before Congress amended 12 U.S.C. 36(j) to exclude RSUs and ATMs from the definition of branch.⁷⁴ Therefore, the *Plant City* decision did not address whether drop boxes fit

within the definition of an RSU and thus are exempted from the 12 U.S.C. 36 branching restrictions.

Interpreting 12 U.S.C. 36(j) in a way that defines ATMs and RSUs in a distinct manner is a better reading of the plain language of 12 U.S.C. 36(j) and leads to the logical conclusion that non-automated, unstaffed facilities such as drop boxes should be included in the definition of RSU. Specifically, interpreting “automated teller machine” and “remote service unit” to be synonymous (*i.e.*, automated, unstaffed facilities) would construe two different phrases to have the same meaning and renders the second phrase useless. Congress included the term “automated” in the phrase “automated teller machine” but did not include the term “automated” in the phrase “remote service unit,” suggesting that Congress did not necessarily intend for the term “remote service unit” to only apply to automated facilities. Though the OCC has historically treated drop boxes as branches based on the fact that drop boxes are not automated, the agency is now adopting a new position based on a reading of the plain language of the statute that avoids rendering statutory language superfluous and producing illogical results whereby drop boxes are considered branches despite having less branch-like functionality than ATMs.

The OCC also disagrees with the commenter’s statement that the proposed amendments to § 7.4003 constitute a “preemption determination” under the National Bank Act. Case law is clear that it is Federal law, not State law, that determines what is considered a “branch” of a national bank for the purposes of 12 U.S.C. 36(j).⁷⁵ The OCC is merely clarifying how it interprets the ambiguous language in 12 U.S.C. 36(j). As noted above, Congress did not define “automated teller machine” or “remote service unit” in 12 U.S.C. 36(j), so the OCC must interpret these phrases to resolve this silence.⁷⁶ This is not a “preemption determination” pursuant

to the National Bank Act. Accordingly, the OCC adopts these changes as proposed.

Establishment and Operation of a Deposit Production Office by a National Bank (New § 7.1028/Former § 7.4004)

Section 7.4004 provides that a national bank or its operating subsidiary may engage in deposit production activities at a site other than the main office or a branch of the bank, and further provides that a deposit production office (DPO) may solicit deposits, provide information about deposit products, and assist persons in completing application forms and related documents to open a deposit account. Section 7.4004 specifically states that a DPO is not a branch so long as the site does not receive deposits, pay withdrawals, or make loans. It further states that all deposit and withdrawal transactions of a bank customer using a DPO must be performed by the customer, either in person at the main office or a branch office of the bank or by mail, electronic transfer, or a similar method of transfer. Finally, this section states that a national bank may use the services of, and compensate, persons not employed by the bank in its deposit production activities. As with § 7.4003, the OCC proposed to move § 7.4004 to subpart A of part 7 as new § 7.1028 to place it in the same subpart as other interpretations regarding branching and non-branching functions. This change improves the organization of part 7. The OCC proposed no other changes to this section except for a non-substantive change to its wording. The OCC received no comments on new § 7.1028 and adopts it as proposed.

Combination of National Bank Loan Production Office, Deposit Production Office, and Remote Service Unit (New § 7.1029/Former § 7.4005)

Section 7.4005 provides that a location at which a national bank operates a loan production office (LPO), a DPO, and an RSU is not a “branch” within the meaning of 12 U.S.C. 36(j) by virtue of that combination of operations because none of these locations individually constitutes a branch. The OCC proposed to add language regarding the extent of the permissible interaction between bank personnel and the RSU at a facility that combines an LPO or a deposit production office with an RSU. Specifically, the OCC proposed to add language that provides that an RSU at a combined location must be primarily operated by the customer with at most delimited assistance from bank

⁷⁵ See *First National Bank in Plant City, Florida v. Dickinson*, 396 U.S. 122, 133–34 (1969) (rejecting the contention by *amicus curiae* National Association of Supervisors of State Banks that State law definitions of what constitutes “branch banking” must control the content of the Federal definition of “branch.”).

⁷⁶ 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 *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997) (“The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.”).

⁷⁴ EGRPRA, Section 2204 (1996).

personnel.⁷⁷ The OCC also proposed to move § 7.4005 to subpart A of part 7, as new § 7.1029. The OCC received no comments on these changes and adopts them as proposed.

Permissible Derivatives Activities for National Banks (New § 7.1030)

The proposal included a new § 7.1030 addressing derivatives activities permissible for national banks.⁷⁸ This new section incorporated and streamlined the framework in OCC interpretive letters discussing bank-permissible derivatives activities.⁷⁹ The proposed rule addressed five functional categories of permissible derivatives activities: (1) Derivatives referencing underlyings a national bank may purchase directly as an investment; (2) derivatives with any underlying to hedge the risks arising from bank-permissible activities; (3) derivatives with any underlying that are customer-driven, cash-settled and either perfectly-matched or portfolio-hedged; (4) derivatives with any underlying that are customer-driven and physically-settled by transitory title transfer; and (5) derivatives with any underlying that are customer-driven, physically-settled (other than by transitory title transfer), and physically-hedged. The OCC is adopting § 7.1030 with the substantive and technical changes described below.

Authority. Under the proposal, paragraph (a) of new § 7.1030 specified that the section is issued pursuant to 12 U.S.C. 24(Seventh). Paragraph (a) further specified that a national bank may only engage in derivatives transactions in accordance with the requirements of this section. The OCC did not receive any comments on this paragraph and is adopting paragraph (a) as proposed.

Definitions. In paragraph (b), the proposed rule incorporated several terms that are commonly used in OCC

derivatives interpretive letters. The proposed rule also defined certain terms for the first time to promote transparency and consistency among institutions. For the reasons described below, the OCC is adopting these definitions as proposed.

• **Customer-driven.** The proposed rule defined “customer-driven” to mean a transaction entered into for a customer’s valid and independent business purpose. As explained in the preamble to the proposed rule,⁸⁰ this approach is consistent with the definition used in OCC interpretive letters.⁸¹ The preamble explained that this focus on the customer recognizes that a number of derivatives activities are permissible for a national bank because the bank is acting as a financial intermediary for the customer. A customer-driven transaction would not include a transaction entered into for the purpose of speculating in derivative, currency, commodity, or security prices.⁸² Similarly, a customer-driven transaction would not include a transaction the principal purpose of which is to deliver to a national bank assets that the national bank could not invest in directly.

The OCC received one comment on this proposed definition. The commenter said that the final rule should clarify that “customer-driven” derivatives activities continue to include the types of permissible derivatives transactions described in Interpretive Letter 1018. The commenter also said the final rule should make clear that, while speculation cannot be the purpose for which the national bank enters into the transaction, no such limitation is imposed as to the purpose for which the customer enters into the transaction and that the OCC should confirm that an otherwise bank-permissible derivative transaction entered into by a national bank as a financial intermediary would be viewed as “customer-driven,” so long as the national bank and its customer have bilaterally negotiated and agreed to the terms of the transaction, regardless of the execution mechanism selected by the bank and its customer. Finally, the commenter said that the limitation in the proposed definition specifying that

a customer-driven transaction does not include “a transaction the principal purpose of which is to deliver to a national bank assets that the national bank could not invest in directly” does not prohibit physically settled derivatives.

The OCC intended the proposed definition to reflect the term “customer-driven” as it has been used in prior OCC interpretations, and the OCC does not believe any changes to the definition are necessary in response to the commenter. First, the definition does not prohibit customer-driven mirror trades through affiliates as described in Interpretive Letter 1018.⁸³ National banks should be aware that these activities are subject to sections 23A and 23B of the Federal Reserve Act and 12 CFR part 32.⁸⁴

Second, the OCC does not believe any changes to the definition of “customer-driven” are necessary to confirm that a national bank, rather than its customer, may not have a speculative purpose. The proposed definition applies to a transaction entered into for a customer’s “valid and independent business purpose.” The OCC recognizes that bank customers’ valid and independent business purposes may include the customer obtaining directional exposure to an underlying, for example, as part of the customer’s investment strategy.⁸⁵ The requirement that a transaction be “customer-driven” applies only to the national bank; it does not apply to the bank’s customer. Therefore, the OCC does not believe that any changes to the definition of “customer-driven” are necessary to confirm that the rule does not limit a national bank’s customer’s valid and independent business purpose.

Third, the OCC declines to adopt the commenter’s proposed interpretation that a derivative transaction entered into by a national bank as a financial intermediary would be viewed as “customer-driven,” so long as the national bank and its customer have bilaterally negotiated and agreed to the terms of the transaction, regardless of the execution mechanism selected by the bank and its customer. A national bank may use both over-the-counter trades or trading platforms to execute

⁷⁷ This language is based on published OCC precedent. See OCC Interpretive Letter No. 1165 (June 28, 2019).

⁷⁸ Permissible financial derivatives transactions for Federal savings associations are addressed separately in 12 CFR 163.172.

⁷⁹ OCC legal interpretations have confirmed certain derivatives activities are permissible for national banks under 12 U.S.C. 24(Seventh). Congress has recognized national banks’ authority to engage in derivatives activities in various statutes. See, e.g., 12 U.S.C. 84 (incorporating credit exposure from derivatives into the legal lending limit); Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, section 206(a)(6) (defining “identified banking product” to include any swap agreement except an equity swap with a retail customer); 12 U.S.C. 371c (defining “covered transaction” between a bank and its affiliates to include a derivative transaction); Dodd-Frank Act section 716 (15 U.S.C. 8305); Dodd-Frank Act section 731 (7 U.S.C. 6s); Dodd-Frank Act section 764 (15 U.S.C. 780–10).

⁸⁰ 85 FR 40794, at 40804.

⁸¹ E.g., OCC Interpretive Letter No. 1160 (Aug. 22, 2018).

⁸² OCC interpretations have specified that customer-driven derivatives transactions do not include transactions entered into by the bank for the purpose of speculating in the underlying commodity or security prices. See e.g., OCC Interpretive Letter No. 1033 (Jun. 14, 2005); OCC Interpretive Letter No. 892 (Sept. 13, 2000); OCC Interpretive Letter No. 684 (Aug. 4, 1995); OCC No-Objection Letter 90–1 (Feb. 16, 1990).

⁸³ Interpretive Letter 1018 specified that the bank would only mirror derivative transactions with subsidiaries and affiliates that are customer-driven and bank permissible. OCC Interpretive Letter No. 1018 (Feb. 10, 2005).

⁸⁴ See also Margin and Capital Requirements for Covered Swap Entities, 85 FR 39754, at 39764 (July 1, 2020) (discussing the views of the Board of Governors of the Federal Reserve System (Federal Reserve Board) on the application of sections 23A and 23B to swaps between a bank and its affiliate).

⁸⁵ See, e.g., OCC Interpretive Letter No. 1090 (Oct. 25, 2007).

customer-driven transactions. However, the fact that a trade is bilaterally negotiated does not, on its own, mean that the trade is customer-driven (*i.e.*, is entered into for a customer's valid and independent business purpose and does not have the principal purpose of delivering to a national bank assets that the national bank could not invest in directly). For example, a bilaterally negotiated transaction between a national bank and a third party that, under the facts and circumstances, has the purpose of giving the national bank speculative exposure to underlying commodity or security prices would not be considered customer-driven under this definition.

Finally, the OCC confirms that the language in the definition of "customer-driven" stating that the principal purpose of the transaction cannot be to deliver to a national bank assets that the national bank could not invest in directly does not preclude a bank from engaging in permissible physically-settled derivatives activities. Paragraphs (c)(4) and (5) of the final rule explicitly permit national banks to engage in customer-driven physically-settled derivatives financial intermediation transactions. For the foregoing reasons, the OCC is adopting the definition of "customer-driven" as proposed.

• *Perfectly-matched.* The proposal included a definition of "perfectly-matched" that was substantially similar to prior OCC interpretive letters. Specifically, the proposal defined perfectly-matched to mean two back-to-back derivative transactions that offset risk with respect to all economic terms (*e.g.*, amount, maturity, duration, and underlying). The preamble to the proposal specified that, consistent with OCC interpretive letters, this definition would allow transactions to be considered "perfectly-matched" despite a difference in price between two derivatives when that difference reflects the bank's intermediation fee (in the form of a spread).⁸⁶

The OCC received one comment on this proposed definition. First, this commenter said the OCC should adopt a broader concept of "appropriately hedged" rather than distinguishing between the definitions of "perfectly-matched" and "portfolio-hedged," which the commenter viewed as unnecessary. This commenter argued that a bifurcated definitional approach could potentially create ambiguity as to whether there may be certain types of derivative transactions that, while appropriately hedged in some manner

so as to offset the market risk of such transactions, may not fall within either technical definition, and thus would not be bank-permissible. This commenter further argued that, if the final rule maintains the distinction between "perfectly-matched" and "portfolio-hedged," it should expressly confirm that any derivative transaction the risks of which are appropriately offset, whatever the technique, will fall under one of these two definitions. The commenter argued that, if a permissible hedging technique does not fall within the definition of "perfectly-matched," then it should be assumed to fall within the definition of "portfolio-hedged."

The OCC disagrees with the commenter's view that these definitions are unnecessary and that they create ambiguity. OCC interpretations have long used the terms "portfolio-hedged" and "perfectly-matched" in analyzing the permissibility of national bank derivatives activities, and the distinction between these two activities is well-established and useful to the OCC's supervisory activities. The commenter describes certain types of transactions that they believe may not fall into the definition of either perfectly-matched or portfolio-hedged, such as using two or more derivatives to hedge a single customer transaction.⁸⁷ The OCC agrees these transactions generally would not fall into the definition of perfectly-matched, as OCC interpretive letters have used this definition consistently to describe mirror transactions with matching economic terms. Customer-driven intermediation transactions that are not perfectly-matched are still permissible if they are conducted as part of a portfolio-hedged derivatives program. As described further below, national banks may permissibly conduct such transactions as part of a portfolio-hedged derivatives program if the portfolio of transactions is hedged based on net unmatched positions or exposures in the portfolio. In response to the commenter's example of hedging a single derivative with multiple offsetting derivatives, the OCC confirms that a national bank would not be precluded from managing derivatives within a portfolio-hedged program on such a basis. The transactions may be permissible as portfolio-hedged derivatives transactions as long as the bank appropriately hedges net residual

risks resulting from the offsetting derivatives transactions.

The commenter also proposed that the OCC adopt a unified term such as "appropriately hedged" in lieu of "perfectly-matched" and "portfolio-hedged." The commenter suggested that such a definition should permit "appropriate and effective" hedging but does not specifically propose how this term should be defined. The definitions "perfectly-matched" and "portfolio-hedged" encompass the methods of hedging a national bank's market risk arising from permissible derivatives financial intermediation activities—whether at the individual transaction level through back-to-back transactions or at the level of net risks within a derivatives portfolio. The OCC believes that incorporating and defining these longstanding hedging approaches reflecting the OCC's interpretive letters will not cast doubt on the permissibility of currently-recognized national bank derivatives activities; furthermore, it reflects the OCC's established expectation that, for derivatives activities relying on portfolio hedging for their permissibility, the national bank should have the appropriate hedging skills and sophistication to manage the net risks of its derivatives portfolio. Accordingly, the final rule retains the definitions for "perfectly-matched" and "portfolio-hedged" as proposed.

The commenter further said that, if the distinction between perfectly-matched and portfolio hedged is retained, the definition of "perfectly-matched" should be revised to treat corresponding transactions as perfectly-matched hedges so long as they substantially offset risk with respect to all material terms, so as to make clear that differences between the transaction with little or no effect on market risk (*e.g.*, different maturity dates between the customer derivative and the offsetting future, or different margin arrangements) do not bar the transactions from being treated as perfectly-matched.⁸⁸ The OCC disagrees with this proposed interpretation. OCC precedents have long defined perfectly-matched transactions as transactions that offset risk with respect to all economic terms (*e.g.*, amount, maturity, duration, and underlying). The OCC has described a perfectly-matched

⁸⁶ OCC Interpretive Letter No. 1110 (Jan. 30, 2009).

⁸⁷ The commenter also raised the example of hedging an equity derivative by holding physical equity positions. This example is discussed below in the section addressing physical hedging activities.

⁸⁸ The commenter also discussed physically-hedged transactions that are hedged on a transaction-by-transaction basis. This example is discussed below in relation to the permitted physical hedging activities under § 7.1030(c)(5). As discussed below, such transactions are not considered perfectly-matched under the final rule but are addressed in § 7.1030(c)(5).

transaction as one that does not expose the national bank to price risk associated with the underlying so that the main risk to the bank is credit risk.⁸⁹ Two transactions with different economic terms could expose the national bank to other risks. For example, two transactions with different maturity dates could expose the national bank to price risk in the time period between the two maturity dates. Accordingly, the OCC is not expanding the definition of “perfectly-matched” to incorporate such transactions. However, as described above, such transactions may be permissible as part of a portfolio-hedged derivatives program if the national bank appropriately manages net unmatched exposures in the derivatives portfolio.

- *Portfolio-hedged.* The proposal included a definition of portfolio-hedged that was substantially similar to prior OCC interpretive letters. Specifically, the OCC proposes to define “portfolio-hedged” to mean that a portfolio of derivatives transactions is hedged based on net unmatched positions or exposures in the portfolio. The proposed definition refers to unmatched “positions or exposures” to clarify that hedging on a portfolio basis may involve hedging based on various risk exposures with different instruments in accordance with applicable policies and procedures and risk limits of the national bank. This definition is consistent with OCC interpretations that have typically used “portfolio-hedged” to describe the practice of hedging based on net residual risk position in a portfolio of positions.⁹⁰ The OCC has explained that this method of hedging can reduce transactional costs and operational risks because fewer transactions need to be executed relative to the number of transactions executed under perfectly-matched hedging (in which the national bank must offset each transaction on an individual basis).⁹¹ As described above, a national bank would not be precluded from managing derivatives within a portfolio-hedged program on a more specific basis (for example, by managing the risk of a particular derivative transaction by entering into two or more offsetting transactions). The OCC did not receive any additional comments on the definition of portfolio-hedged and is adopting the definition as proposed.

- *Physical hedging or physically-hedged.* The proposal defined “physical

hedging” and “physically-hedged” to mean holding title to or acquiring ownership of an asset (for example, by warehouse receipt or book entry) to solely manage the risks arising out of permissible customer-driven derivatives transactions. The OCC intended this definition to be consistent with the description of commodities physical hedging activities that the OCC has identified as permissible in prior interpretive letters and in OCC Bulletin 2015–35 (Aug. 4, 2015). Under the proposal, this definition also applies to physical hedging of customer-driven derivatives referencing securities. The OCC did not receive any comments on the definition of “physically-hedged” and is adopting the definition as proposed.

- *Physical settlement or physically-settled.* The proposal defined “physical settlement” or “physically settled” to mean accepting title to or acquiring ownership of an asset. The preamble to the proposal explained that physical settlement stands in contrast to cash-settled transactions, in which counterparties do not exchange the underlying assets. The preamble to the proposal also explained that physical settlement includes transitory title transfer, which is discussed below. The OCC did not receive any comments on the definition of “physical settlement” or “physically-settled” and is adopting the definition as proposed.

- *Transitory title transfer.* The proposal defined “transitory title transfer” to mean a transaction that is settled by accepting and immediately relinquishing title to an asset. The proposal explained that this definition is intended to be consistent with prior OCC interpretive letters, which explain that transitory title transfer is a means of physical settlement in which a counterparty only briefly holds title to the underlying asset.⁹² The preamble explained that, consistent with prior OCC interpretations, transitory title transfer does not entail a national bank taking physical possession of a commodity.⁹³ The OCC did not receive any comments on the definition of transitory title transfer and is adopting the definition as proposed.

- *Underlying.* The proposal defined the term “underlying” to mean the

reference asset, rate, obligation, or index on which the payment obligation(s) between counterparties to a derivatives transaction is based. The OCC included “underlying” as a defined term because the notice requirement in paragraph 7.1030(d) is triggered when a national bank expands its derivatives activities to include additional types of underlyings. The OCC received one comment on this definition. The commenter said the OCC should clarify that the definition of “underlying” should be construed broadly and flexibly over time, so as not to inadvertently introduce ambiguity with respect to whether a particular asset or quantitative measure may constitute an underlying of a permissible derivative transaction. However, the commenter did not provide examples of any particular asset or quantitative measure that would not be encompassed within the proposed definition. The OCC does not believe any changes to the definition of underlying are necessary to provide appropriate flexibility over time. The proposed definition encompasses any “asset, rate, obligation, or index,” which the OCC believes sufficiently encompasses the underlyings used by national banks as part of their permissible derivatives financial intermediation activities, and that these categories are in and of themselves sufficiently flexible. Accordingly, the final rule adopts the definition of underlying as proposed.

The OCC requested comment on whether the final rule should include a definition of the term “derivative” and whether a definition of this term would be necessary to appropriately scope the proposed provision and whether any definition would be workable in practice. The OCC received one comment that did not support defining “derivative” in the final rule. This commenter said that there is no need for the rule to define “derivative,” as there is generally a common understanding of the term, as reflected in existing precedent. The OCC agrees that there is a common understanding of the term “derivative” and notes that prior OCC interpretations generally have not defined the term. Accordingly, the final rule does not include a specific definition of the term “derivative.” The OCC intends to implement the rule based on the common industry and supervisory understanding regarding the type of transactions that constitute derivatives.

Permissible Derivatives Activities Generally. The proposal addressed five categories of permissible derivatives activities. For the reasons described below the final rule retains these five

⁸⁹ See, e.g., OCC Interpretive Letter No. 1060 (Apr. 26, 2006).

⁹⁰ See e.g., OCC Interpretive Letter No. 1073 (Oct. 19, 2006); OCC Interpretive Letter No. 1060.

⁹¹ *Id.*

⁹² See, e.g., OCC Interpretive Letter No. 962 (Apr. 21, 2003).

⁹³ See, e.g., OCC Interpretive Letter No. 1073; OCC Interpretive Letter No. 1060; OCC Interpretive Letter No. 1025 (Apr. 25, 2005); OCC Interpretive Letter No. 962; OCC Interpretive Letter No. 684. See also 81 FR 96353, at 96355 (Dec. 30, 2016) (explaining “transitory title transfer typically does not entail physical possession of a commodity; the ownership occurs solely to facilitate the underlying transaction and lasts only for a moment in time.”).

categories as proposed. These categories are discussed below.

- *Derivatives Referencing Underlyings in which a National Bank May Invest Directly.* Section 7.1030(c)(1) of the proposed rule specified that a national bank may engage in derivatives transactions with payments based on underlyings that a national bank is permitted to purchase directly as an investment. The OCC intended this provision to reflect OCC interpretive letters that have recognized that national banks may engage in derivatives activities where the derivative references assets that a national bank could purchase directly as an investment.⁹⁴ The OCC did not receive any comments on paragraph (c)(1) and is adopting this paragraph as proposed. As specified in the preamble to the proposal, paragraph (c)(1) addresses only derivatives on underlyings that a national bank would be permitted to purchase directly as principal. For example, an underlying that a national bank could hold only as a nonconforming investment under 12 CFR part 1 or only in satisfaction of debts previously contracted would not be a permissible underlying under this paragraph.

- *Hedging Bank-Permissible Activities with Derivatives.* Section 7.1030(c)(2) of the proposed rule provided that a national bank may engage in derivatives transactions with any underlying to hedge the risks arising from bank-permissible activities after providing notice to its EIC.⁹⁵ The preamble to the proposal explained that the OCC has recognized that a national bank may hedge the risks of bank-permissible activities using derivatives on underlyings in which a national bank may not invest directly.⁹⁶ The OCC did

⁹⁴ See, e.g., OCC Interpretive Letter No. 494 (Dec. 20, 1989); OCC Interpretive Letter No. 422 (Apr. 11, 1988); OCC No Objection Letter No. 86–13 (Aug. 8, 1986). See also, “Report to Congress and the Financial Stability Oversight Council Pursuant to Section 620 of the Dodd-Frank Act” at 86–90 (September 2016), available at <https://www.occ.treas.gov/publications-and-resources/publications/banker-education/files/pub-report-to-congress-sec-620-dodd-frank.pdf> (Section 620 Report).

⁹⁵ In contrast, if a national bank engaged in hedging using derivatives on underlyings in which a national bank could invest directly, the bank would not need to provide notice because this activity could be conducted under § 7.1030(c)(1) of the rule.

⁹⁶ The OCC has also long recognized that a national bank may hedge its risk using derivatives on underlyings that a national bank would be permitted to invest in directly. For example, a national bank may use futures contracts on exchange, coin, or bullion to hedge activities conducted pursuant to a national bank’s statutory authority to buy and sell exchange, coin, or bullion. Similarly, a national bank may use futures to hedge against the risk of loss due to the interest rate

not receive any comments on this section and is adopting it as proposed.

- *Derivatives Financial Intermediation for Customers.* Sections 7.1030(c)(3) through (5) of the proposal addressed derivatives financial intermediation activities. These sections of the proposal were intended to reflect the conclusions of OCC interpretive letters that have recognized that a national bank may act as a financial intermediary in customer-driven⁹⁷ derivatives transactions on a variety of reference assets as part of the business of banking.⁹⁸ These letters have recognized national banks’ authority to enter into cash-settled, customer-driven derivatives transactions both on a perfectly-matched⁹⁹ and portfolio-hedged basis.¹⁰⁰ These letters have also recognized in this context the permissibility of physical settlement by transitory title transfer.¹⁰¹ Additionally,

fluctuations inherent in bank loan operations, U.S. Treasury Bills, and certificates of deposit. These activities may be conducted under § 7.1030(c)(1) of the final rule.

⁹⁷ A “customer-driven” transaction is one entered into for a customer’s valid and independent business purposes. See, e.g., OCC Interpretive Letter No. 1160; OCC Interpretive Letter No. 892. This definition is addressed in § 7.1030(b) of the rule.

⁹⁸ See, e.g., OCC Interpretive Letter No. 937 (Jun. 27, 2002); OCC Interpretive Letter No. 892; No-Objection Letter 87–5 (Jul. 20, 1987).

⁹⁹ See, e.g., OCC Interpretive Letter No. 1110 (longevity indexes); OCC Interpretive Letter No. 1101 (Jul. 7, 2008) (certain risk indexes); OCC Interpretive Letter No. 1089 (Oct. 15, 2007); (specific property indexes); OCC Interpretive Letter No. 1081 (May 15, 2007) (specific property indexes); OCC Interpretive Letter No. 1079 (Apr. 19, 2007) (inflation indexes); OCC Interpretive Letter No. 1065 (Jul. 24, 2006) (petroleum products, agricultural oils, grains and grain derivatives, seeds, fibers, foodstuffs, livestock/meat products, metals, wood products, plastics and fertilizer); OCC Interpretive Letter No. 1063 (Jun. 1, 2006) (hogs, lean hogs, pork bellies, lumber, corrugated cardboard, and polystyrene); OCC Interpretive Letter No. 1059 (Apr. 13, 2006) (old corrugated cardboard #11, polypropylene: injection molding (copoly), polypropylene: All grades, Dow Jones AIG Commodity Index); OCC Interpretive Letter No. 1056 (Mar. 29, 2006) (frozen concentrate orange juice, polypropylene); OCC Interpretive Letter No. 1039 (Sept. 13, 2005) (crude oil, natural gas, heating oil, natural gasoline, gasoline, unleaded gas, gasoil, diesel, jet fuel, jet-kerosene, residual fuel oil, naphtha, ethane, propane, butane, isobutane, crack spreads, lightends, liquefied petroleum gases, natural gas liquids, distillates, oil products, coal, emissions allowances, benzene, dairy, cattle, wheat, corn, soybeans, soybean meal, soybean oil, cocoa, coffee, cotton, orange juice, sugar, paper, rubber, steel, aluminum, zinc, lead, nickel, tin, cobalt, iridium, rhodium, freight, high density polyethylene (plastic), ethanol, methanol, newsprint, paper (linerboard), pulp (kraft), and recovered paper (newsprint)).

¹⁰⁰ See, e.g., OCC Interpretive Letter No. 1073 (aluminum, nickel, lead, zinc, and tin); OCC Interpretive Letter No. 1060 (coal); OCC Interpretive Letter No. 1040 (emissions allowances); OCC Interpretive Letter No. 937 (electricity).

¹⁰¹ See OCC Interpretive Letter No. 1073 (aluminum, nickel, lead, zinc, and tin); OCC Interpretive Letter No. 1060 (coal); OCC Interpretive

these letters have recognized that a national bank may engage in customer-driven financial intermediation derivatives activities that are physically-settled (other than by transitory title transfer) and to physically hedge those derivatives in certain circumstances.¹⁰² The OCC proposed to incorporate and streamline the framework contained in its interpretive letters addressing derivatives financial intermediation activities in paragraphs 7.1030(c)(3) through (5). These paragraphs are adopted largely as proposed but with the targeted changes discussed below.

The OCC received one comment addressing these sections. This commenter recommended revising § 7.1030(c) to allow national banks to physically hedge cash-settled derivatives, in addition to physically-settled derivatives. This commenter also said, to the extent the final rule continues to differentiate between cash- and physically-settled trades, the final rule should also confirm that, where a national bank has a physically-settled trade, the settlement of which it directs to an affiliate, the trade would be deemed to be cash-settled. The final rule incorporates one change in response to this comment to clarify the rule’s application to physical hedging involving transactions other than commodity derivatives. OCC interpretive letters and guidance addressing physical hedges of commodity derivatives are typically limited to hedges of physically-settled transactions.¹⁰³ The OCC therefore disagrees with the commenter’s suggestion that OCC interpretations generally permit physical hedging for

Letter No. 1025 (electricity); Interpretive Letter No. 962 (electricity). The term “transitory title transfer” means accepting and instantaneously relinquishing title to the commodity, as a party in a “chain of title” transfer. OCC Interpretive Letter No. 1025.

¹⁰² See, e.g., OCC Interpretive Letter No. 1040; OCC Interpretive Letter No. 892; OCC Interpretive Letter No. 684. OCC interpretive letters have explained that physical delivery can help to reduce the risk in customer-driven commodity derivatives transactions if the activity is conducted in accordance with safe and sound banking practices and would achieve a more accurate and precise hedge than a cash-settled transaction.

¹⁰³ See OCC Interpretive Letter No. 1040 (“The Bank may conduct the proposed customer-driven, physically settled emissions derivative business and hedge risks arising from these permissible banking activities as an extension of its existing energy-related commodities derivatives business”); OCC Interpretive Letter No. 684 (“the OCC concludes that it is legally permissible for a national bank to hedge the financial exposure arising from otherwise permissible banking activities in markets that involve physical delivery of commodities and, in connection with such hedging activities, to make or take physical delivery of commodities”); OCC Bulletin 2015–35, Quantitative Limits on Physical Commodity Transactions (Aug. 4, 2015).

cash-settled derivatives. However, the OCC recognizes that interpretive letters addressing physical hedges of equity derivatives do not always include the same condition.¹⁰⁴ In light of prior interpretations' treatment of equity derivatives transactions, the final rule removes the condition that a physical hedge of a derivative other than a commodity derivative must hedge a physically-settled transaction. The final rule effects this change by removing "physically-settled (other than by transitory title transfer)" from § 7.1030(c)(5) and including physical settlement as a requirement for physical hedging involving commodities in new § 7.1030(e)(5)(iii). These changes clarify that physical hedging involving securities is permissible for cash-settled transactions, but physical hedging involving commodities is permissible only to hedge physically-settled transactions. In response to the comment regarding physically-settled transactions where physical settlement is directed to an affiliate, the OCC confirms that the type of transactions described in Interpretive Letter 949 are permissible under the final rule as long as the transactions are cash-settled with respect to the national bank.¹⁰⁵

Additionally, this commenter recommended that the OCC clarify the application of the definitions "perfectly-matched" and "portfolio-hedged" to physically-hedged derivatives transactions. The commenter described that a derivative transaction that is physically hedged on an individual basis, such as a total return swap that is hedged via holding the underlying equity position would not necessarily be covered by the definition of "perfectly-matched" which is limited to two back-to-back derivatives transactions. As discussed above, the OCC believes it is preferable to retain the definition of "perfectly-matched" as used in prior OCC interpretations. However, to address the commenter's concern that the activities described in § 7.1030(c)(5) will not be perfectly matched under this definition, the final rule replaces the term "perfectly-matched" with "hedged on a transaction-by-transaction basis." This change is consistent with prior interpretations that describe physical hedging on a transaction-by-transaction

basis rather than on a "perfectly-matched" basis.¹⁰⁶

Relative to prior OCC interpretations, the final rule makes fewer distinctions based on the particular underlying or how the national bank hedges its derivatives financial intermediation activity. While prior interpretations typically analyzed both the underlying and the bank's method for hedging the customer-driven derivative (*i.e.*, perfectly-matched versus portfolio-hedged), the final rule permits customer-driven, cash-settled derivatives transactions on any underlying, whether perfectly-matched or portfolio-hedged. The OCC recognizes that financial intermediation in derivatives continues to evolve and that the markets for derivatives on underlyings that the OCC has not previously addressed through interpretations may have sufficient liquidity and depth to allow a bank to conduct the activity as a financial intermediary. Similarly, the OCC recognizes that these same factors may allow a national bank to hedge its customer-driven derivatives activities in evolving ways—whether by portfolio hedging or physical hedging—consistent with conducting the activity as a financial intermediary. Accordingly, the OCC is adopting these provisions with the targeted changes described above.

The proposal requested comment on whether the rule should reflect any additional safety and soundness standards regarding the underlyings that are permissible for financial intermediation in derivatives and how national banks may hedge these activities. The proposal specifically requested comment on whether the regulation should include additional language relating to the liquidity of the market for permissible customer-driven derivatives activities. The OCC did not receive any comments on this request and is not adopting any additional safety and soundness standards or language related to the underlyings that are permissible for derivatives financial intermediation activities. As with any national bank permissible activity, general safety and soundness standards apply to these activities.¹⁰⁷ In addition, the final rule adopts specific requirements for physical hedging

activities in § 7.1030(e) and (c)(5) (prohibiting a national bank from taking physical delivery of any commodity by receipt of physical quantities of the commodity on bank premises).

Notice requirement. Section 7.1030(d) of the proposal required a national bank to provide written notice to its EIC prior to engaging in activity using derivatives referencing assets that a national bank could not invest in directly. The OCC intended this provision to be consistent with OCC interpretations that included a process in which the national bank provides notice to its EIC about the business and management practices the bank will employ in performing the derivatives activity as financial intermediation.¹⁰⁸ The OCC received one comment addressing the notice process. This commenter said that the notice requirements should be revised to ensure consistency in supervisory standards and to clarify that the proper role of supervisors in evaluating derivatives activities relates to consistently applying safety and soundness standards, not evaluating legal permissibility. Specifically, this commenter said the final rule should clearly distinguish between the legal permissibility of derivatives transactions (to be governed by § 7.1030 and the OCC's legal interpretations thereof) from firm-specific prudential concerns, to be reviewed by the EIC and supervisory team; require an EIC to consult with OCC leadership before raising any categorical safety and soundness concerns about an activity; and provide for consistent and uniform standards with respect to evaluating the safety and soundness of certain types of derivatives activities as a categorical matter, with the EIC and supervisory team focusing only on idiosyncratic, bank-specific aspects of the relevant activity.

First, the OCC believes the rule appropriately identifies safety and soundness and legal permissibility considerations. For example, paragraph (c) identifies the legally permissible categories of derivatives activities, while paragraphs (d) and (e) establish the supervisory notice requirement and

¹⁰⁴ See OCC Interpretive Letter No. 892; OCC Interpretive Letter No. 1090.

¹⁰⁵ OCC Interpretive Letter No. 949 provides that the equity derivatives transactions under consideration in that letter would be cash settled with respect to the national bank and "[i]f under the terms of certain contracts the customer is permitted to elect physical settlement, an affiliate of the bank will make or receive physical delivery." OCC Interpretive Letter No. 949 (Sept. 19, 2002).

¹⁰⁶ OCC Interpretive Letter No. 1040 ("The Bank also proposes to hedge the market risk associated with the proposed emissions derivatives transactions on a transaction-by-transaction or portfolio basis, primarily with physical emissions allowances.").

¹⁰⁷ As discussed below, the final rule includes new paragraph (f), which explicitly provides that a national bank must adhere to safe and sound banking practices in conducting the activities described in § 7.1030.

¹⁰⁸ For example, OCC Interpretive Letter No. 1160 contemplates that a bank would provide written notification to its EIC prior to commencing a derivatives financial intermediation business for a reference asset addressed in prior OCC interpretive letters. This process replaced the no-objection process that was typically included in prior OCC interpretive letters. See, e.g., OCC Interpretive Letter No. 1065. The notice provision of the final rule also replaces the no-objection process contemplated in OCC interpretive letters addressing hedging activities using derivatives on underlyings in which a national bank could not invest directly. See OCC Interpretive Letter No. 896 (Aug. 21, 2000).

additional safety and soundness requirements, respectively. For further clarity, however, the final rule adds a new paragraph (f) confirming that a national bank must adhere to safe and sound banking practices in conducting the activities described in § 7.1030. The provision specifically requires a bank to have a risk management system (policies, processes, personnel, and control system) that effectively manages (*i.e.*, identifies, measures, monitors, and controls) these activities' interest rate, credit, liquidity, price, operational, compliance, and strategic risks. This provision clarifies that, in addition to being within a national bank's legal authority, derivatives activities must also be conducted in a safe and sound manner. As part of their regular supervisory activities, OCC supervisors consider both whether activities are safe and sound, as well as if they are conducted in compliance with applicable law.

The final rule does not require supervisory staff to consult with OCC leadership before raising "categorical safety and soundness concerns" about a derivatives activity as the commenter suggested. Nor does the final rule prescribe uniform regulatory standards specific to evaluating the safety and soundness of certain types of derivatives activities. Making assessments with respect to the safety and soundness of an activity is the key function of OCC supervisors. The OCC has established generally applicable safety and soundness standards by regulation¹⁰⁹ and has issued extensive guidance on the examination process.¹¹⁰ Requiring additional internal processes before an examiner may raise concerns regarding an activity could interfere with this important function. Accordingly, OCC supervisors will examine national bank derivatives activities as part of their regular and ongoing examination and supervision activities.

The OCC expects the notice requirement in the final rule to enhance prudential supervision of national bank derivatives activities by ensuring that banks evaluate the risks of the activities both at inception and on an ongoing basis. In addition, the OCC expects that incorporating notice as a regulatory requirement will ensure consistency in notice practices across OCC-supervised institutions. Like the proposal, the final rule requires the written notice to include information that is substantially similar to the information that is discussed in Interpretive Letter 1160.

Specifically, the written notice must include a detailed description of the proposed activity, including the relevant underlying(s); the anticipated start date of activity; and a detailed description of the national bank's risk management system (policies, processes, personnel, and control systems) for identifying, measuring, monitoring, and controlling the risks of the activity.

The notice requirement does not impose a prior approval requirement. Rather, the notice is designed to make OCC supervisors aware of a national bank's derivatives activities so that such activities can be appropriately scoped into OCC's ongoing supervision and oversight of the bank's safety and soundness. In addition, having awareness of a bank's derivatives activities will enable the OCC to raise questions as to whether the derivatives activity can be conducted in a safe and sound manner, or whether the derivatives activity is within the scope of those legally authorized for a national bank, before the bank activities commence or at any time, as is the case with any other permissible bank activities.

Like the proposal, § 7.1030(d)(1) of the final rule requires a national bank to provide its EIC notice prior to engaging in any of the derivatives hedging or financial intermediation activities described in § 7.1030(c)(2) through (5) for the first time. This notice requirement applies, for example, if a bank has previously engaged in cash-settled derivatives with respect to a particular underlying as described in § 7.1030(c)(3) but seeks to begin physically settling transactions as described in § 7.1030(c)(4) or (5). Likewise, a national bank must provide notice prior to first engaging in derivatives hedging activities pursuant to § 7.1030(c)(2) or expanding the bank's derivatives hedging activities to include a new category of underlying. Also like the proposal, under § 7.1030(d)(2) of the final rule, the bank must submit written notice at least 30 days before the national bank commences the derivatives activity.

The OCC requested comment on whether it was sufficiently clear when a notice would be required and what would constitute a "new category of underlying." The OCC specifically requested comments on whether the regulation text should list these categories and, if so, whether the regulation should specify that any new derivatives activities not falling within one of the specified categories also requires notice. The OCC received one comment in response to this request.

This commenter said that the final rule should not define categories of "underlying" by regulation, but rather should take a substantially more principles-based approach to determining when prior notice is required that looks primarily to the risk management implications and challenges of any potential new derivatives activity. Specifically, this commenter said the final rule should make clear that prior notice is required only when a national bank commences a new activity or modifies an existing activity that would expose the bank to, and require the bank to manage and control, a material and substantially new type of market risk. The commenter also said that no notice should be required under the final rule where a national bank engages in permissible derivatives activity that is hedged either (1) using mirrored transactions that involve no market risk or (2) on a nearly perfectly-matched basis that involve only de minimis residual market risk. In contrast, this commenter argued, where a national bank is engaged in derivatives activities that are hedged on a portfolio basis pursuant to which the bank is actively managing an inventory of market risks, imposing a notice requirement is appropriate as it would facilitate supervisory review of a bank's risk management and internal controls in implementing that hedging strategy.

The OCC disagrees and finds that, even when a national bank believes it is not exposed to a materially new type of market risk, there is supervisory value in receiving notice of the new activities. The considerations identified by the commenter—facilitating supervisory review of a bank's risk management and internal controls in implementing its hedging strategy—are relevant whether the activity is hedged on a perfectly-matched or portfolio-hedged basis.¹¹¹ Receiving a notice will allow supervisors to incorporate the activities into their overall supervisory strategy. The OCC disagrees that notice should not be required for derivatives transactions that the national bank determines involve de minimis market risk. Receiving notices in such circumstances is particularly important for banks that are engaging in derivatives activities for the first time or

¹¹¹ The notice requirement is expected to enhance supervision by providing OCC supervisors with comprehensive, up-to-date information on the activities in which the national bank is engaged. This information will assist OCC supervisors by ensuring they have an opportunity to assess a bank's ability to engage in derivatives activities in a safe and sound manner prior to the bank commencing the activity and provide them ongoing information as those activities expand to new categories.

¹⁰⁹ 12 CFR part 30.

¹¹⁰ See, e.g., the Examination Process Series of the Comptroller's Handbook (June 2018).

expanding a limited derivatives business to incorporate additional derivatives products. The OCC believes that the notice process is a reasonable requirement in light of its value to supervisors. The notice process requires a limited amount of information that should be readily available to the bank and does not require that the bank receive approval prior to conducting the activity. Accordingly, the OCC continues to believe the notice process will provide an efficient notice standard for national banks engaging in derivatives activities. For the foregoing reasons, the OCC is adopting the notice requirement as proposed.

One commenter said that the final rule should make clear that national banks may continue to rely on guidance that they have previously received regarding the permissibility of derivatives activities and need not provide notice under proposed new § 7.1030 to continue to engage in activities that were commenced under the prior interpretive and supervisory framework before the final rule became effective. As described in the proposal, national banks that have provided notice to or received statements of no-objection from their EICs for particular derivatives activities consistent with the process in prior OCC interpretive letters would not be required to submit new notices for those activities.

Additional requirements for physical hedging activities. Section 7.1030(e) of the proposal incorporated the practices from prior interpretive letters and guidance related to physical hedging with securities and commodities.¹¹² The proposal included certain modifications to these practices to promote consistency in the practices national banks employ with respect to physical hedging activities. Specifically, the proposal applied the framework in interpretive letters addressing physical hedging using securities to all physical hedging activities involving underlyings in which a national bank could not invest directly. Under the proposed rule, a national bank could engage in physical hedging only if: (1) The national bank holds the underlying solely to hedge risks arising from derivatives transactions originated by customers for the customers' valid and independent business purposes; (2) the physical hedging activities offer a cost-effective means to hedge risks arising from permissible banking activities; (3) the national bank does not take anticipatory or maintain residual

positions in the underlying except as necessary for the orderly establishment or unwinding of a hedging position; and (4) the national bank does not acquire equity securities for hedging purposes that constitute more than five percent of a class of voting securities of any issuer.¹¹³ The OCC did not receive any comments on these proposed requirements for physical hedging activities. Because these requirements continue to accurately reflect OCC supervisory expectations for physical hedging activities, the OCC is adopting the requirements as proposed.

Consistent with OCC interpretive letters and guidance concerning physical hedging with commodities in which a national bank could not invest directly,¹¹⁴ the proposed rule imposed additional requirements on physical hedging with commodities. Under the proposed rule, a national bank would be permitted to engage in physical hedging with commodities only if the national bank's physical position in a particular physical commodity (including, as applicable, delivery point, purity, grade, chemical composition, weight, and size) is no more than five percent of the gross notional value of the national bank's derivatives that (1) are in that same particular commodity and (2) allow for physical settlement within 30 days. Title to commodities acquired and immediately sold in a transitory title transaction would not count against this five percent limit.¹¹⁵ Consistent with OCC interpretive letters,¹¹⁶ the proposed rule permitted physical hedging involving commodities only if the physical position more effectively reduces risk than a cash-settled hedge involving the same commodity. The proposal also specified that a national bank may not take physical delivery of any commodity by receipt of physical

quantities of the commodity on bank premises. The OCC explained in the preamble to the proposal that these requirements apply to physical hedging activities involving commodities due to the unique risks of physical commodity activities.¹¹⁷

The OCC received one comment addressing these requirements. First, this commenter said the final rule should require that any physical hedge be "at least as effective as," not more effective than, a cash-settled hedge. Second, this commenter said, to better align the five percent limit with financial risk management practices, this limit should be calculated based on the type of market risk (*i.e.*, the denominator with respect to a given transaction should include all transactions that implicate substantially equivalent market risk). Third, the commenter said the OCC should expressly confirm that the five percent limit is intended to be calculated in the same manner described in OCC Bulletin 2015–35 and that the OCC should provide greater clarity and specificity regarding the derivatives that are included in the five percent test's denominator because they "allow for physical settlement within 30 days."

The OCC disagrees with the first two comments. The purpose of § 7.1030(e) of the proposal was to incorporate the OCC's existing interpretations and supervisory guidance into regulation. Under existing interpretations, a physical hedge should be more effective than a cash-settled hedge involving the same commodity in light of the additional risks associated with physical hedging.¹¹⁸ In other words, if a national bank has a choice between hedging with a cash-settled derivative or a physical commodity, all else being equal, the bank should choose the cash-settled derivative that involves less risk to the bank. This general principle is consistent with OCC interpretations that have found cash-settled transactions raise fewer supervisory concerns compared to physically-settled transactions.¹¹⁹ Accordingly, the final rule continues to require a national bank to utilize cash-settled transactions when such transactions are equally effective as physical hedges.

Under existing OCC guidance, the five percent limit on physical hedging activities applies to a particular

¹¹³ Certain of the practices described in prior OCC interpretive letters were not included in the proposed rule text because they are generally applicable safety and soundness standards that can be evaluated and addressed under other existing sources of law, including, as applicable, 12 U.S.C. 1818. For example, several interpretive letters discuss that a national bank should have appropriate risk management policies and procedures for its physical hedging activities. In addition, several interpretive letters have also specified that a bank may not engage in physical hedging activities for the purpose of speculating in security or commodity prices. As described above, customer-driven financial intermediation as defined in the proposal (and adopted in the final rule) would not include activities entered into for the purpose of speculation.

¹¹⁴ See OCC Bulletin 2015–35; OCC Interpretive Letter No. 684.

¹¹⁵ Consistent with OCC Interpretive Letter No. 1040, this five percent limit would not apply to physical hedging using emissions allowances.

¹¹⁶ See OCC Interpretive Letter No. 684; OCC Interpretive Letter No. 632 (Jun. 30, 1993).

¹¹⁷ See 85 at 40809. See also Section 620 Report (describing the price risks and operational risks specific to physical commodities activities).

¹¹⁸ See OCC Interpretive Letter No. 684; OCC Interpretive Letter No. 632.

¹¹⁹ See generally OCC Interpretive Letter No. 1039; OCC Interpretive Letter No. 632; No-Objection Letter 87–5.

¹¹² See OCC Bulletin 2015–35; OCC Interpretive Letter No. 935 (May 14, 2002); OCC Interpretive Letter No. 892; OCC Interpretive Letter No. 684.

commodity, as defined by the commodity's delivery point, purity, grade, chemical composition, weight, and size (as applicable).¹²⁰ This condition is intended to ensure a bank's physical hedging activities remain a nominal portion of the national bank's risk management activities.¹²¹ Further, applying the limit based on a particular commodity ensures that the national bank keeps physical inventory of a particular commodity to levels commensurate with its need to make or take physical delivery of that commodity.¹²² It remains important that a national bank's physical hedging activities amount to no more than a nominal portion of a bank's risk management activities and that the inventory of a particular commodity is limited to levels commensurate with the bank's need to make or take physical delivery of that commodity. Accordingly, the final rule continues to apply the limit to each particular physical commodity (including, as applicable, delivery point, purity, grade, chemical composition, weight, and size). The OCC believes that applying the limit based on a broader category, such as all transactions that implicate substantially equivalent market risk, would not be administrable and could lead to inconsistent calculation of the limit.

In response to the commenter's third comment on the five percent limit, the OCC confirms that the limit is meant to align with OCC Bulletin 2015–35. In particular, a national bank's physical position in a particular physical commodity (including, as applicable, delivery point, purity, grade, chemical composition, weight, and size) must not be more than five percent of the gross notional value of the bank's derivatives that are in that particular physical commodity and allow for physical settlement within 30 days. Like OCC Bulletin 2015–35, this limit applies to transactions that contemplate physical delivery within 30 days, *i.e.*, the denominator includes derivatives that can or will physically settle within 30 days.

Subpart B—National Bank Corporate Practices

National Bank Corporate Governance (§ 7.2000)

As noted, the OCC continually seeks to update its regulations to stay current with industry changes and technological advances, subject to Federal law and

consistent with the safe and sound operation of the banking system. As part of this process, the OCC proposed updating and modernizing § 7.2000, which provides a regulatory framework for national bank corporate governance. As described by the OCC in various conditional approvals,¹²³ “corporate governance procedures” generally refer to requirements involving the operation and mechanics of the internal organization of a national bank, including relations among owners-investors, directors, and officers, and do not include requirements that relate to the banking powers or activities of a national bank or relationships between a national bank and customers or third parties. Examples of corporate governance procedures include, but are not limited to, share exchanges, anti-takeover provisions, and the use of blank check procedures in issuing preferred stock. The OCC issued § 7.2000 in 1996 to provide national banks with increased flexibility to structure their corporate governance procedures consistent with the particular needs of the bank while providing shareholders and others with adequate notice of the corporate standards on which a bank will rely.¹²⁴ The OCC has not substantively changed § 7.2000 since its adoption.¹²⁵

Section 7.2000 currently provides that a national bank proposing to engage in a corporate governance procedure must comply with applicable Federal banking statutes and regulations and safe and sound banking practices. In addition, § 7.2000 provides that to the extent not inconsistent with applicable Federal banking statutes or regulations, or bank safety and soundness, a national bank may elect to follow the corporate governance procedures of the law of the State in which the main office of the bank is located, the law of the State in which the holding company of the bank is incorporated, Delaware General Corporation Law, or the Model Business Corporation Act. Further, § 7.2000 requires that a national bank designate in its bylaws the body of law selected for its corporate governance procedures. Finally, § 7.2000 describes the process for obtaining OCC staff positions on the ability of a national bank to engage in a particular corporate governance procedure.

¹²³ See *e.g.*, OCC Conditional Approval No. 859 (June 13, 2008); OCC Conditional Approval No. 696 (June 9, 2005).

¹²⁴ 61 FR 4849, at 4854 (Feb. 9, 1996).

¹²⁵ Non-substantive amendments to § 7.2000 changed the address and telephone number of the OCC Communications Office. See 79 FR 15641 (March 21, 2014); 80 FR 28345 (May 18, 2015).

The OCC proposed to amend § 7.2000 to reduce burden, provide greater clarity, and modernize the national bank charter with respect to corporate governance provisions. The proposed amendments also would address anomalous results that may arise when a national bank eliminates its holding company. As a general matter, the OCC proposed changing the term “corporate governance procedure” used in § 7.2000 to “corporate governance provisions” and to revise paragraph (a) of § 7.2000 accordingly. As discussed in the proposal, the OCC believes that “corporate governance procedure” may be construed more narrowly than intended and omit corporate governance practices that are not procedural in nature. The OCC proposed revising paragraph (a) to provide the corporate governance provisions in a national bank's articles of association and bylaws and the bank's conduct of its corporate governance affairs must comply with applicable Federal banking statutes and regulations and safe and sound banking practices. The OCC received no comments on proposed paragraph (a) and adopts it as proposed. As discussed in the proposal, the OCC does not intend this change to affect the application of prior OCC interpretations of corporate governance procedures to § 7.2000.

The OCC also proposed increasing a national bank's flexibility in choice of corporate governance provisions in three ways. First, the OCC proposed revising paragraph (b) of § 7.2000 to authorize a national bank to elect the corporate governance provisions of the law of any State in which any branch of the bank is located in addition to the law of the State in which the bank's main office is located, to the extent not inconsistent with applicable Federal banking statutes or regulations or safety and soundness. The OCC received no comments on this change and adopts it as proposed. Accordingly, a national bank is no longer limited to using the corporate governance provisions of the State where its main office is located. For example, a national bank with its main office in State A and branches in State B and State C may elect to use the corporate governance provisions of the law of one of State A, State B, or State C.

Second, the OCC proposed revising paragraph (b) to authorize the national bank to use the law of the State where one holding company of the bank is incorporated. The current rule indicates that a national bank may use the law of the State where the holding company of the bank is incorporated. This amendment expressly recognizes the

¹²⁰ OCC Bulletin 2015–35.

¹²¹ *Id.*

¹²² *Id.*

possibility that a national bank may be controlled by more than one holding company and that those holding companies may be incorporated by different States. Under this amendment, the bank is able to pick the law of the State of any one of its holding companies. The OCC received no comments on this change and adopts it as proposed, with a technical change for consistency within paragraph (b).

Third, the OCC proposed adding a new paragraph (c) that would allow a national bank to continue to use the corporate governance provisions of the law of the State where its holding company is incorporated even if the holding company is later eliminated or no longer controls the bank, and the national bank is not located in that State. This amendment removes an impediment to a national bank that may choose to eliminate its holding company or is no longer controlled by that holding company but wishes to retain longstanding and familiar corporate governance provisions. The OCC received one comment supporting proposed paragraph (c) and adopts it as proposed.

The OCC also proposed revising current paragraph (c) of § 7.2000 (proposed to be redesignated as § 7.2000(d)). Current paragraph (c) provides that the OCC considers requests for the OCC staff's position on the ability of a national bank to engage in a particular State corporate governance procedure in accordance with the no-objection procedures set forth in OCC Banking Circular 205 or any subsequently published agency procedures, and that requests should demonstrate how the proposed practice is not inconsistent with applicable Federal statutes or regulations and is consistent with bank safety and soundness. The OCC issued Banking Circular 205 on July 26, 1985 and has not modified it since. However, a national bank also may request the views of the OCC on an interpretation of national banking statutes and regulations independent of the process in Banking Circular 205, which has been the more common approach since 1985.

In order to update paragraph (c), the OCC proposed removing the requirement that banks requesting the OCC's views on State corporate governance law use the no-objection procedure. The proposal also listed the information that a request must contain. Similar to what is set forth in OCC Banking Circular 205, this information includes: (1) The name of the bank; (2) citations to the State statutes or regulations involved; (3) a discussion as to whether a similarly situated State

bank is subject to or may adopt the corporate governance provision; (4) identification of all Federal banking statutes or regulations that are on the same subject as, or otherwise have a bearing on, the subject of the proposed State corporate governance provision; and (5) an analysis of how the proposed corporate governance provision is not inconsistent with applicable Federal statutes or regulations nor with bank safety and soundness. The OCC received no comments on proposed paragraph (d) and adopts it as proposed. The OCC notes that this provision does not preclude a national bank from seeking informal consultation with OCC staff. However, if the bank wants to receive a written response from OCC staff, it must follow the procedure in this proposed paragraph (d).

The final rule revises the heading of § 7.2000 to reflect the change in terminology from corporate governance procedures to corporate governance provisions. The final rule also makes a technical change to the heading not previously proposed to clarify that this provision applies to national banks. As a result, the heading now reads "National bank corporate governance."

The OCC requested comment on whether a national bank also should be able to adopt a combination of corporate governance provisions from the laws of several different States where the national bank and any holding companies are located, thus potentially resulting in a national bank following corporate governance provisions that derive from a combination of States' laws, or whether a national bank should be limited to electing and using the corporate governance provisions of a single State. The OCC received one comment on this request. The commenter raised potential litigation issues with adopting a combination of corporate governance provisions, questioning whether courts will respect combined elections of law where there are minimal contacts with a State whose law has been elected, and citing a trend in court decisions on the validity of choice of law as part of contractual agreements. Given this concern and the lack of positive comments regarding this change, as well as the possible confusion for the bank, shareholders, the OCC, and others that may arise with the use of multiple States' corporate governance laws, the OCC is not amending the final rule at this time to permit the adoption of corporate governance provisions from the laws of several different States.

Further, the OCC requested comment on whether it should make, to the extent appropriate, similar revisions to the

regulations pertaining to corporate governance provisions for Federal savings associations in 12 CFR 5.21 and 5.22. Under current law, all Federal savings associations may elect to use the corporate governance provisions of the laws of the State where the home office of the association is located. Federal stock savings associations also may elect the laws of the State where any holding company of the association is incorporated or chartered; Delaware General Corporation law; or the Model Business Corporation Act, provided that such procedures may be elected to the extent not inconsistent with applicable Federal statutes and regulations and safety and soundness, and such procedures are not prohibited by part 5. One commenter stated that Federal mutual savings associations should have the same leeway in making a choice of law as national banks. Accordingly, the OCC is revising §§ 5.21 and 5.22 to permit additional flexibility for Federal savings associations to allow parity with national banks, as applicable and pursuant to permissible law. As a result of this final rule, Federal savings associations also may elect to use the corporate governance provisions of any State in which a branch of the association is located and, in the case of Federal stock savings associations, the law of any State in which any current or former holding company of the association is incorporated or chartered. The final rule also changes "institution" to "association" in § 5.21 for consistency.

In addition, the OCC requested comment on whether the final rule should change the term "corporate governance procedures" to "corporate governance provisions" in §§ 5.21 and 5.22 to be consistent with the change in terminology proposed for § 7.2000. The OCC did not receive any comments on this request. For clarity and conformity, the OCC is making this technical change to §§ 5.21 and 5.22.

The OCC received two additional comments regarding § 7.2000. One commenter requested that the OCC review the form articles of association and bylaws to confirm that they are consistent with applicable Federal banking statutes and regulations. The commenter asserted that these forms contain requirements that are not mandated by Federal banking statutes and regulations. As the commenter's request does not specifically request any specific revisions to § 7.2000, the OCC is adopting the amendments as proposed. However, the OCC notes that it periodically reviews its model articles of association and bylaws in the ordinary course of business.

Another commenter recommended that the OCC add a provision to part 7 recognizing the authority of a national bank to adopt exculpatory clauses in their articles and/or bylaws under applicable State law or the Model Code. The commenter's request for a provision on national bank authority to adopt exculpatory clauses raises an issue that the OCC did not specifically address in the proposal. The proposed revisions were not intended to address or sanction specific substantive provisions of State corporate law. As the OCC did not contemplate the commenter's requested provision in the proposed rule, the OCC declines to further revise § 7.200 at this time. However, the agency may consider this and similar issues in future rulemakings.

National Bank Adoption of Anti-Takeover Provisions (§ 7.2001)

The OCC proposed to add a new § 7.2001 to address the extent to which a national bank may include anti-takeover provisions in its articles of association or bylaws.¹²⁶ Anti-takeover provisions are examples of corporate governance provisions¹²⁷ covered by 12 CFR 7.2000. As discussed above, under § 7.2000(b) a national bank may elect to follow the corporate governance provisions of specified State law to the extent it is (1) not inconsistent with applicable Federal banking statutes or regulations and (2) not inconsistent with bank safety and soundness.

The OCC received one comment related to proposed § 7.2001. The commenter raised several concerns about how the provision would apply to mutual institutions. The OCC notes that proposed § 7.2001 applies only to national banks, not Federal mutual savings associations. Further, national banks may only be organized as corporations and not as banks in the mutual form of organization. The proposal noted it did not apply to Federal savings associations and that existing provisions on this subject applicable to stock Federal savings associations were not affected by the proposal.¹²⁸ Therefore, the OCC adopts § 7.2001 as proposed, with one clarifying change to paragraph (d).

As noted in the proposed rule, the purpose of § 7.2001 is to provide the OCC's views about the permissibility of several types of anti-takeover

provisions. Specifically, paragraph (a) of § 7.2001 provides that a national bank may, pursuant to 12 CFR 7.2000(b), adopt anti-takeover provisions included in State corporate governance law if the provisions are not inconsistent with Federal banking statutes or regulations and not inconsistent with bank safety and soundness.

Paragraph (b) of § 7.2001 sets forth the type of anti-takeover provisions in State corporate governance provisions that the OCC specifically has determined are not inconsistent with Federal banking statutes or regulations.¹²⁹ This list is not exclusive and the OCC may find that other State anti-takeover laws are not inconsistent with Federal banking statutes or regulations. A national bank may elect to follow these provisions, subject to the bank safety and soundness limitation discussed below.

Restrictions on business combinations with interested shareholders. These State provisions prohibit, or permit the corporation to prohibit in its certificate of incorporation or other governing document, the corporation from engaging in a business combination with an interested shareholder or any related entity for a specified period of time (e.g., three years) from the date on which the shareholder first becomes an interested shareholder (subject to certain exceptions, such as board approval). An interested shareholder is one that owns an amount of stock specified in the State statute, e.g., at least fifteen percent. Federal banking statutes and regulations do not address, directly or indirectly, this type of restriction for national banks. Although Federal banking statutes authorize national banks to engage in specified consolidations and mergers,¹³⁰ this authorization does not preclude a bank's shareholders from adopting a provision that limits the consolidations and mergers into which the bank would enter. Therefore, State restrictions on business combinations with interested shareholders are not inconsistent with Federal law.

Poison pill. A "poison pill" is a State statutory provision that provides, or that permits the corporation to provide in its certificate of incorporation or other governing document, that all shareholders, other than the hostile acquirer, have the right to purchase additional stock at a substantial discount upon the occurrence of a

triggering event. Because no Federal banking statutes or regulations directly or indirectly address these shareholder purchase rights, State poison pill laws are not inconsistent with Federal law.¹³¹

Requiring all shareholder actions to be taken at a meeting. These State provisions provide, or permit the corporation to provide in its certificate of incorporation or other governing document, that all actions to be taken by shareholders must occur at a meeting and prohibit shareholders from taking action by written consent. Certain Federal banking statutes require shareholder approval to be taken at a meeting¹³² while other sections require shareholder approval but do not specify a meeting.¹³³ There is no provision in Federal law authorizing national bank shareholders to take action by written consent in lieu of a meeting. Furthermore, nothing in Federal law precludes a national bank's articles of association from requiring a meeting for any action. Therefore, this type of State provision is not inconsistent with Federal law.

Limits on shareholders' authority to call special meetings. These State provisions provide, or permit the corporation to provide in its certificate of incorporation or other governing document, that only the board of directors, and not shareholders, have the right to call special meetings of the shareholders or, if shareholders have the right, require a high percentage of shareholders to call the meeting. Because Federal banking statutes or regulations do not address, directly or indirectly, the right of shareholders of a national bank to call special meetings, these type of State laws are not inconsistent with Federal law.

Shareholder removal of a director only for cause. These State provisions provide, or permit the corporation to provide in its certificate of incorporation or other governing document, that shareholders may remove a director only for cause, rather than both for cause and without cause. The National Bank Act and OCC regulations do not have a specific provision addressing director removal

¹³¹ However, shareholders, including the hostile acquirer, should consider the implications under the Change in Bank Control Act or Bank Holding Company Act if a shareholder, or shareholders acting in concert, acquire sufficient shares to constitute "control."

¹³² See 12 U.S.C. 71, 214a, 215, 215a, and 215a-2.

¹³³ See 12 U.S.C. 30, 51a, 57, and 59. However, 12 U.S.C. 21a provides that any action requiring approval of the stockholders be obtained by approval by a majority vote of the voting shares at a meeting, unless the statutory provision addressing the action requires greater level of approval.

¹²⁶ OCC regulations currently include provisions addressing adoption of anti-takeover provisions by stock Federal savings associations. See 12 CFR 5.22(g)(7), (h) and (j)(2)(i)(A). The OCC did not propose to amend those provisions.

¹²⁷ The final rule changes this terminology in § 7.2000 to "corporate governance provisions."

¹²⁸ See 85 FR 40794, at 40810, note 108.

¹²⁹ Permitting the use of staggered boards is another anti-takeover provision. New § 7.2001 does not include staggered boards because they are now expressly permitted under the National Bank Act. 12 U.S.C. 71; 12 CFR 7.2024.

¹³⁰ See 12 U.S.C. 215, 215a, 215a-1, 215a-3, and 215c.

by shareholders. Removal only for cause is consistent with the OCC's model national bank Articles of Association, which provide for removal for cause and for failure to meet statutory director qualifications.¹³⁴ Therefore, State provisions requiring shareholder removal of a director only for cause are not inconsistent with Federal law.

Paragraph (c) of § 7.2001 sets forth the type of anti-takeover provisions in State corporate governance provisions that the OCC has determined are inconsistent with Federal banking statutes or regulations. A national bank may not elect to follow these provisions. These provisions are set forth below.

Supermajority voting requirements. These State statutory provisions require, or permit the corporation to require in its certificate of incorporation or other governing document, that a supermajority of the shareholders approve specified matters. A requirement that a supermajority vote of shareholders must approve some transactions is inconsistent with Federal law when applied to transactions for which a Federal statute or regulation includes an express specific shareholder approval level. Certain provisions of the National Bank Act specify shareholder approval by a two-thirds vote¹³⁵ and other provisions require majority shareholder approval.¹³⁶ When a provision in the National Bank Act specifies the level of shareholder vote required for approval, it is inconsistent with Federal law to follow a State corporate governance provision that permits or requires a different level or an additional shareholder approval requirement for a subset of shareholders.

Restrictions on a shareholder's right to vote all the shares it owns. These State statutory provisions prohibit, or permit the corporation in its certificate of incorporation or other governing document to prohibit, a person from voting shares acquired that increase their percentage of ownership of the company's stock above a certain level. This type of provision is inconsistent with the National Bank Act, which expressly provides that each shareholder is entitled to one vote on each share of stock held by the shareholder on all matters other than elections for directors, where cumulative voting may be allowed if so provided in the articles of

association.¹³⁷ A State corporate governance provision that interferes with this express right to vote is inconsistent with Federal law.

As indicated above, § 7.2000(b) permits a national bank to elect to follow a State corporate governance provision only if it is not inconsistent with Federal law and bank safety and soundness. Paragraph (d) of § 7.2001 addresses the impact of bank safety and soundness on adoption of anti-takeover provisions.

Anti-takeover provisions may make it harder for a bank to be acquired by another bank or by investors or to raise capital by discouraging share purchases by a potential acquiror. Thus, when a bank is in a weak condition, anti-takeover provisions the OCC has determined are not inconsistent with Federal law nevertheless would be inconsistent with bank safety and soundness if they would impair the possibility of restoring the bank to sound condition. These provisions would then be impermissible.

Accordingly, paragraph (d) provides that any State corporate governance provision, including anti-takeover provisions, that would render more difficult or discourage an injection of capital by purchase of bank stock, a merger, the acquisition of the bank, a tender offer, a proxy contest, the assumption of control by a holder of a large block of the bank's stock, or the removal of the incumbent board of directors or management is inconsistent with bank safety and soundness if: (1) The bank is less than adequately capitalized (as defined in 12 CFR part 6); (2) the bank is in troubled condition (as defined in 12 CFR 5.51(c)(7)); (3) grounds for the appointment of a receiver under 12 U.S.C. 191 are present, as determined by the OCC; or (4) the bank is otherwise in less than satisfactory condition, as determined by the OCC. The OCC notes that the final rule adds "as determined by the OCC" to paragraph (d)(3) to clarify for a bank when this condition would be present.

However, paragraph (d) also provides that an anti-takeover provision is not inconsistent with bank safety and soundness if, at the time it adopts the provision, the national bank: (1) Is not subject to any of the foregoing conditions and (2) includes along with the provision a limitation that the provision is not effective if one or more of the foregoing conditions occur or if the OCC otherwise directs the bank not to follow the provision for supervisory reasons.

Paragraph (e) provides for OCC case-by-case review of anti-takeover provisions. The OCC reviewed each type of State anti-takeover provision described in paragraph (b) for consistency with Federal banking statutes and regulations only at a general level, without reviewing the specific terms of a proposed provision to be adopted by a particular bank. While the OCC has concluded that the types of provisions set out in paragraph (b) are not inconsistent with Federal banking statutes and regulations in general, the specific provision a particular bank adopts may contain features that could change the result of the OCC's review. Similarly, some anti-takeover provisions may be inconsistent with bank safety and soundness for a particular national bank because of its individual circumstances, even if it is not subject to the conditions listed in paragraph (d).

In order to address the need for individual determinations when appropriate, paragraph (e) provides that the OCC may determine that a State anti-takeover provision, as proposed or adopted by an individual national bank, is (1) inconsistent with Federal banking statutes or regulations, even if it is of a type included in paragraph (b) or (2) inconsistent with bank safety and soundness other than as provided in paragraph (d). The OCC may begin a case-by-case review on its own initiative. In addition, a bank that wishes the OCC to review the permissibility of the specific State anti-takeover provisions it has adopted or proposes to adopt may request the OCC's review, under the procedures set forth at 12 CFR 7.2000(d).

Finally, paragraph (f) addresses the method a national bank, its shareholders, and its directors must use to adopt each anti-takeover provision. In general, the bank must follow the requirements for board of director and shareholder approval set out in the State corporate governance statute it is electing to follow. However, if the provision is included in the bank's articles of association, the bank's shareholders must approve the amendment of the articles pursuant to 12 U.S.C. 21a, even if the State law does not require approval by the shareholders. Further, if the State corporate governance law requires the provision to be in the company's articles of incorporation, certificate of incorporation, or similar document, the national bank must include the provision in its articles of association. If the State corporate governance law does not require the provision to be in the company's articles of incorporation,

¹³⁴ See Articles of Association, Charters, and Bylaw Amendments (Forms), Comptroller's Licensing Manual (June 19, 2017) (Model Articles of Association, Article Fourth, last paragraph).

¹³⁵ See 12 U.S.C. 30, 57, 59, 181, 214a, 215, 215a, and 215a-2.

¹³⁶ See 12 U.S.C. 21a and 51a.

¹³⁷ 12 U.S.C. 61.

certificate of incorporation, or similar document but allows it to be in the bylaws, then the national bank must include the provision in either its articles of association or in its bylaws. However, if the State corporate governance law requires shareholder approval for changes to the corporation's bylaws, then the national bank must include the provision in its articles of association.

National Bank Director or Attorney as Proxy (§ 7.2002)

Twelve U.S.C. 61 prohibits an officer, clerk, teller, or bookkeeper of the national bank from acting as proxy for shareholder voting. Section 7.2002 codifies this prohibition in OCC regulations and provides that any person or group of persons, except the bank's officers, clerks, tellers, or bookkeepers, may be designated to act as proxy. The OCC proposed to amend this section to clarify that the proxy referenced in the section is for shareholder voting, as provided in the statute. The OCC received no comments on this clarification and adopts it as proposed with technical changes. The final rule revises the section heading and rule text to clarify that this provision applies to national banks. The OCC intends no substantive changes to § 7.2002.

National Bank Shareholder Meetings; Board of Directors Meetings (§ 7.2003)

The OCC is finalizing changes it made to part 7 in an interim final rule entitled *Director, Shareholder, and Member Meetings*, published in the **Federal Register** on May 28, 2020.¹³⁸ Among other things, this interim final rule amended § 7.2003 to permit national banks to provide for telephonic or electronic participation at shareholder and board of directors meetings.¹³⁹ To accomplish this, the OCC combined former 12 CFR 7.2001, which provided for procedures for notifying shareholders of shareholder meetings, into former § 7.2003, which provided the rule for annual shareholder meetings that fall on a holiday; added new telephonic and electronic participation language to 12 CFR 7.2003 as new paragraphs (c) and (d); and retitled § 7.2003 as "Shareholder meetings; Board of directors meetings." Former § 7.2001 became § 7.2003(a). Former § 7.2003 became § 7.2003(b). Combining §§ 7.2001 and 7.2003 put all

amendments related to shareholder meetings in one section.

The OCC received one substantive comment letter that supported these amendments. In response to a request for comment included in the preamble to this interim final rule, this commenter opposed any new risk management standards to mitigate any security risks arising from telephonic or electronic meetings, noting that new standards would be unnecessary given current safeguards and regulatory requirements. The OCC is finalizing the amendments made by the interim final rule to §§ 7.2001 and 7.2003 with conforming and technical changes. The final rule replaces references in § 7.2003 to "corporate governance procedures" to "corporate governance provisions," to conform to the change in this terminology made by § 7.2000 of this final rule. The final rule also makes a technical change to the heading to add national banks. The OCC notes that it is not imposing any new risk management standards for telephonic or electronic meetings though this final rule.

Specifically, § 7.2003(c) permits a national bank to provide for telephonic or electronic participation at shareholder meetings. Further, paragraph (c) requires a national bank to have procedures for telephonic or electronic participation in shareholder meetings. A national bank may choose these procedures from several sources: (1) The corporate governance provisions it has elected to follow pursuant to § 7.2000(b), if those elected procedures include telephonic or electronic participation procedures; (2) the Delaware General Corporation Law; or (3) the Model Business Corporation Act. However, these procedures must not be inconsistent with applicable Federal statutes and regulations and safety and soundness. This provision ensures that a national bank has procedures in place for remote participation at shareholder meetings even if the corporate governance law it has elected to follow does not contain procedures for remote participation at shareholder meetings or if it has not elected to follow any particular corporate governance law pursuant to § 7.2000(b). To inform shareholders of its choice of procedures, this paragraph requires the national bank to indicate the use of these procedures in its bylaws.

Paragraph (d) of § 7.2003 provides that a national bank may provide for telephonic or electronic participation at a meeting of its board of directors. This provision codifies OCC Interpretive Letter No. 860¹⁴⁰ and makes the

national bank rule consistent with rules for Federal savings associations.

Oath of National Bank Directors (§ 7.2008)

The OCC is making technical changes to § 7.2008 in this final rule not included in the proposed rule. Currently, § 7.2008 provides that a notary public, including one who is a director but not an officer of the national bank, may administer the oath of directors, and that any person, other than an officer of the bank, having an official seal and authorized by the State to administer oaths, also may administer the oath. However, the statute governing the oath of bank directors, 12 U.S.C. 73, requires that the oath be taken before a notary public or any other State authorized officer other than an officer of the director's bank. Further, OCC instructions conform to the statute by requiring the director to take the oath before a notary public or other authorized State official.¹⁴¹ The final rule corrects the regulation to require that this oath be administered by a notary public or any person having an official seal and authorized by the State to administer oaths, other than an officer of the national bank, thereby conforming this rule to the statute. Further, the final rule clarifies that the State-authorized officer not a notary may be a director of the bank, as may the notary public under the current rule, as long as that person is not also an officer of the bank.

Quorum of a National Bank Board of Directors; Proxies Not Permissible (§ 7.2009)

Section 7.2009 requires a national bank to provide in its articles of association or bylaws that a quorum of the board of directors is at least a majority of the entire board then in office. Section 7.2009 also prohibits bank officers from voting by proxy. The OCC did not propose any substantive changes to this section. However, the OCC received one comment on § 7.2009 requesting that the OCC revise it to allow national banks to adopt the quorum requirements of the law of the relevant State, the Delaware General Corporation Law, or the Model Business Corporation Act. Both the Model Business Corporation Act and Delaware General Corporation Law permit corporate boards to deem one third of all members sufficient to establish a quorum.

The OCC disagrees with this comment. The current requirement in

¹³⁸ 85 FR 31943 (May 28, 2020). This rule was effective May 28, 2020.

¹³⁹ The OCC finalized amendments made by this interim final rule to part 5 in its recent Licensing Amendments final rule. See 85 FR 80404 (Dec. 11, 2020).

¹⁴⁰ OCC Interpretive Letter No. 860 (Apr. 5, 1999).

¹⁴¹ See "General Instructions—Oath of Bank Directors" at www.occ.gov/static/licensing/Instructions-Oaths-NB.pdf.

§ 7.2009 that at least a majority of the Board meet to constitute a quorum is designed to ensure the safety and soundness of bank operations. Any lesser quorum requirement could result in greater absenteeism in managing the affairs of the bank and enable a smaller minority of directors to dictate the direction of corporate affairs, which would heighten risks to safety and soundness. The OCC did not propose an amendment to the quorum requirements of § 7.2009 and declines to do so in this final rule.

National Bank Directors' Responsibilities (§ 7.2010)

Twelve CFR 7.2010 provides that the business and affairs of a bank shall be managed by or under the direction of the board of directors and that boards of directors should refer to published OCC guidance for additional information regarding responsibilities of directors. The OCC did not propose substantive changes to § 7.2010.

Two commenters discussed the second sentence of § 7.2010, which states that the board of directors should refer to OCC published guidance for additional information regarding responsibilities of directors. One commenter stated that the sentence might be read as codifying guidance and suggested that the referenced guidance may be incorrect, inconsistent, or omit information that is germane to the duties and responsibilities of bank directors. Another commenter stated that the reference to guidance in § 7.2010 should be revised to avoid suggesting that guidance has the force of law. This commenter recommended that the OCC revise § 7.2010 to delete the second sentence and establish any specific legal standards regarding director responsibilities through the rulemaking process. The OCC notes that § 7.2010 only refers boards of directors to OCC guidance for additional information and does not suggest that guidance has the force of law nor that the guidance contains all pertinent information. This guidance may be helpful to boards of directors by discussing existing legal requirements applicable to directors and, consistent with the Interagency Statement Clarifying the Role of Supervisory Guidance,¹⁴² outlining the OCC's supervisory expectations.

¹⁴² Interagency Statement Clarifying the Role of Supervisory Guidance, <https://www.occ.gov/news-issuances/news-releases/2018/nr-ia-2018-97a.pdf> (Sept. 11, 2018). The OCC, Federal Deposit Corporation (FDIC), and Federal Reserve Board issued a proposed rule codifying this statement on November 5, 2020. 85 FR 70512.

One commenter also suggested that the OCC repeal § 7.2010 in its entirety or revise it to replace the current text with a statement that the standards of conduct applicable to directors are governed by the law of the State elected by the bank or the Model Business Corporation Act. The OCC is not including this suggested revision in the final rule. The OCC has not previously interpreted directors to be subject only to the standards of conduct established by the law of the State elected by the bank or the Model Business Corporation Act and doing so may conflict with other statutory or regulatory standards applicable to bank directors.

President as Director of a National Bank (§ 7.2012)

Twelve U.S.C. 76 provides that the president of the bank must be a member of the board and be chairman thereof, but that the board may designate a director in lieu of the president to be chairman, who must perform duties as assigned by the board. Section 7.2012 codifies this statutory requirement in the OCC's rules by providing that pursuant to 12 U.S.C. 76, the president of a national bank must be a member of the board of directors, but a director other than the president may be elected chairman of the board. This section further provides that a person other than the president may serve as the chief executive officer, and that this person is not required to be a director of the bank. When first proposing this rule, the OCC acknowledged that it was adding this second sentence to provide that a person other than the president or a director may serve as chief executive officer of a bank.¹⁴³

The OCC proposed two changes to this section and did not receive any comments. As a result, the OCC is adopting these changes to § 7.2012 as proposed. First, the final rule provides that the person serving as, or in the function of, president of a national bank, regardless of title, must be a member of the board of directors. This change aligns the regulation with the OCC's view that the bank officer positions in 12 U.S.C. 76 and other provisions of the National Bank Act refer to functions rather than required titles. If a national bank does not have an individual serving in the position of president but does have another officer serving the function of president, the individual serving in the function of president must be a member of the board of directors. The person serving the function of president is generally the

¹⁴³ 60 FR 11924 (March 3, 1995). This rule was finalized in 1996. 61 FR 4849 (Feb. 9, 1996).

individual appointed to oversee the national bank's day-to-day activities.¹⁴⁴ This change provides national banks with flexibility in employee titles and management organization. The OCC notes that 12 U.S.C. 24(Fifth) provides national banks with the authority to set the duties of their officers. National banks should ensure that their employee titles do not create unnecessary confusion.

Second, the final rule removes the provision in § 7.2012 that states that a person other than the president may serve as chief executive officer, and this person is not required to be a director of the bank. This provision is unnecessary. The position of chief executive officer is not referenced in statute and, as indicated above, national banks have discretion to set the duties of their officers. Further, this provision would conflict with the first revision to this section. Because function rather than title govern under this amendment, the final rule requires a chief executive officer that serves the function of president to be a member of the board.

The OCC also is making a technical change to the section heading not included in the proposed rule to reflect that fact that § 7.2012 applies only to national banks.

Indemnification of National Bank and Federal Savings Association-Affiliated Parties (§§ 7.2014, 145.121)

The OCC proposed amending and reorganizing § 7.2014, Indemnification of institution-affiliate parties (by national banks), applying revised § 7.2014 to Federal savings associations, and removing § 145.121, Indemnification of directors, officers and employees (by Federal savings associations). As discussed below, the OCC is adopting § 7.2014 as proposed, with a technical change to the section heading.

Section 7.2014 addresses indemnification of institution-affiliated parties (IAPs) by national banks in cases involving an administrative proceeding or civil action initiated by a Federal banking agency, as well as cases that do not involve a Federal banking agency. Under § 7.2014(a), a national bank only may make or agree to make indemnification payments to an IAP with respect to an administrative proceeding or civil action initiated by a Federal banking agency if those payments are reasonable and consistent with the requirements of 12 U.S.C.

¹⁴⁴ See OCC, "The Director's Book: Role of Directors for National Banks and Federal Savings Associations" (November 2020) available at www.OCC.gov.

1828(k) and the implementing regulations thereunder. Pursuant to section 1828(k), the FDIC may prohibit, by regulation or order, any indemnification payment made with regard to an administrative proceeding or civil action instituted by the appropriate Federal banking agency that results in a final order under which the IAP: (1) Is assessed a civil money penalty; (2) is removed or prohibited from participating in conduct of the affairs of the insured depository institution; or (3) is required to take certain affirmative actions in regards to an insured depository institution.¹⁴⁵ Section 1828(k) defines “indemnification payment” to mean any payment (or any agreement to make any payment) by any insured depository institution to pay or reimburse an IAP for any liability or legal expense with regard to any administrative proceeding or civil action instituted by the appropriate Federal banking agency that results in a final order under which the IAP: (1) Is assessed a civil money penalty; (2) is removed or prohibited from participating in conduct of the affairs of the insured depository institution; or (3) is required to take certain affirmative actions in regards to an insured depository institution.¹⁴⁶ Section 7.2014(a) defines “institution-affiliated party” by reference to 12 U.S.C. 1813(u).

Section 7.2014(b)(1) permits a national bank to indemnify IAPs for damages and expenses, including the advancement of legal fees and expenses, in cases involving an administrative proceeding or civil action that is not initiated by a Federal banking agency in accordance with the law of the State in which the main office of the bank is located, the law of the State in which the bank’s holding company is incorporated, or the relevant provisions of the Model Business Corporation Act or Delaware General Corporation Law,

¹⁴⁵ In prohibiting such payments, the FDIC may take into account several factors listed in the statute, such as whether there is a reasonable basis to believe the IAP has committed fraud, breached a fiduciary duty, or committed insider abuse; is substantially responsible for the insolvency of the depository institution; has violated any Federal or State banking law or regulation that has had a material effect on the financial condition of the institution; or was in a position of managerial or fiduciary responsibility. See 12 U.S.C. 1828(k)(2). The FDIC has forbidden certain indemnification payments by regulation. See 12 CFR 359.1(l)(1) (definition of “prohibited indemnification payment”); 12 CFR 359.3 (forbidding prohibited indemnification payments, except as provided in part 359).

¹⁴⁶ See 12 U.S.C. 1828(k)(5)(A); see also 12 U.S.C. 1818(b)(6) (defining affirmative actions that an IAP may be required to take in regard to insured depository institutions for purposes of section 1828(k)(5)(A)).

provided such payments are consistent with safe and sound banking practices.

Additionally, pursuant to § 7.2014(b)(2), a national bank may provide for the payment of reasonable premiums for insurance covering the expenses, legal fees, and liability of IAPs to the extent that these costs could be indemnified under administrative proceedings or civil actions not initiated by a Federal banking agency, as provided in § 7.2014(b)(1).

Twelve CFR 145.121 addresses indemnification of directors, officers and employees by Federal savings associations. Section 145.121(b) requires a Federal savings association to indemnify any person against whom an action is brought or threatened because that person is or was a director, officer, or employee of the association. This indemnification is subject to the requirements of § 145.121(c) and (g). Section 145.121(c) provides that indemnification only may be made available to the IAP if (1) there is a final judgment on the merits in the IAP’s favor; or (2) in the case of settlement, final judgment against the IAP, or final judgment in the IAP’s favor other than on the merits, if a majority of the disinterested directors of the Federal savings association determine that the IAP was acting in good faith. It also provides that the association give the OCC at least 60 days’ notice of its intention to indemnify an IAP and provides that the association may not indemnify the IAP if the OCC advises the savings association in writing that the OCC objects. Section 145.121(g) makes the indemnification subject to 12 U.S.C. 1821(k).

Pursuant to § 145.121(d), a Federal savings association may obtain insurance to protect it and its directors, officers, and employees from potential losses arising from claims for acts committed in their capacity as directors, officers, or employees. However, a Federal savings association may not obtain insurance that provides for payment of losses incurred as a consequence of willful or criminal misconduct.

Pursuant to § 145.121(e), if a majority of the directors of a Federal savings association conclude that, in connection with an action, a person may become entitled to indemnification, the directors may authorize payment of reasonable costs and expenses arising from the defense or settlement of the action. Before making advance payment of expenses, the savings association is required to obtain an agreement that the savings association will be repaid if the person on whose behalf payment is

made is later determined not to be entitled to the indemnification.

Pursuant to § 145.121(f), an association that has a bylaw in effect relating to indemnification of its personnel must be governed solely by that bylaw, except that its authority to obtain insurance must be governed by § 145.121(d), which, as described above, authorizes the purchase of indemnification insurance unless the insurance pays for losses created by willful or criminal misconduct. Section 145.121(g) states that the indemnification provided for in § 145.121 for Federal savings associations is subject to and qualified by 12 U.S.C. 1821(k), which addresses personal liability for directors and officers in certain civil actions.

The OCC proposed adding Federal savings associations to § 7.2014 so that both charters would be required to comply with § 7.2014 and removing § 145.121. Because § 7.2014 applies to IAPs as well as officers, directors, and employees, and § 145.121 applies only to officers, directors and employees, this amendment enlarges the scope of indemnification rules for Federal savings associations. As a result, the OCC’s indemnification rules also would apply to certain Federal savings association controlling shareholders, independent contractors, consultants, and other persons identified in 12 U.S.C. 1813(u). The OCC received no comments on this integration of Federal savings associations into § 7.2014 and therefore adopts this integration as proposed.

The OCC also proposed other amendments to § 7.2014. First, the OCC proposed amending current § 7.2014(b)(1), redesignated as § 7.2014(a) and retitled, to provide that State law on indemnification may apply to all administrative proceedings or civil actions for which an IAP can be indemnified, not just actions that are initiated by a person or entity not a Federal banking agency as under the current rule. This revision clarifies the application of State law on indemnification to actions initiated by Federal banking agencies. However, current § 7.2014(a), redesignated as § 7.2014(b), would still apply. Specifically, under redesignated § 7.2014(b), with respect to proceedings or civil actions initiated by a Federal banking agency, a national bank or Federal savings association only may make or agree to make indemnification payments to an IAP that are reasonable and consistent with the requirements of

section 1828(k) and implementing regulations thereunder.¹⁴⁷

The OCC also proposed a technical change to redesignated § 7.2014(a). As indicated above, the current rule states that in cases involving an administrative proceeding or civil action not initiated by a Federal banking agency, a national bank may indemnify an IAP in accordance with the law of the State in which the main office of the bank is located, the law of the State in which the bank's holding company is incorporated, or the relevant provisions of the Model Business Corporation Act or Delaware General Corporation Law, provided such payments are consistent with safe and sound banking practices. Because these sources of law are identical to the law a national bank may elect to follow pursuant to current § 7.2000(b) or the law a Federal savings association may elect to follow pursuant to current § 5.21 or § 5.22, the OCC proposed to replace the language on sources of State law in this provision with a statement that the bank or savings association may indemnify an IAP for damages and expenses in accordance with the law of the State the bank or savings association has designated for its corporate governance under the provisions of § 7.2000, § 5.21, or § 5.22, as applicable. Because the OCC is enlarging the choice of law for both national banks and Federal savings associations in this final rule, this cross-reference incorporates these new State law options.¹⁴⁸

One commenter suggested that the OCC clarify in the final rule under redesignated § 7.2014(a) how the OCC would evaluate whether indemnification payments to IAPs are "consistent with safety and soundness." For example, the commenter suggested that the OCC confirm that the types of indemnification permissible under Delaware General Corporation Law generally would be permissible for national banks and Federal savings associations, except where such payment would introduce safety and soundness risk by measurably reducing bank capital and/or liquidity levels. The

¹⁴⁷ The OCC also proposed to move the cross-reference to the definition of IAP in redesignated § 7.2014(b) to redesignated paragraph (a) and to make stylistic changes to the wording of redesignated § 7.2014(b).

¹⁴⁸ As explained *supra*, the OCC is amending § 7.2000 to also allow national banks to follow the corporate governance provisions of the law of any State in which any branch of the bank is located or where a holding company of the bank is incorporated even if the holding company is later eliminated or no longer controls the bank and the national bank is not located in that State. The final rule makes this same change to §§ 5.21 and 5.22 for Federal savings associations.

OCC disagrees with this comment. OCC determinations of whether indemnification payments to IAPs are "consistent with safety and soundness" are made on a case-by-case basis based on the specific facts and circumstances of a particular case, and do not depend on State law. In the absence of specific facts and circumstances, the OCC declines to expound in the final rule upon how the OCC would evaluate the safety and soundness of indemnification payments to IAPs.

The commenter also suggested that the OCC include in the final rule under redesignated § 7.2014(a) a process for appealing the OCC's invalidation of indemnification payments or an indemnification agreement on safety and soundness grounds. The OCC did not propose an appeals process, and therefore is not including one in the final rule. If a national bank or Federal savings association disputes an OCC invalidation of an indemnification payment or agreement, it may file an appeal with the OCC pursuant to the OCC's Bank Appeals Process.¹⁴⁹

For the reasons discussed above, the OCC adopts redesignated § 7.2014(a) as proposed.

Second, the OCC proposed amending § 7.2014(b)(2), redesignated as § 7.2014(d), to allow a national bank or Federal savings association to provide for the payment of reasonable insurance premiums in connection with all actions involving an IAP that could be indemnified under § 7.2014, whether or not initiated by a Federal banking agency. The OCC received no comments on this change and adopts it as proposed. The OCC believes this change will resolve confusion regarding how current § 7.2014(b)(2) is applied. This change also will better align OCC regulations on the payment of insurance premiums with the FDIC's regulations and 12 U.S.C. 1828(k).¹⁵⁰

Third, the OCC proposed adding a new paragraph (c) to require a national bank or Federal savings association, before advancing funds to an IAP under § 7.2014, to obtain a written agreement that the IAP will reimburse the bank or savings association for any portion of indemnification that the IAP is ultimately found not to be entitled to under 12 U.S.C. 1828(k) and implementing regulations, except to the

¹⁴⁹ Information about the OCC's Bank Appeals Process is available at occ.gov.

¹⁵⁰ The FDIC's implementing regulations under section 1828(k), 12 CFR part 359, explicitly allow the payment of insurance premiums in anticipation of actions brought by a Federal banking agency, provided the insurance is not used to reimburse the cost of a judgment or civil monetary penalty. See 12 CFR 359.1(l)(2).

extent the bank's or savings association's expenses have been reimbursed by an insurance policy or fidelity bond.¹⁵¹ This requirement is similar to the requirement in § 145.121(e) currently applicable to Federal savings associations and therefore will not impose any additional burdens on Federal savings associations. Further, FDIC regulations,¹⁵² State law,¹⁵³ and the Model Business Corporation Act¹⁵⁴ contain similar requirements for IAPs to reimburse institutions for funds to which they are later found not to be entitled. As most national banks are subject to the FDIC's indemnification regulations¹⁵⁵ or have elected under 12 CFR 7.2000(b) to follow State corporate law imposing reimbursement requirements for advancement of funds, the OCC believes that this change will not impose any additional burden on national banks and will merely codify existing practices. This change also will ensure that national banks, and Federal savings associations, do not provide indemnification to IAPs that is ultimately in contravention of the statutory limits of section 1828(k).

One commenter suggested that the OCC confirm in the final rule that the written agreement required under § 7.2014(c) may provide for the reimbursement of expenses, in addition to damages and other costs. The commenter noted that proposed § 7.2014(c) implies that expenses may be covered by a written agreement, because it notes that the written agreement may cover any portion of the indemnification payment "except to the extent that the bank's or savings association's expenses have been reimbursed by an insurance policy or fidelity bond." The OCC does not believe that the final rule creates any uncertainty regarding whether the written agreement may provide for the reimbursement of expenses, in addition to damages and other costs. As the commenter notes, and the OCC agrees, the written agreement may cover any portion of the indemnification payment "except to the extent that the bank's or savings association's expenses have been reimbursed by an insurance policy

¹⁵¹ National banks are required to purchase fidelity coverage by 12 CFR 7.2013.

¹⁵² See 12 CFR 359.5(a)(4).

¹⁵³ See, e.g., 8 Del. C. section 145(e); Utah Code section 16-10a-904; 805 Ill. Comp. Stat. 5/8.75(e); see also N.Y. Bus. Corp. Law section 725(a) (requiring repayment, but not explicitly requiring a written agreement).

¹⁵⁴ See Model Bus. Corp. Act section 8.53(a).

¹⁵⁵ Federal savings associations are also subject to the FDIC's indemnification regulations.

or fidelity bond.” The OCC therefore adopts § 7.2014(c) as proposed.

One commenter suggested that rather than amending § 7.2014, the OCC should repeal the entire regulation and the comparable regulation for Federal savings associations, § 145.121. The commenter noted that 12 CFR part 359 and 12 U.S.C. 1828(k) already govern indemnification to IAPs in administrative and court proceedings brought by a Federal banking agency; and the proposed language in 12 CFR 7.2000 makes the separate indemnification provisions relating to non-part 359 proceedings unnecessary. The OCC disagrees with the commenter’s suggestion. The OCC believes that having OCC-specific regulations provides clarity for OCC-supervised banks and savings associations. The OCC therefore has not made any changes to the final rule in response to this comment.

The commenter also suggested that, if the OCC does not repeal § 7.2014, the OCC should delete language in § 7.2014 that reserves the power of the OCC to overturn any bank board decision on indemnification and advancement of expenses. The OCC disagrees with this comment. The OCC must retain supervisory authority to object to indemnification payments if they threaten the safety and soundness of the institution. The OCC notes that it would only exercise this authority under those circumstances. The OCC therefore has not made any changes to the final rule in response to this comment.

This commenter also suggested that, if the OCC does not repeal § 7.2014, the OCC should include the right to advance expenses in both matters subject to 12 CFR part 359 and those that are not. The commenter further suggested that the OCC should expand coverage for indemnification unrelated to part 359-type matters to those who may not fall under the definition of IAPs, noting that State statutes typically cover potentially other individuals. The OCC also disagrees with these comments. Section 7.2014 already includes the right to advance expenses in both matters subject to 12 CFR part 359, which implements 12 U.S.C. 1828(k), and those that are not. As noted above, § 7.2014 addresses indemnification of IAPs by national banks in cases involving an administrative proceeding or civil action initiated by a Federal banking agency, as well as cases that do not involve a Federal banking agency. Further, the OCC believes the scope of the coverage for indemnification to IAPs is appropriate and sufficiently broad. “IAP” has the same meaning as set forth

at 12 U.S.C. 1813(u), and thus § 7.2014 applies not only to officers, directors, and employees of the bank, but also to controlling shareholders, independent contractors, consultants, and other persons identified in 12 U.S.C. 1813(u). The OCC therefore has not made any changes to the final rule in response to these comments.

The OCC believes that revised § 7.2014 incorporates the provisions of current § 145.121 that should be applicable to both national banks and Federal savings associations, while maintaining appropriate flexibility for both types of institutions. As noted above, revised § 7.2014 will apply to actions brought by a Federal banking agency and actions not brought by a Federal banking agency, as in § 145.121, while retaining the statutory limits of section 1828(k).¹⁵⁶ Revised § 7.2014 also includes the reimbursement agreement requirement, as in § 145.121(e). However, the OCC did not propose to include in § 7.2014 the provision in § 145.121 that requires Federal savings associations to indemnify persons against whom an action is brought under certain circumstances, such as if they are successful on the merits of the action,¹⁵⁷ nor the provision requiring a board vote to authorize indemnification under certain circumstances.¹⁵⁸ In place of these requirements, revised § 7.2014 permits Federal savings associations to incorporate State law on indemnification. Because State law governing indemnification generally incorporates these aspects of current § 145.121, the OCC expects that Federal savings associations will continue to be subject to similar provisions governing indemnification as before. For example, State law generally requires mandatory indemnification if an employee is successful on the merits,¹⁵⁹ as well as a board vote authorizing indemnification in almost all circumstances.¹⁶⁰ Because

¹⁵⁶ Section 145.121(g) subjects and qualifies the indemnification provided for by current § 145.121 to 12 U.S.C. 1821(k). In contrast, current § 7.2014 explicitly subjects national bank indemnification to the restrictions of 12 U.S.C. 1828(k). Section 1828(k) directly addresses indemnification and is applicable to any insured depository institution. See 12 U.S.C. 1828(k)(5)(A). Section 1821(k) addresses personal liability for directors and officers and is also applicable to any insured depository institution. Both of these statutes apply, and will continue to apply to national banks and Federal savings associations but proposed § 7.2014 retains the citation to section 1828(k) as the more relevant citation for indemnification purposes.

¹⁵⁷ See § 145.121(b).

¹⁵⁸ See § 145.121(c)(1)(ii)(C).

¹⁵⁹ See, e.g., 8 Del. C. 145(c); New York BCL section 723(a); 805 ILCS 5/8.75(c); Model Bus. Corp. Act, section 8.52 (2016).

¹⁶⁰ See, e.g., 8 Del. C. 145(d); New York BCL section 723(b); 805 ILCS 5/8.75(d); Model Bus. Corp. Act, sections 8.53(c), 8.55 (2016).

national banks also may incorporate State indemnification law, they will be subject to these State indemnification provisions as well. The OCC specifically requested comment on whether, instead of relying on State law, the final rule should include the requirement from § 145.121 that, in the case of settlement, final judgment against the IAP, or final judgment in the IAP’s favor other than on the merits, a majority of the disinterested directors determine that the IAP was acting in good faith before the institution may indemnify the IAP. One commenter replied to the OCC’s request for comment, and did not support including this requirement in the final rule. The commenter argued that this requirement is generally more restrictive than typical State law and may discourage qualified candidates from serving on the board of a national bank or Federal savings association, and that there is no compelling public interest served by subjecting national bank or Federal savings association directors to greater risk of personal liability than directors of other corporations. The OCC agrees with the commenter, and therefore, the OCC is not including the requirement in the final rule.

The OCC also did not propose to include in § 7.2014 the provision in § 145.121 that requires a 60-day prior notice to the OCC before making an indemnification because it believes this provision is burdensome and unnecessary.¹⁶¹ However, the OCC requested comment on whether the final rule should include this prior notice requirement and, if so, what benefits prior approval would provide that would outweigh any additional regulatory burden. One commenter replied to the OCC’s request for comment and did not support including this prior-notice requirement. The commenter argued, and the OCC agrees, that the regulatory burden of such a notice would outweigh any benefit. Therefore, the OCC is not including this requirement in the final rule.

Restricting Transfer of National Bank Stock and Record Dates; Stock Certificates (§ 7.2016)

Facsimile Signatures on Bank Stock Certificates (§ 7.2017)

Lost Stock Certificates (§ 7.2018)

Sections 12 CFR 7.2016, 7.2017, and 7.2018 contain specific requirements related to national bank stock transfers and stock certificates. Many of these requirements are mandated by 12 U.S.C. 52. However, some of these

¹⁶¹ See § 145.121(c)(2).

requirements are outdated because national banks today rarely issue physical stock certificates.

Section 7.2016(a) states that, pursuant to section 52, a national bank may impose conditions on the transfer of its stock reasonably calculated to simplify the work of the bank with respect to stock transfers, voting at shareholders' meetings, and related matters and to protect the bank against fraudulent transfers. Consistent with the statute, § 7.2016(b) allows a national bank to close its stock records for a reasonable period to ascertain shareholders for voting purposes. The board also may fix record dates, which should be reasonable in proximity to the date notice is given to shareholders of the meeting. Section 7.2017 states that the president and cashier of the bank, or other officers authorized by the bank's bylaws, shall sign each stock certificate. These signatures may be manual or facsimile and may be electronic. Each certificate also must be sealed with the seal of the bank.

To streamline OCC rules, the OCC proposed combining §§ 7.2016 and 7.2017 into one section, § 7.2016, that would apply to both stock transfers and stock certificate requirements. The OCC also proposed making OCC rules on stock certificates more flexible. As noted above, section 12 U.S.C. 52 requires certain officers of the association to sign every bank stock certificate and for it to be sealed with the seal of the association. However, banks now generally hold stock in "book-entry" form, which is not a format that supports signatures or stamps. Although section 52 places requirements on physical stock certificates, the OCC does not believe that the language of that section requires banks to actually issue stock in certificated form. Notably, section 52 also states that "[t]he capital stock of each association shall be . . . transferable on the books of the association in such manner as may be prescribed in the by-laws or articles of association."¹⁶² This language allows banks to provide for book-entry transfer in their by-laws or articles of association, even if this type of transfer is incompatible with the use of signatures and seals. Therefore, the OCC proposed stating that a national bank may prescribe the manner in which its stock must be transferred in its by-laws or articles of association. The OCC also proposed specifying that a national bank that does issue stock in certificate form must comply with the requirements of section 52, including: (1) The name and location of the bank; (2) name and

holder of record of the stock; (3) the number and class of shares which the certificate represents; (4) if the bank issues more than one class of stock, the respective rights, preferences, privileges, voting rights, powers, restrictions, limitations, and qualifications of each class of stock issued (unless incorporated by reference to the articles of association); (5) signatures of the president and cashier of the bank, or such other officers as the bylaws of the bank provide; and (6) the seal of the bank. The OCC proposed to continue allowing banks to meet the signature requirements of section 52 through the use of electronic means or by facsimiles, as is permitted by current § 7.2017.

Finally, the OCC proposed to remove § 7.2018 as unnecessary. Section 7.2018 states that if the bank's articles of association or bylaws do not provide for replacing lost, stolen, or destroyed stock certificates, the bank may adopt procedures under 12 CFR 7.2000. Section 7.2000 generally permits national banks to adopt corporate governance procedures¹⁶³ in accordance with State law, to the extent not inconsistent with applicable Federal laws and regulations or with bank safety and soundness. Therefore, this provision is unnecessary.

The OCC received no comments on these changes to §§ 7.2016 and 7.2018. Therefore, the OCC adopts these changes to § 7.2016 and removes §§ 7.2017 and 7.2018 as proposed. The OCC also is making a technical change to the section heading not included in the proposed rule to reflect that fact that § 7.2016 applies only to national banks.

Acquisition and Holding of Shares as Treasury Stock (§ 7.2020)

The OCC proposed to remove 12 CFR 7.2020. Section 7.2020 provides that a national bank may repurchase its outstanding shares and hold them as treasury stock as a capital reduction under 12 U.S.C. 59 if the repurchase and retention is for a "legitimate corporate purpose" and not for speculative purposes. The OCC issued § 7.2020 in 1996 as an exception to the provision in 12 U.S.C. 83 that prohibited a national bank from being the "purchaser or holder" of its own shares. However, in 2000, Congress amended section 83 to remove this prohibition.¹⁶⁴ Therefore, § 7.2020 is unnecessary. The OCC received no comments on this change

and the final rule removes § 7.2020 as proposed. The OCC notes that removing § 7.2020 would not limit the OCC's authority over share repurchases. Share repurchases are considered reductions in capital and would continue to be subject to OCC and shareholder approval under 12 U.S.C. 59 and 12 CFR 5.46.

Capital Stock-Related Activities of a National Bank (new § 7.2025)

The OCC proposed new § 7.2025 to codify various OCC interpretations of the National Bank Act involving capital stock issuances and repurchases. The OCC received no comment on this new section and adopts it as proposed.

Section 7.2025 explains the shareholder approval requirements for the issuance of authorized common stock; the issuance, repurchase, and redemption of preferred stock pursuant to blank check procedures; and share repurchase programs. Generally, an increase or decrease in the amount of a national bank's common or preferred stock is a change in permanent capital subject to the notice and approval requirements of 12 CFR 5.46 and applicable law.¹⁶⁵ Section 7.2025(a) sets forth the general requirements for changes in permanent capital. Paragraphs (b) through (d) of § 7.2025 provide more specific requirements for shareholder approval of various types of issuances and repurchases. Section 7.2025(e) identifies certain permissible features for preferred stock.

Issuance of previously approved and authorized common stock. The issuance of common stock is governed by 12 U.S.C. 57, which provides that a national bank may, with the approval of the OCC, and by a vote of shareholders owning two-thirds of the stock of the bank, increase its capital stock to any sum. The OCC has interpreted 12 U.S.C. 57 to require a two-thirds shareholder vote to amend the articles of association to increase the number of authorized shares.¹⁶⁶ The OCC also has long interpreted section 57 to permit a national bank's board of directors to issue common stock without obtaining additional shareholder approval at the time of the issuance so long as the issuance does not exceed the amount of common stock previously approved and

¹⁶⁵ See generally 12 U.S.C. 51a, (preferred stock issuance), 57 (increase in capital), and 59 (reduction of capital).

¹⁶⁶ See, e.g., Articles of Association, Charter, and Bylaw Amendments, Comptroller's Licensing Manual (June 2017), p. 3 (indicating that two-thirds of a national bank's shareholders must vote to increase or decrease the authorized number of common shares in the articles of association).

¹⁶³ The proposed rule changed this terminology in § 7.2000 to "corporate governance provisions."

¹⁶⁴ Public Law 106-569, Title XII, section 1207(a), 114 Stat. 3034 (American Homeownership and Economic Opportunity Act of 2000).

¹⁶² See 12 U.S.C. 52, first paragraph.

authorized by shareholders.¹⁶⁷ Section 7.2025(b) codifies this interpretation. Specifically, paragraph (b) provides that, in compliance with 12 U.S.C. 57, a national bank may issue common stock up to an amount previously approved and authorized in the national bank's articles of association by holders of two-thirds of the national bank's shares without obtaining additional shareholder approval for each subsequent issuance within the authorized amount.

Issuance, repurchase, and redemption of preferred stock pursuant to certain procedures. Twelve U.S.C. 51a requires a majority of shareholders vote to approve a national bank's issuance of preferred stock. However, the statute does not specify when in the process the bank must obtain shareholder approval. In OCC Interpretive Letter 921, the OCC determined that a national bank could adopt, subject to required shareholder approval, a provision in its articles of association or an amendment to its articles authorizing the bank's board of directors to issue preferred stock using blank check procedures ("blank check preferred stock").¹⁶⁸ Blank check preferred stock refers to preferred stock for which the board is empowered to issue and determine the terms of authorized and unissued preferred stock. To be permissible, blank check preferred stock must be permitted by the corporate governance procedures adopted by the bank under § 7.2000.¹⁶⁹

The OCC also determined that shareholders' adoption or approval of a blank check preferred stock article constitutes the shareholder action required by 12 U.S.C. 51a and 51b to issue and establish the terms of preferred stock. The subsequent issuance of the preferred stock within the authorized limits would not require additional shareholder approval. Interpretive Letter 921 did not specifically address blank check preferred procedures that include the authority, and the shareholder action required, to repurchase and redeem blank check preferred stock.

The redemption or repurchase of preferred stock is a reduction in capital. Twelve U.S.C. 59 requires the approval of two-thirds of shareholders for a

national bank to reduce capital, but it does not specify when in the process the bank must obtain shareholder approval. In Interpretive Letter 1162, the OCC determined that the holders of two-thirds of a national bank's shares may approve in advance redemptions of blank check preferred stock by voting to amend the articles of association to authorize the issuance and redemption of blank check preferred shares.¹⁷⁰

Section 7.2025(c) codifies these interpretations and permits blank check procedures, if approved in advance by the bank's shareholders, that authorize the issuance, repurchase, and redemption of preferred stock without additional shareholder approval at the time of issuance, repurchase, or redemption, if certain conditions are met. Paragraph (c) provides that, subject to the requirements of 12 U.S.C. 51a, 51b, and 59, a national bank may adopt procedures to authorize the board of directors to issue, determine the terms of, repurchase, or redeem one or more series of preferred stock, if permitted by the corporate governance provisions adopted by the bank under 12 CFR 7.2000. This provision further provides that, to satisfy the shareholder approval requirements of 12 U.S.C. 51a and 59, shareholders must approve the adoption of these procedures in advance through an amendment to the national bank's articles of association, and that any amendment that authorizes both the issuance and the repurchase and redemption of shares must be approved by holders of two-thirds of the national bank's shares.

Share repurchase programs. In Interpretive Letter 1162, the OCC determined that the shareholder approval requirement in 12 U.S.C. 59 may be satisfied by a two-thirds shareholder vote approving an amendment to the bank's articles of association authorizing the board of directors to implement share repurchase programs. A share repurchase program authorizes the board of directors to repurchase the national bank's common or preferred stock from time to time under board-determined parameters that can limit the frequency, type, aggregate limit, or purchase price of repurchases, without obtaining additional shareholder approval at the time the shares are repurchased. Section 7.2025(d) codified this interpretation by providing that, subject to the requirements of 12 U.S.C. 59, a national bank may establish a program for the repurchase, from time to time, of the national bank's common or preferred

stock, if permitted by the corporate governance provisions adopted by the bank under 12 CFR 7.2000. Paragraph (d) also provides that, to satisfy the shareholder approval requirement of 12 U.S.C. 59, the repurchase program must be approved in advance by the holders of two-thirds of the national bank's shares, including through an amendment to the national bank's articles of association that authorizes the board of directors to implement share repurchase programs from time to time under board-determined parameters that can limit the frequency, type, aggregate limit, or purchase price of repurchases.

Preferred stock features. Section 7.2025(e) clarifies that a national bank may issue and maintain noncumulative preferred stock. This provision codifies a longstanding OCC interpretation that 12 U.S.C. 51b, by its terms, describes limitations on the portion of the preferred stock dividend which may be cumulative. It does not require that preferred stock dividends must always be cumulative.¹⁷¹ Specifically, § 7.2025(e) provides that a national bank's preferred stock may be cumulative or non-cumulative and may or may not have voting rights on one or more series.

Subpart C—National Bank and Federal Savings Association Operations

National Bank and Federal Savings Association Operating Hours and Closings (§ 7.3000)

The OCC proposed to amend § 7.3000, National bank hours and closings, to include Federal savings associations, to update it, and to make technical and clarifying changes. The OCC received one comment on § 7.3000, in support of the proposed updates to the types of emergency conditions that may result in the declaration of a legal holiday. Therefore, the OCC adopts the amendments to § 7.3000 as proposed, with technical changes to the section and paragraph (a) headings.

Twelve U.S.C. 95(b)(1) specifically authorizes the Comptroller to designate a legal holiday because of emergency conditions occurring in any State or part of a State for national banks located in

¹⁶⁷ A previous version of § 5.46 (1981) provided that shareholder approval would not be required to increase common stock through the issuance of a class of common up to an amount previously approved by shareholders. Subsequent amendments to § 5.46, which the OCC intended to simplify 12 CFR part 5, omitted this language but did not change this interpretation.

¹⁶⁸ OCC Interpretive Letter No. 921 (Dec. 13, 2001).

¹⁶⁹ The final rule changes this terminology in § 7.2000 to "corporate governance provisions."

¹⁷⁰ OCC Interpretive Letter No. 1162 (July 6, 2018).

¹⁷¹ In part, section 51b provides that preferred shareholders "shall be entitled to receive such cumulative dividends . . . as may be provided in the articles of association . . . and no dividends shall be declared or paid on common stock until cumulative dividends on preferred stock have been paid in full . . ." The OCC has previously interpreted section 51a as providing national banks with broad authority to issue preferred stock, including preferred stock bearing noncumulative dividends, notwithstanding the language of section 51b. See OCC Letter from Martin Goodman, OCC Assoc. Ch. Couns. (Oct. 3, 1977).

that State or affected area. Section 95(b)(1) also provides that when a State or State official authorized by law designates any day as a legal holiday for ceremonial or emergency reasons, that day is a legal holiday and a national bank located in that State or affected part of the State may close or remain open unless the Comptroller directs otherwise by written order. Section 7.3000 implements this statutory provision. Specifically, current § 7.3000(b) provides that when the Comptroller, a State, or a legally authorized State official declares a day a legal holiday due to emergency conditions, a national bank may temporarily limit or suspend its operations at its affected offices. Alternatively, the bank may continue its operations, unless the Comptroller directs otherwise by written order. This rule provides that emergency conditions include natural disasters and civil and municipal emergencies, such as severe flooding or a power emergency declared by a local power company or government requesting that businesses in the affected area close. Section 7.3000(c) states that a State or a legally authorized State official may declare a day a legal holiday for ceremonial reasons and provides that when a State legal holiday is declared for ceremonial reasons, a national bank may choose to remain open or to close. Section 7.3000(d) provides that a national bank should assure that all liabilities or other obligations under the applicable law due to the bank's closing are satisfied, e.g., notice to depositors about funds availability pursuant to 12 CFR 229.13(g)(4).

There is no equivalent statute or corresponding regulation for Federal savings associations. However, a former OTS regulation at 12 CFR 510.2(b) permitted the OTS to waive or relax any limitations pertaining to the operations of a Federal savings associations in any area affected by a determination by the President of the United States that a major disaster or emergency had occurred. Amending § 7.300 to include Federal savings associations clarifies for these institutions how a legal holiday is declared and the implications of a legal holiday declaration, as well as provide consistency between national bank and Federal savings association operations on legal holidays.¹⁷²

¹⁷² We note that the Comptroller is directed under section 4 of the HOLA (12 U.S.C. 1463(a)(1)(A)) to provide for the "safe and sound operation" of Federal savings associations. The OTS relied on this HOLA authority when it issued § 510.2(b) (see 54 FR 49411, at 49456 (Nov. 30, 1989)) and this final rule furthers that objective. See also 12 U.S.C. 1(a)

As proposed, in addition to adding Federal savings associations, the final rule clarifies and updates the emergency closing provisions of § 7.3000. First, the final rule clarifies that § 7.3000 also applies to Federal branches and agencies of foreign banks. Although current § 7.3000 applies to Federal branches and agencies pursuant to section 4(b) of the International Banking Act, 12 U.S.C. 3102(b), the OCC believes it is appropriate to specify this application in the rule.¹⁷³

Second, the final rule clarifies that the Comptroller may declare "any day" a legal holiday, instead of "a day," to more accurately reflect the statutory language and to clarify that the Comptroller may declare more than one day due to the emergency condition as a legal holiday.

Third, the final rule amends § 7.3000(b) to state that emergency conditions may be "caused by acts of nature or of man." This amendment mirrors the language in 12 U.S.C. 95(b)(1) and clarifies the broad scope of possible emergency conditions that could justify a legal holiday.

Fourth, the final rule updates the types of emergency conditions listed in the rule to include disasters other than natural disasters, public health or safety emergencies, and cyber threats or other unauthorized intrusions, and updates the list of examples to include pandemics, terrorist attacks, and cyber-attacks on bank systems.

Fifth, the final rule provides that the Comptroller may issue a declaration of a legal holiday in anticipation of the emergency condition, in addition to at the time of the emergency or soon thereafter. This codifies the current practice of the Comptroller in most cases, which permits national banks, Federal savings associations, and Federal branches and agencies to better plan for the possible closing.

Sixth, the final rule provides that in the absence of a Comptroller declaration of a bank holiday, a national bank, Federal savings associations, or Federal branch or agency may choose to temporarily close offices in response to an emergency condition. If a bank, savings association, or branch or agency

(charging the OCC with assuring the safety and soundness of institutions subject to its jurisdiction).

¹⁷³ As indicated previously in this preamble, section 4(b) of the International Banking Act, 12 U.S.C. 3102(b), provides that the operations of a foreign bank at a Federal branch or agency shall be conducted with the same rights and privileges as a national bank at the same location and shall be subject to all the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply under the National Bank Act to a national bank doing business at the same location. See also 12 CFR 28.13.

temporarily closes pursuant to this provision, it should notify the OCC of such temporary closure as soon as feasible. This provision provides additional flexibility to OCC-regulated institutions during emergency conditions and codifies similar language currently included in the OCC's Licensing Manual.¹⁷⁴

Seventh, the final rule clarifies in § 7.3000(c) that a State legal holiday may be for the entire State or part of the State, as indicated in 12 U.S.C. 95(b)(1).

Eighth, as provided in the statute, the final rule provides in § 7.3000(c) that the Comptroller may by written order direct the affected institution to close or remain open during a State legal holiday declared for ceremonial reasons, as with a State legal holiday declared due to an emergency.

Finally, the final rule adds a new paragraph, § 7.3000(e), to provide a definition of "State" that is consistent with the definition in 12 U.S.C. 95(b)(2).

Also as proposed, the final rule also makes a number of technical changes to § 7.3000. The final rule replaces the word "country" with "United States" in the phrase describing affected geographic area to make this phrase more precise; deletes the superfluous citation to 12 U.S.C. 95 in § 7.3000(b); and deletes the superfluous first sentence of current § 7.3000(c), which states that a State or a legally authorized State official may declare a day a legal holiday for ceremonial reasons.

In making these changes, the OCC is reorganizing § 7.3000(b) and (c) so that all provisions relating to Comptroller declared legal holidays for emergency conditions are in § 7.3000(b) and all provisions related to State declared legal holidays for emergency and ceremonial reasons are in § 7.3000(c). This reorganization more clearly sets forth the standards for Comptroller and State declared legal holidays and corresponds better with the statutory text.

Section 7.3000 also provides, in paragraph (a), that a national bank's board of directors should review its banking hours and, independently of any other bank, take appropriate actions to establishing a schedule of its banking hours. As proposed, the final rule updates this provision by replacing "banking hours" with "hours of operations for customers." The final rule also makes technical corrections to the section and paragraph heading to reflect this change in terminology. Furthermore, the final rule includes Federal savings associations and Federal branches and agencies in this provision.

¹⁷⁴ See Comptroller's Licensing Manual, Branch Closings (June 2017).

Because Federal branches and agencies typically do not have a board of directors, § 7.3000(a) provides that an equivalent person or committee for a Federal branch or agency should review that entity's operating hours and take appropriate action to establish a schedule of operating hours for customers.

Sharing National Bank or Federal Savings Association Space and Employees (§ 7.3001)

Section 7.3001 permits national banks and Federal savings associations to lease excess space on bank or savings association premises to other businesses, share space jointly held with other businesses, offer its services in space owned by or leased to other businesses, and share employees when sharing space. The OCC proposed to add a cross-reference to redesignated § 7.1024, National bank or Federal savings association ownership of property, in § 7.3001(a)(1) to clarify that the requirements of § 7.1024 apply to the sharing of office space and employees pursuant to § 7.3001. The OCC did not receive any comments on this change and adopts it as proposed.

Additional Issues and General Comments

Application to Federal savings associations generally. The OCC received several comments on the applicability of the proposed revisions in the proposed rule to Federal savings associations and, in particular, mutual savings associations. One commenter stated that national banks and Federal savings associations have different enabling acts, and it is not clear that applying national bank rules to Federal savings associations is a good fit. The OCC is cognizant of the fact that national banks and Federal savings associations have different enabling statutes and takes those differences into account when determining whether, and when, to integrate the rules applicable to national banks and Federal savings associations. In other areas, the OCC has retained different regulations for national banks and Federal savings associations, as dictated by provisions of the National Bank Act and the HOLA, respectively.

The same commenter noted that mutual associations are a distinct and very different entity from a governance perspective and requested that mutual savings associations have the same leeway in making a choice of law as national banks. This commenter also stated that mutual savings associations should not be denied the benefit of State law simply because national banks are

denied those provisions by their enabling act. The OCC notes that the proposal as well as the final rule do not deny Federal mutual savings associations the benefit of State law. In fact, as noted above in the preamble discussion of § 7.2000, the final rule permits additional flexibility for Federal savings associations with respect to a choice of corporate governance law to allow parity with national banks. In suggesting and adopting these changes, the OCC recognized the distinction between Federal savings associations and national banks by considering choice of law issues for these different charters separately.

Another commenter suggested the OCC should explore further ways to harmonize national bank and Federal savings association regulations, including potential Federal savings association use of 12 U.S.C. 24 and 12 CFR part 24, to invest directly in public welfare investments. The OCC regularly reviews its regulations to determine opportunities to harmonize Federal savings associations and national bank regulations, where appropriate. The OCC staff notes that 12 CFR 160.36 already permits Federal savings associations to make *de minimis* investments in community development investments of the type permitted by 12 CFR part 24 for a national bank, and 12 U.S.C. 1464(c)(3)(A) and 12 CFR 160.30 authorize community development investments by Federal savings associations.

A commenter suggested that any attempt to revise the corporate governance documents of a subsidiary Federal stock savings association of a mutual holding company (MHC) should be harmonized with the Federal Reserve Board's regulation on mutual holding companies, Regulation MM.¹⁷⁵ The same commenter suggested that one of the principal problems with governance for mutual savings associations is a faulty assumption that depositor members have an active interest in participating in the association's corporate affairs.¹⁷⁶ While the OCC considered and is amending for Federal savings associations only the choice of State law for the corporate governance provisions, the OCC is not considering a general overhaul of all the Federal mutual savings association governance regulations in this rulemaking. The OCC may consider revising other governance provisions relating to Federal mutual savings associations in a separate

¹⁷⁵ 12 CFR part 239.

¹⁷⁶ Federal savings association mutual members have certain statutory and regulatory voting rights. See 12 U.S.C. 1464; 12 CFR 5.21.

rulemaking and, if practical, in conjunction with a Federal Reserve Board review of Regulation MM.

The same commenter indicated that, while the right to vote shares above a certain percentage limit and supermajority voting provisions may be prohibited for national banks, these provisions normally are permitted for Federal savings associations. The commenter suggested that the OCC explicitly state these provisions are permissible for Federal savings associations. In response, the OCC notes that it has permitted certain anti-takeover and supermajority vote provisions for Federal savings associations, either specifically provided by regulation or authorized by the applicable State law, provided that any supermajority vote provisions are adopted by a percentage of the shareholder vote at least equal to the highest percentage that would be required to take any action under such provision.¹⁷⁷ Also, the OCC generally does not approve supermajority provisions that require approval of more than 80 percent of the voting shares.¹⁷⁸

Electronic filings and procedures. One commenter encouraged the OCC to permit digital and remote filing procedures, such as electronic fingerprinting, digital signatures, and virtual notarization. Specifically, the commenter suggested that the requirements for filing oaths of directors should be modernized by permitting submissions in electronic form instead of the original hard copy; allowing the notary to be a bank officer; and as an alternative to notarization, allowing certification of oaths by the Secretary or an Assistant Secretary of the financial institution. The OCC notes that has already updated its licensing regulation to encourage the use of electronic filings, including permitting digital signatures in the OCC's Central Application Tracking System (CATS). Further, the OCC is unable to update to virtual notarization because notarization is governed by State law.

Technical Changes

In addition to the technical changes discussed above, the OCC proposed numerous technical changes throughout 12 CFR part 7. The OCC received no comments on these changes and adopts them as proposed. Specifically, the final rule:

- Replaces the word "shall" with "must," "will," or other appropriate

¹⁷⁷ 12 CFR 5.22(h).

¹⁷⁸ See Articles of Association, Charters, and Bylaw Amendments (Forms), Comptroller's Licensing Manual (June 19, 2017), Anti-Takeover Provisions, p. 11.

language, which is the more current rule writing convention for imposing an obligation and is the recommended drafting style of the **Federal Register**;

- Uniformly capitalizes the words “State” and “Federal” in conformance with **Federal Register** drafting style;
- Replaces the term “bank” and “savings association” with “national bank” or “Federal savings association,” respectively, where appropriate;
- Clarifies punctuation and update or conform spelling of various terms; and
- Conforms paragraph heading style.

The OCC also is making technical changes to 12 CFR 5.30 to reflect changes made by the final rule. Specifically, the final rule removes drop boxes from the definition of branch in § 5.30(d)(1)(i), pursuant to the change made by § 7.1027, and replaces the cross-reference to § 7.4003 in § 5.30(d)(i)(iii) with § 7.1027, as redesignated by this final rule.

In addition, the OCC is making a conforming change to the heading of subpart B and technical changes to various section headings in subpart B to better identify their application only to national banks.

Finally, the OCC is making technical changes to 12 CFR 4.5 to replace outdated information on office locations and responsibilities. The OCC cross-references 12 CFR part 4, subpart A, when using the term “appropriate OCC supervisory office” in 12 CFR 7.1025 and 7.1026. Twelve CFR part 4, subpart A, sets forth the physical addresses of OCC offices, including supervisory offices. The OCC is updating one address in 12 CFR 4.5, *Other OCC Supervisory Offices*, to provide the correct location of Midsize Bank Supervision (MBS) headquarters in 12 CFR 4.5(a). The OCC also is amending the description of MBS duties in 12 CFR 4.5(a) to better reflect its current responsibilities.

IV. Regulatory Analyses

A. Paperwork Reduction Act

Certain provisions of the final rule contain “collection of information” requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC reviewed the final rule and determined that it revises certain information collection requirements previously cleared by OMB under OMB

Control No. 1557–0204. The OCC has submitted the revised information collection to OMB for review under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of the OMB’s implementing regulations (5 CFR part 1320).

Current Actions

The information collection requirements are as follows:

- *Tax Equity Finance Transactions*—Written requests are required to increase the aggregate limit on tax equity finance transactions. Prior written notification to OCC is required for each tax equity finance transaction. § 7.1025.

- *Payment Systems*—Thirty (30) days advance written notice is required before joining a payment system that would expose the institution to open-end liability. An after-the-fact written notice must be filed within 30 days of becoming a member of a payment system that does not expose the institution to open-end liabilities with certain representations. Both notices must include safety and soundness representations. § 7.1026.

- *Derivatives Activities*—Thirty (30) days prior written notice is required before engaging in certain derivatives hedging activities, expanding derivatives hedging activities to include a new category of underlying, engaging in certain customer-driven financial intermediation derivatives activities, and expanding customer-driven financial intermediation derivatives activities to include a new category of underlying. § 7.1030.

- *State Corporate Governance*—Requests for OCC’s staff position on the ability of national bank to engage in particular State corporate governance provision must include name, citations, discussion of similarly suited State banks, identification of Federal banking statutes and regulations, and analysis of consistency with statutes, regulations, and safety and soundness. § 7.2000.

- *Indemnification of institution-affiliated parties—Administrative proceeding or civil actions not initiated by a Federal banking agency*—A written agreement that an IAP will reimburse the institution for any portion of non-reimbursed indemnification that the IAP is found not entitled to is required before advancing funds to an IAP. Federal savings associations no longer required to provide OCC prior notice of indemnification. § 7.2014.

- *Issuing Stock in Certificate Form*—National banks must include certain information, signatures and seal when issuing stock in certificate form. § 7.2016.

Title of Information Collection: Bank Activities and Operations.

Frequency: Event generated.

Affected Public: Businesses or other for-profit.

Estimated number of respondents: 213.

Total estimated annual burden: 586 hours.

B. Regulatory Flexibility Act

In general, the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires an agency, in connection with a final rule, to prepare a Final Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the Small Business Administration 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). However, under section 605(b) of the RFA, this analysis is not required if an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the **Federal Register** along with its rule.

The OCC currently supervises approximately 1,156 institutions (commercial banks, trust companies, Federal savings associations, and branches or agencies of foreign banks, collectively banks), of which 745 are small entities.¹⁷⁹ Because the rule applies to all OCC-supervised depository institutions, the rule will affect all small OCC-supervised entities and thus, a substantial number of them. However, almost all of the provisions in the final rule clarify or codify existing requirements, provide relief from existing requirements, increase flexibility, or reduce burden. One provision in the final rule, § 7.2012, which will require a person serving as, or in the function of, bank president, regardless of title, to be a member of the bank’s board of directors, could impose a new requirement on banks subject to the prior notice requirement for any change in directors pursuant to 12 CFR 5.51. However, the number of banks that are subject to this prior notice requirement that do not currently have

¹⁷⁹ Consistent with the General Principles of Affiliation 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining if it should classify an institution as a small entity. The OCC used December 31, 2019, to determine size because a “financial institution’s assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.” See footnote 8 of the U.S. Small Business Administration’s *Table of Size Standards*.

a president serving on the board of directors is limited. As a result, the final rule will not impose new mandates on more than a limited number of banks. Therefore, the OCC believes the costs associated with the final rule, if any, would be minimal and thus the final rule would not have a significant economic impact on any small OCC-supervised entities. For these reasons, the OCC certifies that the final rule will not have a significant economic impact on a substantial number of small entities supervised by the OCC. Accordingly, a Final Regulatory Flexibility Analysis is not required.

C. Unfunded Mandates Reform Act of 1995

The OCC has analyzed the final rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1501 *et seq.* Under this analysis the OCC considered whether the final 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 or more in any one year (\$157 million as adjusted annually for inflation). The UMRA does not apply to regulations that incorporate requirements specifically set forth in law.

As discussed above, the final rule would not impose new mandates on more than a limited number of banks. Therefore, the OCC concludes that the final rule would not result in an expenditure of \$157 million or more annually by State, local, and tribal governments, or by the private sector. As a result, the OCC finds that the final rule does not trigger the UMRA cost threshold. Accordingly, the OCC has not prepared the written statement described in section 202 of the UMRA.

D. Riegle Community Development and Regulatory Improvement Act of 1994

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 (1) any administrative burdens that the final rule would place on depository institutions, including small depository institutions and customers of depository institutions and (2) the benefits of the final rule. The has considered the changes made by this final rule and

believes that the overall effective date of April 1, 2021 will provide OCC-regulated institutions with adequate time to comply with the rule. With respect to administrative compliance requirements, the OCC has considered the administrative burdens and the benefits of this final rule and believes that any burdens are necessary for safety and soundness and proper OCC supervision. As examples, the final rule, requires a person serving as, or in the function of, a bank president, regardless of title to be a member of the bank's board of directors (§ 7.2012) and contains notice requirements with respect to payment system membership and derivatives activities. The final rule's benefits include clarifying existing requirements, codifying existing OCC interpretations and guidance, removing unnecessary provisions, and updating and modernizing certain provisions. Further discussion of the consideration by the OCC of these administrative compliance requirements is found in other sections of the final rule's **SUPPLEMENTARY INFORMATION** section.

E. The Congressional Review Act

For purposes of Congressional Review Act, the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a "major" rule.¹⁸⁰ If a rule is deemed a "major rule" by OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.¹⁸¹ The Congressional Review Act defines a "major rule" as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (1) an annual effect on the economy of \$100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (3) a 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.¹⁸²

OMB has determined that this final rule is not a major rule. As required by the Congressional Review Act, the OCC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

F. Effective Date

The APA¹⁸³ requires that a substantive rule must be published not less than 30 days before its effective date, except for: (1) Substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause.¹⁸⁴ Section 302(b) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that regulations issued by a Federal banking agency¹⁸⁵ imposing additional reporting, disclosure, or other requirements on insured depository institutions take effect on the first day of a calendar quarter that begins on or after the date of publication of the final rule, unless, among other things, the agency determines for good cause that the regulations should become effective before such time.¹⁸⁶ The April 1, 2021, effective date of this final rule meets both the APA and RCDRIA effective date requirements as it will take effect at least 30 days after its publication date of December 22, 2020 and on the first day of a calendar quarter following publication, April 1, 2021. However, the OCC notes that RCDRIA provides that insured depository institutions may comply with regulations that impose additional reporting, disclosure, or other requirements before the regulation's effective date.¹⁸⁷

Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an "agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."¹⁸⁸ As described in the final rule's **SUPPLEMENTARY INFORMATION** section, the final rule includes a number of technical, clarifying, or conforming amendments that the OCC did not include in its proposed rule. Because these amendments are not substantive and merely correct or clarify the rule, update the rule to reflect current law, or fix citation and regulatory text format, the OCC believes that public notice of these changes is unnecessary and therefore that it has good cause to adopt

¹⁸³ Codified at 5 U.S.C. 551 *et seq.*

¹⁸⁴ 5 U.S.C. 553(d).

¹⁸⁵ For purposes of RCDRIA, "Federal banking agency" means the OCC, FDIC, and Board. See 12 U.S.C. 4801.

¹⁸⁶ 12 U.S.C. 4802(b).

¹⁸⁷ 12 U.S.C. 4802(b)(2).

¹⁸⁸ 5 U.S.C. 553(b).

¹⁸⁰ 5 U.S.C. 801 *et seq.*

¹⁸¹ 5 U.S.C. 801(a)(3).

¹⁸² 5 U.S.C. 804(2).

these changes without notice and comment. Furthermore, the final rule's amendment to 12 CFR part 4, subpart A, relates to the organization of the OCC. Rules related to agency organization are not subject to APA notice and comment.¹⁸⁹

List of Subjects

12 CFR Part 4

Administrative practice and procedure, Freedom of Information, Individuals with disabilities, Minority businesses, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Women.

12 CFR Part 5

Administrative practice and procedure, Federal savings associations, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 7

Computer technology, Credit, Derivatives, Federal savings associations, Insurance, Investments, Metals, National banks, Reporting and recordkeeping requirements, Securities, Security bonds.

12 CFR Part 145

Electronic funds transfers, Public deposits, Federal savings associations.

12 CFR Part 160

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

For the reasons set out in the preamble, the OCC amends 12 CFR chapter I as follows:

PART 4—ORGANIZATION AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM, POST-EMPLOYMENT RESTRICTIONS FOR SENIOR EXAMINERS

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

Authority: 5 U.S.C. 301, 552; 12 U.S.C. 1, 93a, 161, 481, 482, 484(a), 1442, 1462a, 1463, 1464 1817(a), 1818, 1820, 1821, 1831m, 1831p–1, 1831o, 1833e, 1867, 1951 *et seq.*, 2601 *et seq.*, 2801 *et seq.*, 2901 *et seq.*, 3101 *et seq.*, 3401 *et seq.*, 5321, 5412, 5414; 15 U.S.C. 77uu(b), 78q(c)(3); 18 U.S.C. 641, 1905, 1906; 29 U.S.C. 1204; 31 U.S.C. 5318(g)(2), 9701; 42 U.S.C. 3601; 44 U.S.C. 3506, 3510; E.O. 12600 (3 CFR, 1987 Comp., p. 235).

§ 4.5 [Amended]

- 2. Amend § 4.5(a) by:
 - a. Removing the second sentence; and
 - b. Removing the phrase “1 South Wacker Drive, Suite 2000, Chicago, IL 60606” and adding in its place the phrase “425 South Financial Place, Suite 1700, Chicago, IL 60605”.

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

■ 3. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24a, 35, 93a, 214a, 215, 215a, 215a–1, 215a–2, 215a–3, 215c, 371d, 481, 1462a, 1463, 1464, 1817(j), 1831i, 1831u, 2901 *et seq.*, 3101 *et seq.*, 3907, and 5412(b)(2)(B).

§ 5.21 [Amended]

- 4. Amend § 5.21 by:
 - a. In paragraphs (j)(2)(i)(C) and (j)(3)(ii), removing the phrase “corporate governance procedures” wherever it appears and adding in its place the phrase “corporate governance provisions”;
 - b. In paragraph (j)(3)(ii):
 - i. Removing the phrase “the State where the home office of the institution” and adding in its place “any State in which the home office or any branch of the association”; and
 - ii. Removing the phrase “such procedures” wherever it appears and adding in its place the phrase “such provisions”.
- 5. Amend § 5.22 by:
 - a. Revising paragraph (j)(2)(ii); and
 - b. In paragraph (k)(1)(ii)(B), removing the phrase “corporate governance procedures” and adding in its place the phrase “corporate governance provisions”.

The revision reads as follows:

§ 5.22 Federal stock savings association charter and bylaws.

* * * * *

- (j) * * *
- (2) * * *

(ii) *Corporate governance election and notice requirement.* A Federal stock association may elect to follow the corporate governance provisions of: The laws of any State in which the home office or any branch of the association is located; the laws of any State in which a holding company of the association is incorporated or chartered; Delaware General Corporation law; or the Model Business Corporation Act, provided that such provisions may be elected to the extent not inconsistent with applicable Federal statutes and regulations and safety and soundness, and such provisions are not of the type

described in paragraph (j)(2)(i)(B) of this section. If this election is selected, a Federal stock association must designate in its bylaws the provision or provisions from the body or bodies of law selected for its corporate governance provisions, and must file a notice containing a copy of such bylaws, within 30 days after adoption. The notice must indicate, where not obvious, why the bylaw provisions meet the requirements stated in paragraph (j)(2)(i)(B) of this section. A Federal stock savings association that has elected to follow the corporate governance provisions of the law of the State in which its holding company is incorporated may continue to use those provisions even if the association is no longer controlled by that holding company.

* * * * *

§ 5.30 [Amended]

- 6. Amend § 5.30 by:
 - a. In paragraph (d)(1)(i), adding the word “or” after the phrase “temporary facility,” and removing the phrase “, or a drop box”;
 - b. In paragraph (d)(1)(iii), removing the citation “12 CFR 7.4003” and adding in its place the citation “12 CFR 7.1027”.

PART 7—ACTIVITIES AND OPERATIONS

■ 7. The authority citation for part 7 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 25b, 29, 71, 71a, 92, 92a, 93, 93a, 95(b)(1), 371, 371d, 481, 484, 1462a, 1463, 1464, 1465, 1818, 1828, 3102(b), and 5412(b)(2)(B).

§ 7.1000 [Redesignated]

- 8. Redesignate § 7.1000 as § 7.1024.
- 9. Add a new § 7.1000 to read as follows:

§ 7.1000 Activities that are part of, or incidental to, the business of banking.

(a) *Purpose.* This section identifies the criteria that the Office of the Comptroller of the Currency (OCC) uses to determine whether an activity is authorized as part of, or incidental to, the business of banking under 12 U.S.C. 24(Seventh) or other statutory authority.

(b) *Restrictions and conditions on activities.* The OCC may determine that activities are permissible under 12 U.S.C. 24(Seventh) or other statutory authority only if they are subject to standards or conditions designed to provide that the activities function as intended and are conducted safely and soundly, in accordance with other applicable statutes, regulations, or supervisory policies.

¹⁸⁹ *Id.*

(c) *Activities that are part of the business of banking.* (1) An activity is permissible for national banks as part of the business of banking if the activity is authorized under 12 U.S.C. 24(Seventh) or other statutory authority. In determining whether an activity that is not specifically included in 12 U.S.C. 24(Seventh) or other statutory authority is part of the business of banking, the OCC considers the following factors:

- (i) Whether the activity is the functional equivalent to, or a logical outgrowth of, a recognized banking activity;
- (ii) Whether the activity strengthens the bank by benefiting its customers or its business;
- (iii) Whether the activity involves risks similar in nature to those already assumed by banks; and
- (iv) Whether the activity is authorized for State-chartered banks.

(2) The weight accorded each factor set out in paragraph (c)(1) of this section depends on the facts and circumstances of each case.

(d) *Activities that are incidental to the business of banking.* (1) An activity is authorized for a national bank as incidental to the business of banking if it is convenient or useful to an activity that is specifically authorized for national banks or to an activity that is otherwise part of the business of banking. In determining whether an activity is convenient or useful to such activities, the OCC considers the following factors:

- (i) Whether the activity facilitates the production or delivery of a bank's products or services, enhances the bank's ability to sell or market its products or services, or improves the effectiveness or efficiency of the bank's operations, in light of risks presented, innovations, strategies, techniques and new technologies for producing and delivering financial products and services; and
- (ii) Whether the activity enables the bank to use capacity acquired for its banking operations or otherwise avoid economic loss or waste.

(2) The weight accorded each factor set out in paragraph (d)(1) of this section depends on the facts and circumstances of each case.

- 10. Revise § 7.1002 to read as follows:

§ 7.1002 National bank and Federal savings association acting as finder.

(a) *In general.* A finder may identify potential parties, make inquiries as to interest, introduce or arrange contacts or meetings of interested parties, act as an intermediary between interested parties, and otherwise bring parties together for a transaction that the parties themselves

negotiate and consummate. It is part of the business of banking under 12 U.S.C. 24(Seventh) for a national bank to act as a finder. A Federal savings association may act as a finder to the extent those activities are incidental to the powers expressly authorized by the Home Owners' Loan Act (HOLA) (12 U.S.C. 1461 *et seq.*).

(b) *Permissible finder activities—(1) National banks.* The following list provides examples of permissible finder activities for national banks. This list is illustrative and not exclusive; the OCC may determine that other activities are permissible pursuant to a national bank's authority to act as a finder:

(i) Communicating information about providers of products and services, and proposed offering prices and terms to potential markets for these products and services;

(ii) Communicating to the seller an offer to purchase or a request for information, including forwarding completed applications, application fees, and requests for information to third-party providers;

(iii) Arranging for third-party providers to offer reduced rates to those customers referred by the national bank;

(iv) Providing administrative, clerical, and record keeping functions related to the national bank's finder activity, including retaining copies of documents, instructing and assisting individuals in the completion of documents, scheduling sales calls on behalf of sellers, and conducting market research to identify potential new customers for retailers;

(v) Conveying between interested parties expressions of interest, bids, offers, orders, and confirmations relating to a transaction;

(vi) Conveying other types of information between potential buyers, sellers, and other interested parties;

(vii) Establishing rules of general applicability governing the use and operation of the finder service, including rules that:

(A) Govern the submission of bids and offers by buyers, sellers, and other interested parties that use the finder service and the circumstances under which the finder service will pair bids and offers submitted by buyers, sellers, and other interested parties; and

(B) Govern the manner in which buyers, sellers, and other interested parties may bind themselves to the terms of a specific transaction; and

(viii) Acting as an electronic finder pursuant to § 7.5002(a)(1).

(2) *Federal savings associations.* The following list provides examples of finder activities that are permissible for Federal savings associations. This list is

illustrative and not exclusive; the OCC may determine that other activities are permissible pursuant to a Federal savings association's incidental powers:

(i) Referring customers to a third party; and

(ii) Providing services and products to customers indirectly through a third-party discount program.

(c) *Limitation.* The authority to act as a finder does not enable a national bank or a Federal savings association to engage in brokerage activities that have not been found to be permissible for national banks or Federal savings associations, respectively.

(d) *Advertisement and fee.* Unless otherwise prohibited by Federal law, a national bank or Federal savings association may advertise the availability of, and accept a fee for, the services provided pursuant to this section.

- 11. Amend § 7.1003 by:

- a. In paragraph (a):

- i. Revising the paragraph heading;

- ii. Adding the word "national" before the word "bank" wherever it appears;

- b. In paragraph (b):

- i. Adding the word "national" before the word "bank" in the paragraph heading;

- ii. Adding the word "national" before the word "bank" wherever it appears; and

- iii. Adding the word "national" before the word "bank's"; and

- c. Adding paragraph (c).

The revisions and addition read as follows:

§ 7.1003 Money lent by a national bank at banking offices or at facilities other than banking offices.

(a) *In general.* * * *

(c) *Services on equivalent terms to those offered customers of unrelated banks.* An operating subsidiary owned by a national bank may distribute loan proceeds from its own funds or bank funds directly to the borrower in person at offices the operating subsidiary has established without violating 12 U.S.C. 36, 12 U.S.C. 81 and 12 CFR 5.30 provided that the operating subsidiary provides similar services on substantially similar terms and conditions to customers of unaffiliated entities including unaffiliated banks.

- 12. Revise § 7.1004 to read as follows:

§ 7.1004 Establishment of a loan production office by a national bank.

(a) *In general.* A national bank or its operating subsidiary may engage in loan production activities at a site other than the main office or a branch of the bank. A national bank or its operating subsidiary may solicit loan customers,

market loan products, assist persons in completing application forms and related documents to obtain a loan, originate and approve loans, make credit decisions regarding a loan application, and offer other lending-related services such as loan information and applications at a loan production office without violating 12 U.S.C. 36 and 12 U.S.C. 81, provided that “money” is not deemed to be “lent” at that site within the meaning of § 7.1003 and the site does not accept deposits or pay withdrawals.

(b) *Services of other persons.* A national bank may use the services of, and compensate, persons not employed by the bank in its loan production activities.

§ 7.1005 [Removed and Reserved]

- 13. Remove and reserve § 7.1005.

§ 7.1006 [Amended]

- 14. Amend § 7.1006 by:
 - a. In the section heading, adding the phrase “or Federal savings association” after the phrase “national bank”;
 - b. Adding the phrase “or Federal savings association” after the phrase “national bank” wherever it appears in the first and second sentences; and
 - c. Adding the phrase “or savings association” after the phrase “provided that the bank” in the second sentence.

§ 7.1009 [Removed and Reserved]

- 15. Remove and reserve § 7.1009.
- 16. Revise § 7.1010 to read as follows:

§ 7.1010 Postal services by national banks and Federal savings associations.

(a) *In general.* A national bank or Federal savings association may provide postal services and receive income from those services. The services performed are those permitted under applicable rules of the United States Postal Service and may include meter stamping of letters and packages and the sale of related insurance. The national bank or Federal savings association may advertise, develop, and extend the services to attract customers to the institution.

(b) *Postal regulations.* A national bank or Federal savings association providing postal services must do so in accordance with the rules and regulations of the United States Postal Service. The national bank or Federal savings association must keep the books and records of the postal services separate from those of other banking operations. Under 39 U.S.C. 404 and regulations issued under that statute (see 39 CFR chapter I), the United States Postal Service may inspect the books and records pertaining to the postal services.

§ 7.1012 [Amended]

- 17. Amend § 7.1012 by:
 - a. In paragraph (c)(1), removing the phrase “pick up from, and deliver” and adding in its place the phrase “pick up from and deliver”; and
 - b. In paragraph (c)(2)(vi), removing the words “back office” and adding in its place the word “back-office”.
- 18. Revise § 7.1015 to read as follows:

§ 7.1015 National bank and Federal savings association investments in small business investment companies.

(a) *National banks.* A national bank may invest in a small business investment company (SBIC) or in any entity established solely to invest in SBICs, including purchasing the stock of a SBIC, subject to appropriate capital limitations (see e.g., 15 U.S.C. 682(b)), and may receive the benefits of such stock ownership (e.g., stock dividends). The receipt and retention of a dividend by a national bank from a SBIC in the form of stock of a corporate borrower of the SBIC is not a purchase of stock within the meaning of 12 U.S.C. 24(Seventh).

(b) *Federal savings associations.* Federal savings associations may invest in a SBIC or in any entity established solely to invest in SBICs as provided in 12 CFR 160.30.

(c) *Qualifying SBIC.* A national bank or Federal savings association may invest in a SBIC that is either:

- (1) Already organized and has obtained a license from the Small Business Administration; or
 - (2) In the process of being organized.
- (d) *SBIC wind-down.* A national bank or Federal savings association may retain an interest in a SBIC that has voluntarily surrendered its license to operate as a SBIC in accordance with 13 CFR 107.1900 and does not make any new investments (other than investments in cash equivalents, which, for the purposes of this paragraph (d), means high quality, highly liquid investments whose maturity corresponds to the issuer’s expected or potential need for funds and whose currency corresponds to the issuer’s assets) after such voluntary surrender.

- 19. Amend § 7.1016 by:
 - a. Revising the section heading and paragraphs (a) and (b)(1) introductory text;
 - b. In paragraphs (b)(1)(iii)(B) and (C), (b)(2)(iii), and (b)(3) and (4), removing the word “bank” and adding in its place the phrase “national bank or Federal savings association”;
 - c. In paragraphs (b)(1)(iii)(B), (b)(2)(iii), and (b)(4), adding the phrase “or savings association’s” after the word “bank’s”;

- d. Revising paragraphs (b)(1)(iv) and (b)(2)(i); and
- e. In paragraph (b)(2)(ii), removing the word “bank’s” and adding in its place the phrase “national bank’s or Federal savings association’s”.

The revisions read as follows:

§ 7.1016 Independent undertakings issued by a national bank or Federal savings association to pay against documents.

(a) *In general.* A national bank or Federal savings association may issue and commit to issue letters of credit and other independent undertakings within the scope of applicable laws or rules of practice recognized by law.¹ Under such independent undertakings, the national bank’s or Federal savings association’s obligation to honor depends upon the presentation of specified documents and not upon nondocumentary conditions or resolution of questions of fact or law at issue between the applicant and the beneficiary. A national bank or Federal savings association also may confirm or otherwise undertake to honor or purchase specified documents upon their presentation under another person’s independent undertaking within the scope of such laws or rules.

(b) * * * (1) *Terms.* As a matter of safe and sound banking practice, national banks and Federal savings associations that issue independent undertakings should not be exposed to undue risk. At a minimum, national banks and Federal savings associations should consider the following:

- * * * * *
- (iv) The national bank or Federal savings association either should be fully collateralized or have a post-honor right of reimbursement from the applicant or from another issuer of an independent undertaking. Alternatively, if the national bank’s or Federal savings association’s undertaking is to purchase documents of title, securities, or other valuable documents, the bank or savings association should obtain a first priority right to realize on the documents if the

¹ Examples of such laws or rules of practice include: The applicable version of Article 5 of the Uniform Commercial Code (UCC) (1962, as amended 1990) or revised Article 5 of the UCC (as amended 1995); the Uniform Customs and Practice for Documentary Credits (International Chamber of Commerce (ICC) Publication No. 600 or any applicable prior version); the Supplements to UCP 500 & 600 for Electronic Presentation (eUCP v. 1.0, 1.1, & 2.0) (Supplements to the Uniform Customs and Practices for Documentary Credits for Electronic Presentation); International Standby Practices (ISP98) (ICC Publication No. 590); the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (adopted by the U.N. General Assembly in 1995 and signed by the U.S. in 1997); and the Uniform Rules for Bank-to-Bank Reimbursements Under Documentary Credits (ICC Publication No. 725).

bank or savings association is not otherwise to be reimbursed.

(2) * * *

(i) In the event that the undertaking is to honor by delivery of an item of value other than money, the national bank or Federal savings association should ensure that market fluctuations that affect the value of the item will not cause the bank or savings association to assume undue market risk;

* * * * *

■ 20. Revise § 7.1021 to read as follows:

§ 7.1021 Financial literacy programs not branches of national banks.

A financial literacy program is a program the principal purpose of which is to be educational for members of the community. The premises of, or a facility used by, a school or other organization at which a national bank participates in a financial literacy program is not a branch for purposes of 12 U.S.C. 36 provided the bank does not establish and operate the premises or facility. The OCC considers establishment and operation in this context on a case by case basis, considering the facts and circumstances. However, the premises or facility is not a branch of the national bank if the safe harbor test in § 7.1012(c)(2) applicable to messenger services established by third parties is satisfied. The factor discussed in § 7.1012(c)(2)(i) can be met if bank employee participation in the financial literacy program consists of managing the program or conducting or engaging in financial education activities provided the school or other organization retains control over the program and over the premises or facilities at which the program is held.

§ 7.1022 [Amended]

■ 21. Amend § 7.1022 by:

- a. In paragraph (d), removing the word “shall” and adding in its place the word “may” wherever it appears; and
- b. In paragraph (e), in the first sentence, removing the word “shall” and adding in its place the word “must” and removing the phrase “the effective date of this regulation” and adding in its place the phrase “April 1, 2018”.

§ 7.1023 [Amended]

■ 22. Amend § 7.1023 by:

- a. In paragraph (c), removing the word “shall” and adding in its place the word “may” and removing the words “federal savings association” and adding in its place the words “Federal savings association”; and
- b. In paragraph (d):
- i. In the first sentence:
- A. Removing the word “shall” and adding in its place the word “must”;

- B. Removing the phrase “the effective date of this regulation” and adding in its place the phrase “April 1, 2018”; and
- ii. Removing, in the second sentence, the phrase “federal savings association” and adding in its place the phrase “Federal savings association”.

§ 7.1024 [Amended]

■ 23. Amend newly redesignated § 7.1024 by:

- a. In paragraphs (c)(2)(i) and (ii) and (d), removing the word “shall” and adding in its place the word “must”; and
- b. In paragraph (e), removing the word “shall” and adding in its place the word “may”.

■ 24. Add § 7.1025 to read as follows:

§ 7.1025 Tax equity finance transactions by national banks and Federal savings associations.

(a) *Tax equity finance transactions.* A national bank or Federal savings association may engage in a tax equity finance transaction pursuant to 12 U.S.C. 24(Seventh) and 1464 only if the transaction is the functional equivalent of a loan, as provided in paragraph (c) of this section, and the transaction satisfies applicable conditions in paragraph (d) of this section. The authority to engage in tax equity finance transactions under this section is pursuant to 12 U.S.C. 24(Seventh) and 1464 lending authority and is separate from, and does not limit, other investment authorities available to national banks and Federal savings associations.

(b) *Definitions.* For purposes of this section:

(1) *Appropriate OCC supervisory office* means the OCC office that is responsible for the supervision of a national bank or Federal savings association, as described in subpart A of 12 CFR part 4;

(2) *Capital and surplus* has the same meaning that this term has in 12 CFR 32.2.

(3) *Tax equity finance transaction* means a transaction in which a national bank or Federal savings association provides equity financing to fund a project or projects that generate tax credits or other tax benefits and the use of an equity-based structure allows the transfer of those credits and other tax benefits to the national bank or Federal savings association.

(c) *Functional equivalent of a loan.* A tax equity finance transaction is the functional equivalent of a loan if:

(1) The structure of the transaction is necessary for making the tax credits or other tax benefits available to the

national bank or Federal savings association;

(2) The transaction is of limited tenure and is not indefinite, including retaining a limited investment interest that is required by law to obtain continuing tax benefits or needed to obtain the expected rate of return;

(3) The tax benefits and other payments received by the national bank or Federal savings association from the transaction repay the investment and provide the expected rate of return at the time of underwriting;

(4) Consistent with paragraph (c)(3) of this section, the national bank or Federal savings association does not rely on appreciation of value in the project or property rights underlying the project for repayment;

(5) The national bank or Federal savings association uses underwriting and credit approval criteria and standards that are substantially equivalent to the underwriting and credit approval criteria and standards used for a traditional commercial loan;

(6) The national bank or Federal savings association is a passive investor in the transaction and is unable to direct the affairs of the project company; and

(7) The national bank or Federal savings association appropriately accounts for the transaction initially and on an ongoing basis and has documented contemporaneously its accounting assessment and conclusion.

(d) *Conditions on tax equity finance transactions.* A national bank or Federal savings association may engage in tax equity finance transactions only if:

(1) The national bank or Federal savings association cannot control the sale of energy, if any, from the project;

(2) The national bank or Federal savings association limits the total dollar amount of tax equity finance transactions undertaken pursuant to this section to no more than five percent of its capital and surplus, unless the OCC determines, by written approval of a written request by the national bank or Federal savings association to exceed the five percent limit, that a higher aggregate limit will not pose an unreasonable risk to the national bank or Federal savings association and that the tax equity finance transactions in the national bank's or Federal savings association's portfolio will not be conducted in an unsafe or unsound manner; provided, however, that in no case may a national bank or Federal savings association's total dollar amount of tax equity finance transactions undertaken pursuant to this section exceed 15 percent of its capital and surplus;

(3) The national bank or Federal savings association has provided written notification to the appropriate OCC supervisory office, prior to engaging in each tax equity finance transaction that includes its evaluation of the risks posed by the transaction;

(4) The national bank or Federal savings association can identify, measure, monitor, and control the associated risks of its tax equity finance transaction activities individually and as a whole on an ongoing basis to ensure that such activities are conducted in a safe and sound manner; and

(5) The national bank or Federal savings association obtains a legal opinion or has other good faith, reasoned bases for making a determination that tax credits or other tax benefits are available before engaging in a tax equity finance transaction.

(e) *Applicable legal requirements.* The transaction is subject to the substantive legal requirements of a loan, including the lending limits prescribed by 12 U.S.C. 84 and 12 U.S.C. 1464(u), as appropriate, as implemented by 12 CFR part 32, and if the active investor or project sponsor of the transaction is an affiliate of the bank, to the restrictions on transactions with affiliates prescribed by 12 U.S.C. 371c and 371c-1, as implemented by 12 CFR part 223.

■ 25. Add § 7.1026 to read as follows:

§ 7.1026 National bank and Federal savings association payment system memberships.

(a) *In general.* National banks and Federal savings associations may become members of payment systems, subject to the requirements of this section.

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

(1) *Appropriate OCC supervisory office* means the OCC office that is responsible for the supervision of a national bank or Federal savings association, as described in subpart A of 12 CFR part 4;

(2) *Member* includes a national bank or Federal savings association designated as a “member,” or “participant,” or other similar role by a payment system, including by a payment system that requires the national bank or Federal savings association to share in operational losses or maintain a reserve with the payment system to offset potential liability for operational losses. This definition includes indirect members only if they agree to be bound by the rules of the payment system and the rules of the payment system indicate indirect members are covered;

(3) *Open-ended liability* refers to liability for operational losses that is not capped under the rules of the payment system and includes indemnifications of third parties provided as a condition of membership in the payment system;

(4) *Operational loss* means a charge resulting from sources other than defaults by other members of the payment system. Examples of operational losses include losses that are due to: Employee misconduct, fraud, misjudgment, or human error; management failure; information systems failures; disruptions from internal or external events that result in the degradation or failure of services provided by the payment system; security breaches or cybersecurity events; or payment or settlement delays, constrained liquidity, contagious disruptions, and resulting litigation; and

(5) *Payment system* means “financial market utility” as defined in 12 U.S.C. 5462(6), wherever operating, and includes both retail and wholesale payment systems. Payment system does not include a derivatives clearing organization registered under the Commodity Exchange Act, a clearing agency registered under the Securities Exchange Act of 1934, or foreign organization that would be considered a derivatives clearing organization or clearing agency were it operating in the United States.

(c) *Notice requirements*—(1) *Prior notice required.* A national bank or Federal savings association must provide written notice to its appropriate OCC supervisory office at least 30 days prior to joining a payment system that exposes it to open-ended liability.

(2) *After-the-fact notice.* A national bank or Federal savings association must provide written notice to its appropriate OCC supervisory office within 30 days of joining a payment system that does not expose it to open-ended liability.

(d) *Content of notice*—(1) *In general.* A notice required by paragraph (c) of this section must include representations that the national bank or Federal savings association:

(i) Has complied with the safety and soundness review requirements in paragraph (e)(1) of this section; and

(ii) Will comply with the safety and soundness review and notification requirements in paragraphs (e)(2) and (3) of this section.

(2) *Payment system with limits on liability or no liability.* A notice filed under paragraph (c)(2) of this section also must include a representation that either:

(i) The rules of the payment system do not impose liability for operational losses on members; or

(ii) The national bank’s or Federal savings association’s liability for operational losses is limited by the rules of the payment system to specific and appropriate limits that do not exceed the lower of:

(A) The legal lending limit under 12 CFR part 32; or

(B) The limit set for the bank or savings association by the OCC.

(e) *Safety and soundness procedures.*

(1) Prior to joining a payment system, a national bank or Federal savings association must:

(i) Identify and evaluate the risks posed by membership in the payment system, taking into account whether the liability of the bank or savings association is limited; and

(ii) Ensure that it can measure, monitor, and control the risks identified pursuant to paragraph (e)(1)(i) of this section.

(2) After joining a payment system, a national bank or Federal savings association must manage the risks of the payment system on an ongoing basis. This ongoing risk management must:

(i) Identify and evaluate the risks posed by membership in the payment system, taking into account whether the liability of the bank or savings association is limited; and

(ii) Measure, monitor, and control the risks identified pursuant to paragraph (e)(2)(i) of this section.

(3) If the national bank or Federal savings association identifies risks during the ongoing risk management required by paragraph (e)(2) of this section that raise safety and soundness concerns, such as a material change to the bank’s or savings association’s liability or indemnification responsibilities, the national bank or Federal savings association must:

(i) Notify the appropriate OCC supervisory office as soon as the safety and soundness concern is identified; and

(ii) Take appropriate actions to remediate the risk.

(4) A national bank or Federal savings association that believes its open-ended liability is otherwise limited (*e.g.*, by negotiated agreements or laws of an appropriate jurisdiction) may consider its liability to be limited for purposes of the reviews required by paragraphs (e)(1) and (2) of this section so long as:

(i) Prior to joining the payment system, the bank or savings association obtains a written legal opinion that:

(A) Describes how the payment system allocates liability for operational losses; and

(B) Concludes the potential liability for operational losses for the national bank or Federal savings association is in fact limited to specific and appropriate limits that do not exceed the lower of:

(1) The legal lending limit under 12 CFR part 32; or

(2) The limit set for the bank or savings association by the OCC; and

(ii) There are no material changes to the liability or indemnification requirements applicable to the bank or savings association since the issuance of the written legal opinion.

(f) *Safety and soundness considerations.* (1) A national bank or Federal savings association should evaluate, at a minimum, the following payment system characteristics when conducting an analysis required by paragraph (e) of this section:

(i) Does the processing occur on a real-time gross settlement basis or provide reasonable assurance (e.g., prefunding, etc.) that members will meet settlement obligations?

(ii) How does the payment system's rules limit its liability to members?

(iii) Does the payment system have insurance coverage and/or self-insurance arrangements to cover operational losses?

(iv) Do the payment system's rules provide an unambiguous pro-rata loss allocation methodology under its indemnity provisions and does the methodology provide members the opportunity to reduce or eliminate liability exposure by decreasing or ceasing use of the payment system?

(v) Do the payment system's rules provide for unambiguous membership withdrawal procedures that do not require the prior approval of the system?

(vi) Does the payment system have appropriate admission and continuing participation requirements for system participants? Such requirements should address, among other things:

(A) The participants' access to sufficient financial resources to meet obligations arising from participation;

(B) The adequacy of participants' operational capacities to meet obligations arising from participation; and

(C) The adequacy of the participants' own risk management processes.

(vii) Does the payment system have processes and controls in place to verify and monitor on an ongoing basis the compliance of each participant with admission and participation requirements?

(viii) Does the payment system have written policies and procedures for addressing participant failures to meet ongoing participation requirements?

(ix) Are the payment system's rules relating to the system's emergency

authorities unambiguous and may they be amended or otherwise altered without prior notification to all members and an opportunity to withdraw?

(x) Is the payment system governed by uniform, comprehensive and clear legal standards in its operating jurisdiction that address payment and/or settlement activities?

(xi) Is the payment system subject to and in compliance (or observance) with the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions (CPSS—IOSCO) Principles for Financial Market Infrastructures?

(xii) Is the payment system designated as a systemically important financial market utility (SIFMU) by the Financial Stability Oversight Counsel (FSOC) or is it the international or foreign equivalent?

(xiii) Does the payment system provide members with information relevant to governance, risk management practices, and operations in a timely manner and with sufficient transparency and particularity for the bank to ascertain with reasonable certainty the bank's level of risk exposure to the system?

(xiv) Is the payment system operated by or subject to oversight of a central bank or regulatory authority?

(xv) Is the payment system legally organized as a not-for-profit enterprise or is it owned and operated by a government entity?

(xvi) Does the payment system have appropriate systems and controls for communicating to members in a timely manner about material events that relate to or could result in potential operational losses, e.g. fraud, system failures, natural disasters, etc.?

(xvii) Has the payment system ever exercised its authority under indemnification provisions?

(2) A national bank or Federal savings association should consider, at a minimum, the following characteristics of its risk management program when conducting an analysis required by paragraph (e) of this section:

(i) Does the bank or savings association have appropriate board supervision and managerial and staff expertise?

(ii) Does the bank or savings association have comprehensive policies and operating procedures with respect to its risk identification, measurement and management information systems that are routinely reviewed?

(iii) Does the bank or savings association have effective risk controls

and processes to oversee and ensure the continuing effectiveness of the risk management process? The program should include a formal process for approval of payment system memberships as well as ongoing monitoring and measurement of activity against predetermined risk limits.

(iv) Does the bank or savings association's membership evaluation process include assessments and analyses of:

(A) The credit quality of the entity;

(B) The entity's risk management practices;

(C) Settlement and default procedures of the entity;

(D) Any default or loss-sharing precedents and any other applicable limits or restrictions of the entity;

(E) Key risks associated with joining the entity; and

(F) The incremental effect of additional memberships in aggregate exposure to payment system risk?

(v) Does the bank or savings association's risk management program include policies and procedures that identify and estimate the level of potential operational risks, at both inception of membership and on an ongoing basis?

(vi) Does the bank or savings association have auditing procedures to ensure the integrity of risk measurement, control and reporting systems?

(vii) Does the program include mechanisms to monitor, estimate, and maintain control over the bank or savings association's potential liabilities for operational losses on an ongoing basis. This should include:

(A) Limits and other controls with respect to each identified risk factor;

(B) Reports generated throughout the processes that accurately present the nature and level(s) of risk taken and demonstrate compliance with approved policies and limits; and

(C) Identification of the business unit and/or individuals responsible for measuring and monitoring risk exposures, as well as those individuals responsible for monitoring compliance with policies and risk exposure limits.

(viii) Does a bank or savings association with memberships in multiple payment systems have the ability to monitor and report aggregate risk exposures and measurement against risk limits both at the sponsoring business line level and the total exposure organizationally?

■ 26. Add § 7.1027 to read as follows:

§ 7.1027 Establishment and operation of a remote service unit by a national bank.

A remote service unit (RSU) is an automated or unstaffed facility, operated

by a customer of a bank with at most delimited assistance from bank personnel, that conducts banking functions such as receiving deposits, paying withdrawals, or lending money. A national bank may establish and operate an RSU pursuant to 12 U.S.C. 24(Seventh). An RSU includes an automated teller machine, automated loan machine, automated device for receiving deposits, personal computer, telephone, other similar electronic devices, and drop boxes. An RSU may be equipped with a telephone or tele-video device that allows contact with bank personnel. An RSU is not a "branch" within the meaning of 12 U.S.C. 36(j), and is not subject to State geographic or operational restrictions or licensing laws.

■ 27. Add § 7.1028 to read as follows:

§ 7.1028 Establishment and operation of a deposit production office by a national bank.

(a) *In general.* A national bank or its operating subsidiary may engage in deposit production activities at a site other than the main office or a branch of the bank. A national bank or its operating subsidiary may solicit deposits, provide information about deposit products, and assist persons in completing application forms and related documents to open a deposit account at a deposit production office (DPO). A DPO is not a branch within the meaning of 12 U.S.C. 36(j) and 12 CFR 5.30(d)(1) so long as it does not receive deposits, pay withdrawals, or make loans. All deposit and withdrawal transactions of a bank customer using a DPO must be performed by the customer, either in person at the main office or a branch office of the bank, or by mail, electronic transfer, or a similar method of transfer.

(b) *Services of other persons.* A national bank may use the services of, and compensate, persons not employed by the bank in its deposit production activities.

■ 28. Add § 7.1029 to read as follows:

§ 7.1029 Combination of national bank loan production office, deposit production office, and remote service unit.

A location at which a national bank operates a loan production office (LPO), a deposit production office (DPO), and a remote service unit (RSU) is not a "branch" within the meaning of 12 U.S.C. 36(j) by virtue of that combination. Since an LPO, DPO, or RSU is not, individually, a branch under 12 U.S.C. 36(j), any combination of these facilities at one location does not create a branch. The RSU at such a combined location must be primarily

operated by the customer with at most delimited assistance from bank personnel.

■ 29. Add § 7.1030 to read as follows:

§ 7.1030 Permissible derivatives activities for national banks.

(a) *Authority.* This section is issued pursuant to 12 U.S.C. 24(Seventh). A national bank may only engage in derivatives transactions in accordance with the requirements of this section.

(b) *Definitions.* For purposes of this section:

(1) *Customer-driven* means a transaction is entered into for a customer's valid and independent business purpose (and a customer-driven transaction does not include a transaction the principal purpose of which is to deliver to a national bank assets that the national bank could not invest in directly);

(2) *Perfectly-matched* means two back-to-back derivatives transactions that offset risk with respect to all economic terms (*e.g.*, amount, maturity, duration, and underlying);

(3) *Portfolio-hedged* means a portfolio of derivatives transactions that are hedged based on net unmatched positions or exposures in the portfolio;

(4) *Physical hedging* or *physically-hedged* means holding title to or acquiring ownership of an asset (for example, by warehouse receipt or book-entry) solely to manage the risks arising out of permissible customer-driven derivatives transactions;

(5) *Physical settlement* or *physically-settled* means accepting title to or acquiring ownership of an asset;

(6) *Transitory title transfer* means accepting and immediately relinquishing title to an asset; and

(7) *Underlying* means the reference asset, rate, obligation, or index on which the payment obligation(s) between counterparties to a derivative transaction is based.

(c) *In general.* A national bank may engage in the following derivatives transactions after notice in accordance with paragraph (d) of this section, as applicable:

(1) Derivatives transactions with payments based on underlyings a national bank is permitted to purchase directly as an investment;

(2) Derivatives transactions with an underlying to hedge the risks arising from bank-permissible activities;

(3) Derivatives transactions as a financial intermediary with any underlying that are customer-driven, cash-settled, and either perfectly-matched or portfolio-hedged;

(4) Derivatives transactions as a financial intermediary with any

underlying that are customer-driven, physically-settled by transitory title transfer, and either perfectly-matched or portfolio-hedged; and

(5) Derivatives transactions as a financial intermediary with any underlying that are customer-driven, physically-hedged, and either portfolio-hedged or hedged on a transaction-by-transaction basis, and provided that:

(i) The national bank does not take physical delivery of any commodity by receipt of physical quantities of the commodity on bank premises; and

(ii) Physical hedging activities meet the requirements of paragraph (e) of this section.

(d) *Notice procedure.* (1) A national bank must provide notice to its Examiner-in-Charge prior to engaging in any of the following with respect to derivatives transactions with payments based on underlyings that a national bank is not permitted to purchase directly as an investment:

(i) Engaging in derivatives hedging activities pursuant to paragraph (c)(2) of this section;

(ii) Expanding the bank's derivatives hedging activities pursuant to paragraph (c)(2) of this section to include a new category of underlying for derivatives transactions;

(iii) Engaging in customer-driven financial intermediation derivatives activities pursuant to paragraph (c)(3), (4), or (5) of this section; and

(iv) Expanding the bank's customer-driven financial intermediation derivatives activities pursuant to paragraph (c)(3), (4), or (5) of this section to include any new category of underlyings.

(2) The notice pursuant to paragraph (d)(1) of this section must be submitted in writing at least 30 days before the national bank commences the activity and include the following information:

(i) A detailed description of the proposed activity, including the relevant underlyings;

(ii) The anticipated start date of the activity; and

(iii) A detailed description of the bank's risk management system (policies, processes, personnel, and control systems) for identifying, measuring, monitoring, and controlling the risks of the activity.

(e) *Additional requirements for physical hedging activities.* (1) A national bank engaging in physical hedging activities pursuant to paragraph (c)(5) of this section must hold the underlying solely to hedge risks arising from derivatives transactions originated by customers for the customers' valid and independent business purposes.

(2) The physical hedging activities must offer a cost-effective means to hedge risks arising from permissible banking activities.

(3) The national bank must not take anticipatory or maintain residual positions in the underlying except as necessary for the orderly establishment or unwinding of a hedging position.

(4) The national bank must not acquire equity securities for hedging purposes that constitute more than 5 percent of a class of voting securities of any issuer.

(5) With respect to physical hedging involving commodities:

(i) A national bank's physical position in a particular physical commodity (including, as applicable, delivery point, purity, grade, chemical composition, weight, and size) must not be more than 5 percent of the gross notional value of the bank's derivatives that are in that particular physical commodity and allow for physical settlement within 30 days. Title to commodities acquired and immediately sold by a transitory title transfer does not count against the 5 percent limit;

(ii) The physical position must more effectively reduce risk than a cash-settled hedge referencing the same commodity; and

(iii) The physical position hedges a physically-settled customer-driven commodity derivative transaction(s).

(f) *Safe and sound banking practices.* A national bank must adhere to safe and sound banking practices in conducting the activities described in this section. The bank must have a risk management system (policies, processes, personnel, and control system) that effectively manages (identifies, measures, monitors, and controls) these activities' interest rate, credit, liquidity, price, operational, compliance, and strategic risks.

■ 30. Revise the heading for subpart B to read as follows:

Subpart B—Corporate Practices

■ 31. Amend § 7.2000 by:

■ a. Revising the section heading and paragraph (a);

■ b. In paragraph (b):

■ i. Removing the word “procedures” wherever it appears and adding in its place the word “provisions”;

■ ii. Removing the phrase “the state in which the main office of the bank” and adding in its place the phrase “any State in which the main office or any branch of the bank”;

■ iii. Removing the phrase “the state in which the holding company of the bank” and adding in its place the phrase “any State in which a holding company of the bank”; and

■ iv. Removing the word “shall” and adding in its place the word “must”;

■ d. Redesignating paragraph (c) as paragraph (d) and revising it; and

■ e. Adding a new paragraph (c).

The addition and revisions are as follows:

§ 7.2000 National bank corporate governance.

(a) *In general.* The corporate governance provisions in a national bank's articles of association and bylaws and the bank's conduct of its corporate governance affairs must comply with applicable Federal banking statutes and regulations and safe and sound banking practices.

* * * * *

(c) *Continued use of former holding company State.* A national bank that has elected to follow the corporate governance provisions of the law of the State in which its holding company is incorporated may continue to use those provisions even if the bank is no longer controlled by that holding company.

(d) *Request for OCC staff position.* A national bank may request the views of OCC staff on the permissibility of a national bank's adoption of a particular State corporate governance provision. Requests must include the following information:

(1) The name of the national bank;

(2) Citation to the State statutes or regulations involved;

(3) A discussion as to whether a similarly situated State bank is subject to or may adopt the corporate governance provision;

(4) Identification of all Federal banking statutes or regulations that are on the same subject as, or otherwise have a bearing on, the subject of the proposed State corporate governance provision; and

(5) An analysis of how the proposed practice is not inconsistent with applicable Federal statutes or regulations and is not inconsistent with bank safety and soundness.

■ 32. Add § 7.2001 to read as follows:

§ 7.2001 National bank adoption of anti-takeover provisions.

(a) *In general.* Pursuant to § 7.2000(b), a national bank may adopt anti-takeover provisions included in State corporate governance law if the provisions are not inconsistent with Federal banking statutes or regulations and not inconsistent with bank safety and soundness.

(b) *State anti-takeover provisions that are not inconsistent with Federal banking statutes or regulations.* State anti-takeover provisions that are not inconsistent with Federal banking

statutes or regulations include the following:

(1) *Restrictions on business combinations with interested shareholders.* State provisions that prohibit, or that permit the corporation to prohibit in its certificate of incorporation or other governing document, the corporation from engaging in a business combination with an interested shareholder or any related entity for a specified period of time from the date on which the shareholder first becomes an interested shareholder, subject to certain exceptions such as board approval. An interested shareholder is one that owns an amount of stock specified in the State provision.

(2) *Poison pill.* State provisions that provide, or that permit the corporation to provide in its certificate of incorporation or other governing document, that all the shareholders, other than the hostile acquiror, have the right to purchase additional stock at a substantial discount upon the occurrence of a triggering event.

(3) *Requiring all shareholder actions to be taken at a meeting.* State provisions that provide, or that permit the corporation to provide in its certificate of incorporation or other governing document, that all actions to be taken by shareholders must occur at a meeting and that shareholders may not take action by written consent.

(4) *Limits on shareholders' authority to call special meetings.* State provisions that provide, or that permit the corporation to provide in its certificate of incorporation or other governing document, that:

(i) Only the board of directors, and not the shareholders, have the right to call special meetings of the shareholders; or

(ii) If shareholders have the right to call special meetings, a high percentage of shareholders is needed to call the meeting.

(5) *Shareholder removal of a director only for cause.* State provisions that provide, or that permit the corporation to provide in its certificate of incorporation or other governing document, that shareholders may remove a director only for cause, and not both for cause and without cause.

(c) *State anti-takeover provisions that are inconsistent with Federal banking statutes or regulations.* The following State anti-takeover provisions are inconsistent with Federal banking statutes or regulations:

(1) *Supermajority voting requirements.* State provisions that require, or that permit the corporation to require in its certificate of incorporation

or other governing document, a supermajority of the shareholders to approve specified matters are inconsistent when applied to matters for which Federal banking statutes or regulations specify the required level of shareholder approval.

(2) *Restrictions on a shareholder's right to vote all the shares it owns.* State provisions that prohibit, or that permit the corporation in its certificate of incorporation or other governing document to prohibit, a person from voting shares acquired that increase their percentage of ownership of the company's stock above a certain level are inconsistent when applied to shareholder votes governed by 12 U.S.C. 61.

(d) *Bank safety and soundness—(1) In general.* Except as provided in paragraph (d)(2) of this section, any State corporate governance provision, including anti-takeover provisions, that would render more difficult or discourage an injection of capital by purchase of bank stock, a merger, the acquisition of the bank, a tender offer, a proxy contest, the assumption of control by a holder of a large block of the bank's stock, or the removal of the incumbent board of directors or management is inconsistent with bank safety and soundness if:

- (i) The bank is less than adequately capitalized (as defined in 12 CFR part 6);
- (ii) The bank is in troubled condition (as defined in 12 CFR 5.51(c)(7));
- (iii) Grounds for the appointment of a receiver under 12 U.S.C. 191, as determined by the OCC, are present; or
- (iv) The bank is otherwise in less than satisfactory condition, as determined by the OCC.

(2) *Exception.* Anti-takeover provisions are not inconsistent with bank safety and soundness if, at the time the bank adopts the provisions:

(i) The bank is not subject to any of the conditions in paragraph (d)(1) of this section; and

(ii) The bank includes, in its articles of association or its bylaws, as applicable pursuant to paragraph (f) of this section, a limitation that would make the provisions ineffective if:

(A) The conditions in paragraph (d)(1) of this section exist; or

(B) The OCC otherwise directs the bank not to follow the provision for supervisory reasons.

(e) *Case-by-case review—(1) OCC determination.* Based on the substance of the provision or the individual circumstances of a national bank, the OCC may determine that a State anti-takeover provision, as proposed or adopted by a bank, is:

(i) Inconsistent with Federal banking statutes or regulations, notwithstanding paragraph (b) of this section; or

(ii) Inconsistent with bank safety and soundness other than as provided in paragraph (d) of this section.

(2) *Review.* The OCC may initiate a review, or a bank may request OCC review pursuant to § 7.2000(d), of a State anti-takeover provision.

(f) *Method of adoption for anti-takeover provisions—(1) Board and shareholder approval.* A national bank must follow the provisions for approval by the board of directors and approval of shareholders for the adoption of an anti-takeover provision in the State corporate governance law it has elected to follow. However, if the provision is included in the bank's articles of association, the bank's shareholders must approve the amendment of the articles pursuant to 12 U.S.C. 21a, even if the State law does not require approval by the shareholders.

(2) *Documentation.* If the State corporate governance law requires the anti-takeover provision to be in the company's articles of incorporation, certificate of incorporation, or similar document, the national bank must include the provision in its articles of association. If the State corporate governance law does not require the provision to be in the company's articles of incorporation, certificate of incorporation, or similar document, but allows it to be in the bylaws, then the national bank must include the provision in either its articles of association or in its bylaws, provided, however, that if the State corporate governance law requires shareholder approval for changes to the corporation's bylaws, then the national bank must include the provision in its articles of association.

■ 33. Amend § 7.2002 by:

- a. Revising the section heading;
- b. Removing the word “bank’s” and adding in its place the phrase “national bank’s” wherever it appears; and
- c. Adding the phrase “for shareholder voting” after the word “proxy” wherever it appears.

The revision reads as follows:

§ 7.2002 National bank director or attorney as proxy.

* * * * *

■ 34. Revise § 7.2003 to read as follows:

§ 7.2003 National bank shareholder meetings; Board of directors meetings.

(a) *Notice of shareholders' meetings.* A national bank must mail shareholders notice of the time, place, and purpose of all shareholders' meetings at least 10 days prior to the meeting by first class

mail, unless the OCC determines that an emergency circumstance exists. Where a national bank is a wholly-owned subsidiary, the sole shareholder is permitted to waive notice of the shareholder's meeting. The articles of association, bylaws, or law applicable to a national bank may require a longer period of notice.

(b) *Annual meeting for election of directors.* When the day fixed for the regular annual meeting of the shareholders falls on a legal holiday in the State in which the bank is located, the shareholders' meeting must be held, and the directors elected, on the next following banking day.

(c) *Virtual participation at shareholder meetings—(1) In general.* A national bank may provide for telephonic or electronic participation at shareholder meetings.

(2) *Procedures.* A national bank must follow the procedures for telephonic or electronic participation in a shareholder meeting of the corporate governance provisions it has elected to follow pursuant to § 7.2000(b), if those elected provisions include telephonic or electronic participation procedures; the Delaware General Corporation Law, Del. Code Ann. Tit. 8 (1991, as amended 1994, and as amended thereafter); or the Model Business Corporation Act, provided, however, that such procedures are not inconsistent with applicable Federal statutes and regulations and safety and soundness. The national bank must indicate the use of these procedures in its bylaws.

(d) *Virtual participation at board of directors meetings.* A national bank may provide for telephonic or electronic participation at a meeting of its board of directors.

■ 35. Revise the heading for § 7.2004 to read as follows:

§ 7.2004 Honorary national bank directors or advisory boards.

* * * * *

■ 36. Amend § 7.2005 by:

- a. Revising the section heading and the heading in paragraph (a); and
- b. Removing in paragraph (c)(3)(ii), the word “shall” and adding in its place the word “must”.

The revision reads as follows:

§ 7.2005 Ownership of stock necessary to qualify as director of a national bank.

(a) *In general.* * * *

* * * * *

■ 37. Amend § 7.2006 by:

- a. Revising the section heading; and
- b. In the first sentence, removing the phrase “When electing directors, a shareholder shall” and adding in its

place the phrase “When electing national bank directors, a shareholder must”.

The revision reads as follows:

§ 7.2006 Cumulative voting in election of national bank directors.

* * * * *

■ 38. Amend § 7.2007 by:

- a. Revising the section heading;
- b. In paragraph (a), adding the word “national” before the phrase “bank’s articles of association” in the first sentence; and
- c. In paragraph (b), removing the phrase “If a vacancy occurs on the board of directors,” and adding in its place the phrase “If a vacancy occurs on the national bank’s board of directors.”.

The revision reads as follows:

§ 7.2007 Filling vacancies and increasing board of directors of a national bank other than by shareholder action.

* * * * *

■ 39. Amend § 7.2008 by:

- a. Revising the section heading and paragraph (a); and
- b. In paragraph (b):
 - i. Removing the phrase “Each director shall execute” and adding in its place the phrase “Each national bank director must execute” in the first sentence; and
 - ii. Removing the phrase “A director shall take” and adding in its place the phrase “A national bank director must take” in the second sentence.

The revision reads as follows:

§ 7.2008 Oath of national bank directors.

(a) *Administration of the oath.* The oath of directors must be administered by:

- (1) A notary public, including one who is a director but not an officer of the national bank; or
- (2) Any person, including one who is a director but not an officer of the national bank, having an official seal and authorized by the State to administer oaths.

* * * * *

■ 40. Amend § 7.2009 by:

- a. Revising the section heading; and
- b. Removing the word “shall” and adding in its place the word “must”.

The revision reads as follows:

§ 7.2009 Quorum of a national bank board of directors; proxies not permissible.

* * * * *

■ 41. Amend § 7.2010 by:

- a. Revising the section heading; and
- b. Removing the phrase “affairs of the bank shall” and adding in its place the phrase “affairs of a national bank must” in the first sentence.

The revision reads as follows:

§ 7.2010 National bank directors’ responsibilities.

* * * * *

■ 42. Revise the heading of § 7.2011 to read as follows:

§ 7.2011 National bank compensation plans.

* * * * *

■ 43. Revise § 7.2012 to read as follows:

§ 7.2012 President as director of a national bank.

Pursuant to 12 U.S.C. 76, the person serving as, or in the function of, president of a national bank, regardless of title, must be a member of the board of directors. A director other than the person serving as, or in the function of, president may be elected chairman of the board.

■ 44. Revise the heading of § 7.2013 to read as follows:

§ 7.2013 Fidelity bonds covering national bank officers and employees.

* * * * *

■ 45. Revise § 7.2014 to read as follows:

§ 7.2014 Indemnification of national bank and Federal savings association institution-affiliated parties.

(a) *Indemnification under State law.* Subject to the limitations of paragraph (b) of this section, a national bank or Federal savings association may indemnify an institution-affiliated party for damages and expenses, including the advancement of expenses and legal fees, in accordance with the law of the State the bank or savings association has designated for its corporate governance pursuant to § 7.2000(b) (for national banks), 12 CFR 5.21(j)(3)(ii) (for Federal mutual savings associations), or 12 CFR 5.22(j)(2)(ii) (for Federal stock savings associations), provided such payments are consistent with safe and sound banking practices. The term “institution-affiliated party” has the same meaning as set forth at 12 U.S.C. 1813(u).

(b) *Administrative proceedings or civil actions initiated by Federal banking agencies.* With respect to an administrative proceeding or civil action initiated by any Federal banking agency, a national bank or Federal savings association may only make or agree to make indemnification payments to an institution-affiliated party that are reasonable and consistent with the requirements of 12 U.S.C. 1828(k) and 12 CFR chapter III.

(c) *Written agreement required for advancement.* Before advancing funds to an institution-affiliated party under this section, a national bank or Federal savings association must obtain a

written agreement that the institution-affiliated party will reimburse the bank or savings association, as appropriate, for any portion of that indemnification that the institution-affiliated party is ultimately found not to be entitled to under 12 U.S.C. 1828(k) and 12 CFR chapter III, except to the extent that the bank’s or savings association’s expenses have been reimbursed by an insurance policy or fidelity bond.

(d) *Insurance premiums.* A national bank or Federal savings association may provide for the payment of reasonable premiums for insurance covering the expenses, legal fees, and liability of institution-affiliated parties to the extent that the expenses, fees, or liability could be indemnified under this section.

■ 46. Revise the heading of § 7.2015 to read as follows:

§ 7.2015 National bank cashier.

* * * * *

■ 47. Amend § 7.2016 by:

- a. Revising the section heading;
- b. Redesignating paragraphs (a) and (b) as paragraphs (a)(1) and (2), respectively, and adding a heading for paragraph (a); and
- c. Adding a new paragraph (b).

The revision and additions read as follows:

§ 7.2016 Restricting transfer of national bank stock and record dates; stock certificates.

(a) *Restricting transfer of stock and record dates—** * *

(b) *Bank stock certificates.* (1) A national bank may prescribe the manner in which its stock must be transferred in its bylaws or articles of association. A bank issuing stock in certificated form must comply with the requirements of 12 U.S.C. 52, including as to:

- (i) The name and location of the bank;
- (ii) The name of the holder of record of the stock represented thereby;
- (iii) The number and class of shares which the certificate represents;
- (iv) If the bank issues more than one class of stock, the respective rights, preferences, privileges, voting rights, powers, restrictions, limitations, and qualifications of each class of stock issued (unless incorporated by reference to the articles of association);
- (v) Signatures of the president and cashier of the bank, or such other officers as the bylaws of the bank provide; and
- (vi) The seal of the bank.

(2) The requirements of paragraph (b)(1)(v) of this section may be met through the use of electronic means or by facsimile.

§§ 7.2017 and 7.2018 [Removed]

■ 48. Remove §§ 7.2017 and 7.2018.

■ 49. Revise the heading of § 7.2019 to read as follows:

§ 7.2019 Loans secured by a national bank's own shares.

* * * * *

§ 7.2020 [Removed]

■ 50. Remove § 7.2020.

■ 51. Revise the heading of § 7.2021 to read as follows:

§ 7.2021 National bank preemptive rights.

* * * * *

■ 52. Amend § 7.2022 by:

- a. Revising the section heading; and
- b. Removing the word “state” and adding in its place the word “State”.

The revision reads as follows:

§ 7.2022 National bank voting trusts.

* * * * *

■ 53. Revise the heading of § 7.2023 to read as follows:

§ 7.2023 National bank reverse stock splits.

* * * * *

§ 7.2024 [Amended]

■ 54. Amend § 7.2024(a) and (c) by removing the word “shall” and adding in its place the word “must” wherever it appears.

■ 55. Add § 7.2025 to read as follows:

§ 7.2025 Capital stock-related activities of a national bank.

(a) *In general.* A national bank must obtain the necessary shareholder approval required by 12 U.S.C. 51a, 57, or 59 for any change in its permanent capital. An increase or decrease in the amount of a national bank's common or preferred stock is a change in permanent capital subject to the notice and approval requirements of 12 CFR 5.46 and applicable law. A national bank may obtain the required shareholder approval of changes in permanent capital, as provided in paragraphs (b), (c), and (d) of this section.

(b) *Issuance of previously approved and authorized common stock.* In compliance with 12 U.S.C. 57, a national bank may issue common stock up to an amount previously approved and authorized in the national bank's articles of association by holders of two-thirds of the national bank's shares without obtaining additional shareholder approval for each subsequent issuance within the authorized amount.

(c) *Issuance, repurchase, and redemption of preferred stock pursuant to certain procedures.* Subject to the requirements of 12 U.S.C. 51a and 59, a national bank may adopt procedures to

authorize the board of directors to issue, determine the terms of, repurchase, and redeem one or more series of preferred stock, if permitted by the corporate governance provisions adopted by the bank under § 7.2000. To satisfy the shareholder approval requirements of 12 U.S.C. 51a and 59, the adoption of such procedures must be approved by shareholders in advance through an amendment to the national bank's articles of association. Any amendment to a national bank's articles of association that authorizes both the issuance and the repurchase and redemption of shares must be approved by holders of two-thirds of the national bank's shares.

(d) *Share repurchase programs.* Subject to the requirements of 12 U.S.C. 59, a national bank may establish a program for the repurchase, from time to time, of the national bank's common or preferred stock, if permitted by the corporate governance provisions adopted by the bank under § 7.2000. To satisfy the shareholder approval requirement of 12 U.S.C. 59, the repurchase program must be approved in advance by the holders of two-thirds of the national bank's shares, including through an amendment to the national bank's articles of association that authorizes the board of directors to repurchase the national bank's common or preferred stock from time to time under board-determined parameters that can limit the frequency, type, aggregate limit, or purchase price of repurchases.

(e) *Preferred Stock Features.* A national bank's preferred stock may be cumulative or non-cumulative and may or may not have voting rights on one or more series.

■ 56. Revise the heading for subpart C to read as follows:

Subpart C—National Bank and Federal Savings Association Operations

■ 57. Revise § 7.3000 to read as follows:

§ 7.3000 National bank and Federal savings association operating hours and closings.

(a) *Operating hours.* The board of directors of a national bank or Federal savings association, or an equivalent person or committee of a Federal branch or agency, should review its hours of operations for customers and, independently of any other bank, savings association, or Federal branch or agency, take appropriate action to establish a schedule of operating hours for customers.

(b) *Emergency closings declared by the Comptroller.* Pursuant to 12 U.S.C. 95(b)(1) and 1463(a)(1)(A), the

Comptroller of the Currency (Comptroller), may declare any day a legal holiday if emergency conditions exist. That day is a legal holiday for national banks, Federal savings associations, and Federal branches or agencies in the affected geographic area (*i.e.*, throughout the United States, in a State, or in part of a State), and national banks, Federal savings associations, and Federal branches and agencies may temporarily limit or suspend operations at their affected offices, unless the Comptroller by written order directs otherwise. Emergency conditions may be caused by acts of nature or of man and may include natural and other disasters, public health or safety emergencies, civil and municipal emergencies, and cyber threats or other unauthorized intrusions (*e.g.*, severe flooding, a pandemic, terrorism, a cyber-attack on bank systems, or a power emergency declared by a local power company or government requesting that businesses in the affected area close). The Comptroller may issue a proclamation authorizing the emergency closing in anticipation of the emergency condition, at the time of the emergency condition, or soon thereafter. In the absence of a Comptroller declaration of a bank holiday, a national bank, Federal savings associations, or Federal branch or agency may choose to temporarily close offices in response to an emergency condition. The national bank, Federal savings associations, or Federal branch or agency should notify the OCC of such temporary closure as soon as feasible.

(c) *Emergency and ceremonial closings declared by a State or State official.* In the event a State or a legally authorized State official declares any day to be a legal holiday for emergency or ceremonial reasons in that State or part of the State, that same day is a legal holiday for national banks, Federal savings associations, and Federal branches or agencies or their offices in the affected geographic area. National banks, Federal savings associations, and Federal branches or agencies or their affected offices may close their affected offices or remain open on such a State-designated holiday, unless the Comptroller by written order directs otherwise.

(d) *Liability.* A national bank, Federal savings association, or Federal branch or agency should assure that all liabilities or other obligations under the applicable law due to its closing are satisfied.

(e) *Definition.* For the purpose of this subpart, the term “State” means any of the several States, the District of Columbia, the Commonwealth of Puerto

Rico, the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or any other territory or possession of the United States.

§ 7.3001 [Amended]

■ 58. Amend § 7.3001 by:

■ a. In paragraph (a)(1), removing the phrase “Lease excess space” and adding in its place the phrase “Consistent with § 7.1024, lease excess space”;

■ b. In paragraph (c) introductory text, removing the word “shall” and adding in its place the word “must”; and

■ c. In paragraph (c)(3), removing the word “state” and adding in its place the word “State”.

§§ 7.4003 through 7.4005 [Removed]

■ 59. Remove §§ 7.4003 through 7.4005.

■ 60. Revise § 7.5001 to read as follows:

§ 7.5001 Electronic activities that are incidental to the business of banking.

In addition to the electronic activities specifically permitted in § 7.5004 (sale of excess electronic capacity and by-products) and § 7.5006 (incidental non-financial data processing), the OCC has

determined that the following electronic activities are incidental to the business of banking, pursuant to § 7.1000. This list of activities is illustrative and not exclusive; the OCC may determine that other activities are permissible pursuant to this authority.

(a) Website development where incidental to other banking services;

(b) Internet access and email provided on a non-profit basis as a promotional activity;

(c) Advisory and consulting services on electronic activities where the services are incidental to customer use of electronic banking services; and

(d) Sale of equipment that is convenient or useful to customer's use of related electronic banking services, such as specialized terminals for scanning checks that will be deposited electronically by wholesale customers of banks under the Check Clearing for the 21st Century Act, Public Law 108–100 (12 U.S.C. 5001–5018) (the Check 21 Act).

PART 145—FEDERAL SAVINGS ASSOCIATIONS—OPERATIONS

■ 61. The authority citation for part 145 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828, 5412(b)(2)(B).

§ 145.121 [Removed]

■ 62. Remove § 145.121.

PART 160—LENDING AND INVESTMENT

■ 63. The authority citation for part 160 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1701j–3, 1828, 3803, 3806, 5412(b)(2)(B); 42 U.S.C. 4106.

§ 160.50 [Removed]

■ 64. Remove § 160.50.

§ 160.120 [Removed]

■ 65. Remove § 160.120.

Brian P. Brooks,

Acting Comptroller of the Currency.

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